

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76137

AT AUCKLAND

<u>Before:</u>	S Murphy (Member)
<u>Counsel for the Appellant:</u>	E Griffin
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	15 November & 7 December 2007
<u>Date of Decision:</u>	19 May 2008

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Department of Labour (DOL), declining the grant of refugee status to the appellant, claiming to be a national of Somalia.

INTRODUCTION

[2] The appellant is a woman in her 20s. She claims to have arrived in New Zealand by air on 22 April 2007 but there is no record of her arrival. She lodged an application for refugee status on 2 May 2007, and was interviewed by the Refugee Status Branch (RSB) on 6 June 2007. A decision declining her application was delivered on 6 September 2007. It is from that decision that she appeals to this Authority.

[3] The central issue before the Authority is the question of the credibility of the appellant's account, even as to her identity and nationality.

THE APPELLANT'S CASE

[4] The account which follows is a summary of the evidence given by the appellant at the appeal hearing. It is assessed later.

[5] The appellant was born in Mogadishu to a family of five siblings. She is of the Muslim faith. Her mother was a housewife and her father a teacher. She is a member of the Garre clan. She was attending primary school when the civil war broke out in 1991. The day after the war started, the family's home was hit by a rocket and the family fled to the outskirts of Afgoye in the bush by foot.

[6] When living in the bush in the Afgoye region, the family lived in various huts made of sticks, plastic sheeting and boxes, together with other small groupings of families who had fled Mogadishu. The family survived through gifts of milk and corn from the pastoralists. They sometimes went hungry. Approximately twice a year, relief organisations would visit and provide cooking oil, flour, rice and sugar.

[7] The difficulties of subsisting in the countryside caused the family to move back to Mogadishu in 1994, even though the fighting had not abated. When they returned to the house, it had been looted, part of the wall was destroyed and there were no windows or doors. Having insufficient means to rebuild the house, they repaired it as best they could using plastic and cardboard and draping cloth over the places where the windows had been.

[8] After returning to Mogadishu, the appellant's mother started selling goods in a market, which was close to the family home. Initially, the appellant helped her, as her mother was unable to afford to send her to school. The appellant's father stayed at home because he felt that, as a man in the market who was from a weak clan, he would have to "either be like those preying on others and robbing people or siding with clan and fighting with them". He did not want to be killed or kill others so instead chose to stay at home.

[9] The following year, in 1995, when the appellant's mother had made enough money, she sent the appellant to school. The appellant attended school until 2001, but her mother could only afford the fees for her to attend two days per week. The rest of the time, she continued to help her mother in the market. She finished school early without a qualification as her mother could not afford the

fees. After finishing school, she divided her time between helping her mother in the market and looking after her siblings.

DIFFICULTIES IN MARKET

[10] The appellant's mother's stall in the market was frequently raided by members of the major clans because she came from a minority clan. Members of major clans would come to the stall once or twice a month demanding money and at times taking the day's earnings, which they were able to do because the Garre clan had no militia to protect its members.

[11] In 1999, a group of women from the Habar Gidir clan raided the stall, beat her mother and closed the stall because she was from a minority clan. Some of the women were neighbours. Since then, her mother has closed the stall whenever she sees the women coming.

[12] In the same year, the appellant was coming home from the market by herself after buying groceries when she was captured by an armed gang of Habar Gidir clan members, who threw her to the ground, hit her with the butt of a rifle and took her groceries, earrings and necklace.

DIFFICULTIES AT FAMILY HOME

[13] After the family returned from the bush, two or three times per month, the family home would be raided by members of powerful clans, sometimes by neighbours. They would, on occasion, hit family members with the butt of a rifle, and tell the appellant's family that they had to leave the area.

ISLAMIC COURTS

[14] In June 2006, the Islamic Courts came into power. Within a week, the transitional government was ousted. The appellant and her mother, together with other women, were required to wear *chadors*. The appellant's mother restricted her trading at the market to two to three hours per day, and the appellant stopped working in the stall as she did not feel safe, instead staying mainly indoors.

