



RPD File No. / N° de dossier de SPR : VB0-04912

Private Proceeding / Huis clos

## Reasons and Decision – Motifs et décision

<b>Claimant(s)</b>	XXXXXX XXXXXX <i>aka</i> XXXXXX XXXXXX	<b>Demandeur(e)(s) d'asile</b>
<b>Date(s) of Hearing</b>	20 December 2011	<b>Date(s) de l'audience</b>
<b>Place of Hearing</b>	Vancouver, BC	<b>Lieu de l'audience</b>
<b>Date of Decision</b>	20 December 2011 (rendered orally) 23 January 2012 (written decision)	<b>Date de la décision</b>
<b>Panel</b>	Negar Azmudeh	<b>Tribunal</b>
<b>Counsel for the Claimant(s)</b>	Judith Boer Barrister and Solicitor	<b>Conseil(s) du / de la / des demandeur(e)(s) d'asile</b>
<b>Tribunal Officer</b>	N/A	<b>Agent(e) des tribunaux</b>
<b>Designated Representative(s)</b>	N/A	<b>Représentant(e)(s) Désigné(e)(s)</b>
<b>Counsel for the Minister</b>	Documents Only	<b>Conseil du ministre</b>

## REASONS FOR DECISION

[1] **XXXXX XXXXX** (the “claimant”) alleges that he is a citizen of Somalia. He claims to have a well-founded fear of persecution in that country at the hands of primarily Al-Shabaab by reasons of his actual and perceived political opinion, as well as image. The duty of this panel is to find if there is sufficient credible or trustworthy evidence to determine that there is more than a mere possibility that this claimant would be persecuted if he returned to Somalia. Further, the claimant must demonstrate that it would not be possible to get protection from the authorities in Somalia and that there is no other location within the country where he could live safely.

[2] In coming to my decision, I have considered the testimony and the evidence before me, including the Minister's disclosure in Exhibit 4. The panel has decided that the claimant is a Convention refugee. The claimant's complete allegations are set out in answer to question 31 of his Personal Information Form (PIF) and need not be repeated here in detail. To summarize, the claimant alleges that he is a member of the minority tribe of **XXXXX XXXXX**. He lost both parents in childhood and after the death of his mother he started living with his aunt in **XXXXX**. The claimant alleges that in **XXXXX** he faced some discrimination because of his tribal background, but after the Al-Shabaab conquered the city, his problems started more seriously.

[3] First, the claimant does not share Al-Shabaab's strict interpretation of Islam and, as such, he fears that they would impose their views on him or persecute him if he failed to comply. Second, he also fears being forcibly recruited by Al-Shabaab, such as when they tried to do it before he escaped captivity.

[4] At the outset of the hearing, the claimant's counsel informed the panel that the copy of the claimant's birth certificate<sup>1</sup> is a false document that was prepared while the claimant was in Mexico. When detained by Mexican authorities, the claimant was told that he needed to have an identification (ID) document and when he was freed and asked to report back in three days with an ID document, with the help of another Somali, he provided them with a false identity. I therefore give the birth certificate no weight.

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<sup>1</sup> Exhibit 2.

[5] This being said, the claimant testified in the Somali language and displayed a good knowledge of Somali geography, tribal structure and political violence. He also provided the panel with documents from the United States (U.S.) immigration authorities and his refugee claim in the U.S., which show that he had claimed to be a Somali of the same tribal background. He also provided documents from his sister, who is a U.S. resident, and his brother, who now resides in South Africa, to corroborate his identity.<sup>2</sup> As well as a document from the Somali Community Self Management in Utah.<sup>3</sup>

[6] I find that, given an absence of proper government in Somalia, it is not unreasonable that the claimant has not had more authentic and properly issued identity documents. I also do not count his actions in Mexico to rely on false documents when those false documents were needed to get him to the U.S., that he considered a safe country where he could claim asylum than to be an assault of his credibility as a whole. Therefore, on a balance of probabilities, I find that he has established his identity and nationality as a Somali. I also find that he has consistently communicated his tribal background in both the U.S. and Canada. While he has alleged some discrimination because of his tribe, he has not alleged that the persecution that led to his decision to leave the country to be because of it. On a balance of probabilities, I also accept that he belongs to the minority tribe of **XXXXXX XXXXXX**.