[15] In January 2007, the appellant's mother organised for a Somali businessman to take the appellant out of the country, at a cost of approximately US\$5000. She left the country in a truck with a number of other Somalis and

crossed the border into Kenya on 31 January. She stayed there for two months and 20 days, before arriving in New Zealand on 22 April 2007.

[16] Shortly after arriving in New Zealand, the appellant fell pregnant to a Somali man to whom she is not married. She gave birth on 8 December 2007.

[17] The appellant has not told her parents about the pregnancy. She considers it would be dangerous to do so as it contravenes her religion to have a child out of wedlock. If she returned to Somalia, she believes her parents would cut her off for having an illegitimate child.

[18] The appellant has tried to call her family home whilst in New Zealand but the telephone has been cut off.

[19] In August 2007, the appellant contacted a person in Kenya to get the number of a Somali businessman who used to be a neighbour to the family. She then contacted the businessman who said that he had met her mother in the market. He advised that the family had left their house due to fighting which was occurring in Mogadishu. The appellant's telephone card ran out during the course of the conversation. She did not call back immediately as she could not afford a telephone card.

[20] The appellant tried calling the man back in October but he did not answer his telephone.

WITNESS A

[21] Witness A is from the Hawiye clan and the Ajuran subclan. His brother is married to a Garre woman. He left Somalia in 1994 and arrived in New Zealand to join his brother who had been resettled in New Zealand after being granted refugee status by the United Nations High Commissioner for Refugees (UNHCR).

[22] According to Witness A, both the Garre and the Ajuran are subclans of the Hawiye clan that do not have armed militias. Their clans' people are located in Somalia, Kenya and Ethiopia.

[23] Witness A knows the appellant because he was asked by a fellow member of the community to verify her clan affiliation for the purposes of the hearing, given the relationship between the Garre clan and the Ajuran clan.

[24] After being advised of this, Witness A met the appellant and they discussed their clan background. Witness A is confident that the appellant is a Somali from the Garre clan and Tuff subclan. Her knowledge of the clan relationships, together with her accent, led him to believe that she is from Somalia rather than Kenya or Ethiopia.

[25] He gave evidence that even though the Garre clan comes under the Hawiye clan, it has a minority position and does not have militia, as most of its members are pastoralists, and do not have the organisational structures to create a militia.

WITNESS B

[26] Witness B is a refugee who arrived in New Zealand in 2002 under the UNHCR quota system. Like the appellant, he is from the Garre clan and Tuff subclan. A colleague of his lives with the appellant.

[27] Witness B left Somalia in 1987 to study and has lived outside the country since then.

[28] He has met the appellant on two occasions. He has discussed the appellant's clan affiliation with her and understands she is from the Garre clan and the Tuff subclan, and has also discussed the situation in Somalia. He said that people always tell the truth about their clan affiliation, because it would be immediately apparent if the person was lying, and to do so would involve a loss of face.

[29] He said that clan structure became much more important after the civil war, and previously people from different clans had interacted without difficulties. At the time he left Somalia, clans were unimportant.

[30] Witness B said that the Garre clan are nomadic tribespeople who tend camels, and some of them are farmers. He said they do not have much political involvement, and they do not have a militia to protect them.

[31] The appellant did not tell Witness B when she left Somalia, although he "assumed" she had been there recently.

DOCUMENTS AND SUBMISSIONS

[32] The appellant provided a Somali birth certificate in support of her claim.

[33] Counsel provided written opening submissions on 14 November 2007 and closing submissions on 14 December 2007. These have been taken into account in this decision.

THE ISSUES

[34] 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."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[36] The appellant's evidence was very erratic. It was flawed in the following respects.

[37] At her RSB interview, the appellant was unable to state whether there were any main rivers or mountains in the Afgoye region. She claimed to have lived in the region for three years, and Afgoye town, which she claims to have been to, is located on the banks of the Shabelle river. Her explanation given to the Authority for this was that she was a young child while she was living in the region, that she had lived in the bush rather than Afgoye town, and that she had not seen Shabelle river. The explanation is rejected - she was 12 years old by the time she left the area and she returned there periodically while she was at secondary school. Moreover, the river is a significant landmark in the area, so even if she had not

seen it or noticed it when she went to Afgoye, one would expect her to know of its existence if she had spent so much time in the region.

[38] The appellant told the RSB that the primary school she was attending when the war broke out in 1991 was destroyed. However, she told the Authority that her school was still standing at that time. When asked by the Authority to explain this discrepancy, she said that the secondary school she attended in 1995 was damaged by rockets, and that she recalled that the interpreter at the RSB had confused her primary and secondary schools when she was asked about this. However, the RSB records the appellant as having said that the period of three years during which she went to Afgoye was *after* her school was destroyed, and also saying that her school was destroyed at the time the war broke out. Her explanation as to interpreter error is disbelieved.

[39] The appellant claimed to have worked with her mother in the market for 13 years. When asked by the Authority whether there was a formal system of security in the market she said “No, pretty much everyone has got their own gun”. However, this evidence was at odds with a report obtained by the Authority which stated that “each section of the market is protected by security staff paid by stores in the location”, and that there is also “a security network among different staff”; International Alert Local Business, Local Peace: The Peacebuilding Potential of the Domestic Private Sector; Case Study, Somalia (2006), p490.

[40] When this information was brought to the attention of the appellant, she disputed the report, but then changed her evidence to say that militia are paid to protect the various sectors of the market. Her explanation as to the difference between her new evidence and her previous evidence was that she did not consider that system to be “formal” because it was not put in place by the government. That explanation is specious. In her initial response she had indicated that there was no system of security whatsoever and that people at the market had to protect themselves. It is nonsensical to suppose that she failed to mention the presence of hired security staff because they had not been put in place by a non-existent government.

[41] The appellant says that her travel to New Zealand cost US\$5000, and that her mother saved the money from her work at the market selling fruit and vegetables. However, her evidence was that after their return to Mogadishu her father was unemployed, her mother’s market stall was raided twice a month for money and goods, and the family home was raided two to three times per month

for the same purpose. In those circumstances, the chances of the appellant's mother being able to save that very substantial sum of money in US currency in Somalia's weak economy, living in destitute conditions in Mogadishu are negligible. It is implausible that she could have done so.

[42] The appellant claims to have crossed the border from Somalia to Kenya on 31 January 2007. She says she was in an open-backed (albeit covered) lorry with a large group of other people, that only the driver was asked for documentation, and that they passed through the border post quickly after the driver showed his papers. However, according to country information, the border had been closed since 3 January 2007, and between 5,000 and 7,000 refugees were stranded in Somalia at this time. Although some refugees did manage to make their way through the border, testimonies received by Amnesty International indicated they had faced "harrowing experiences of human rights abuses in the process of reaching the border"; see Amnesty International *Kenya: Denied refuge: the effect of the closure of the Kenya/Somalia border on thousands of Somali asylum-seekers and refugees* (May 2007).

[43] The appellant told the RSB that she had "no idea" that the border was closed at the time she had crossed it. We find this implausible, and the ease with which she crossed the border to be at odds with the country information. Her explanation to the Authority as to how she managed to get through the border at a time when it was closed was that she was an "ordinary civilian" in a "skirt and jumper" and that at the border they were only looking for specific people such as armed men or members of the Islamic Courts. The country information suggests otherwise. The Authority rejects her claim to have crossed the Somali/Kenyan border in January 2007.

[44] As stated earlier, there are no records of the appellant's arrival in New Zealand. Moreover, the information she gave to Immigration New Zealand about the route and airline she took to New Zealand was extremely vague. For example, she stated that she spent one night "in the place where people had slanty eyes" on the way, that she did not know the nationality of the passport on which she travelled to New Zealand, and did not remember the airline on which she travelled. When questioned further, she gave information about the airline which indicated that it was Emirates airline, and yet the time of day she arrived, and the route she claims to have taken suggest she could not have flown with that airline. The

Authority finds that the appellant has attempted to conceal the route and circumstances of her arrival to New Zealand.

[45] The finding is reinforced by the appellant's claim to have become pregnant to a man after her arrival in New Zealand on 22 April 2007. Her child was born on 8 December 2007, suggesting a date of conception within two weeks either side of 28 February 2007. Absent a dramatically premature birth (of which she has made no mention), if she became pregnant in New Zealand, then her claim to have arrived here on 22 April 2007, at least six weeks later, is clearly fabricated.

[46] When asked by the Authority whether the appellant had told him when she left Somalia, Witness B said she had not, but that he "assumed" she left there recently. When the Authority expressed surprise that the appellant had not told him whether she had been in Somalia recently, given they had discussed the situation in Somalia, he said "I never went into detail about her situation". It is implausible that the appellant would not have told Witness B whether she was in Somalia recently, given Witness B's evidence that they had discussed the situation in Somalia, his evidence earlier in the hearing that she had talked to him about her time in Somalia, and his evidence that they are from the same tribe and sub-tribe.

[47] It is also implausible that the appellant would have waited two months to call the Somali trader who had told her that her parents had been forced from their home, after the call in which he told her this disturbing information was cut short due to her telephone card running out. Given that she had just been advised that her parents were in an extremely serious situation, and been left unaware of their whereabouts, one would expect that she would call the man back within a short time of the call being cut off. This is particularly so in light of her evidence that she would have been able to find out where her parents were if "the conversation with the trader had taken longer". Her evidence that she had to wait two months to obtain the requisite \$10 for a telephone card was most unpersuasive. In the claimed circumstances, she would undoubtedly have found the money or another means of calling the trader. Further, the appellant clearly understood the significance of the information to her refugee claim and it is implausible that she would not have taken urgent steps to ascertain information which could be expected to shed light on her predicament.

[48] Finally, it is necessary to refer briefly to Witness A and Witness B. The evidence of both men does no more than identify that the appellant is of the Garre clan. Neither man can corroborate any of the events she claims to have

experienced in Somalia. Witness A said he understood from his discussions with her that she was in Somalia recently but little weight is afforded this given the vague nature of his evidence on this point, the implausible nature of Witness B's evidence on whether she was in Somalia recently, and the flaws in the remainder of the evidence regarding her time in Somalia and the timing of her departure. Given the massive Somali diaspora (some 20-25 million), the mere fact of clan membership does not, of itself, establish that a person was in Somalia at any point in time.

[49] In sum, the above concerns, taken cumulatively, satisfy the Authority that there is no basis on which to believe anything about the appellant's account of her life, other than the fact that she is Somali, and is of the Garre clan.

[50] Her undocumented arrival conforms to a pattern of Somalis who have arrived in New Zealand without official record (which was discussed in *Refugee Appeal No 75634* (24 May 2006), and referred to in her RSB decision). Moreover, a number of Somalis who have recently claimed refugee status in New Zealand have subsequently been revealed as having existing nationality rights in another Western country. The possibility of the appellant having such a second nationality was raised with her in the hearing. Her response was to deny the existence of a second nationality, point out that she was under oath, and reiterate her false evidence about the circumstances of her departure from Somalia, travel to New Zealand, and "16 years" of suffering in Somalia.

[51] The appellant's undocumented arrival, her false evidence regarding the timing and circumstances of her departure from Somalia, her attempts to conceal her route to New Zealand, her false evidence as to her situation and problems in Somalia and Witness B's lack of knowledge of whether she had been in Somalia in recent times combine to indicate that the appellant has not been living in Somalia in recent times. There is a significant possibility that, like the other Somalis referred to above, her fabricated account and false travel details result from attempts to conceal a second nationality.

[52] It is the appellant's responsibility to establish her claim (see *Jiao v Refugee Status Appeals Authority and Attorney General* [2003] NZAR 647) including presenting a true account of her identity, life and her travel movements. The appellant has failed to discharge that burden. Nothing she says can be relied upon. In light of the absence of any credible information about the appellant upon which we can rely, beyond her clanship, the evidence does not establish that she

has a well-founded fear of being persecuted in her country of nationality, whatever that may be.

CONCLUSION

[53] The appellant has failed to discharge the burden to establish her claim, and has not demonstrated that she is in need of refugee protection.

[54] The first framed issue is answered in the negative and the second does not arise.

[55] For the above reasons, 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.

"S Murphy"

S Murphy
Member