[7] I have found the claimant to be a credible witness and therefore believe what he has alleged in support of his case. The claimant testified in a straightforward manner and there were no material inconsistencies in his testimony or contradiction between his testimony and the other evidence before me that were not properly explained. I also find that the claimant did not attempt to exaggerate or embellish his evidence, even when he was given the opportunity to do so. For example, he candidly stated that Al-Shabaab was recently pushed back from **XXXXXX** by the Kenyan military and that before Al-Shabaab, for the most part, he lived a quiet life. He also stated that his male cousin, who was arrested again by Al-Shabaab, must have been freed at some point, because as far as he now knows, he was currently living at a refugee camp.

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<sup>2</sup> Exhibits 5 and 6.

<sup>3</sup> Exhibit 5, page 38.

[8] I note that the claimant has largely provided the same information to the U.S. authorities as being in Exhibit 5, Tab 2. While the panel initially questioned the logic of not staying in the U.S. to exhaust his appeal rights, I find that the claimant's explanation that he could not afford an appeal or being deported back to Somalia to be reasonable and consistent with his subjective fear. The documents in Exhibit 4, page 5, shows that his asylum claim in the U.S. was denied, that he was ordered removed to Somalia and that his application for withholding the removal was also denied.

[9] The claimant's statement that he did not agree with Al-Shabaab's interpretation of religion on everything from dress code, interaction with women, prohibition on music to fighting a jihad. I find that freedom of religion exerts the freedom to live one's interpretation of religion freely and publicly. I find being coerced into a religious behaviour that is against one's conscience amounts to one's violation of human rights. The documentary evidence shows that Al-Shabaab did not recognize the Somali government of Sheikh Sharif Ahmed. That is reflected on the *U.K. Country of Origin Report*, and participated in an Islamic insurgency against his government.<sup>4</sup>

[10] At paragraph 4.28, there were reports that Al-Shabaab is carrying out punishment in accordance with their interpretation of Shari'a law. Then at paragraph 9.04, Al-Shabaab is an Islamic movement which controls parts of Somalia and presents a serious challenge to the ten-year authority of the U.N.-sponsored transitional government. It says it is fighting to implement a strict interpretation of Shari'a law across the country. Al-Shabaab is an Arabic term for the youth.

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<sup>4</sup> Exhibit 3, National Documentation Package (NDP), Somalia, 20 April 2011, Item 2.3, United Kingdom (UK). 19 May 2010. Home Office. *Country of Origin Information Report: Somalia*, in paras. 3.14 and 3.15

[11] While they face some challenge by the more moderate groups, I find that they continue to be a powerful group that strives for control. At paragraph 9.06 of the same document:

Insurgent groups such as Al-Shabaab are alleged to be extorting money from private companies and recruiting young people to join the fight against the government in Mogadishu, including child soldiers. Al-Shabaab has confirmed the presence of foreign fighters within its districts and has stated openly that it has been working with Al-Qaeda in Mogadishu to remove the government of Somalia.

[12] I find that this recruitment is also consistent with the claimant's allegation.

[13] At paragraph 9.07, the main threat to the Transitional Federal Government (TFG) is posed by Al-Shabaab. It is on the U.S. Terror List and is accused of having links with Al-Qaeda. The group controls much of southern and central Somalia, including parts of Mogadishu. Al-Shabaab is reportedly led by a shadowy figure who goes by the name of Abu Zubeyr. This group's professed aim is to spread Islam across the globe.

[14] I find that, regardless of the leadership, it is this group and its collaboration with other extremist groups such as Al-Qaeda that continue to pose a threat in Somalia. I find that what the claimant experienced by Al-Shabaab amounted to persecution because of his actual and perceived political opinion, as well as religion.

[15] The claimant testified that according to the news he has read, the Kenyan military have now pushed the Al-Shabaab militants out of **XXXXXX**. He candidly stated that, in the absence of Al-Shabaab, while he may face some discrimination because of his tribal background in **XXXXXX**, he will not have a huge problem there. But in the absence of a government in Somalia, he said that he expects additional problems with Al-Shabaab. I find that the Foreign Ministry's operation to push out Al-Shabaab does not amount to a permanent and lasting solution and it does not qualify for a change of circumstance. The claimant testified that because of his tribal background, his aunt's ability to sell goods at the market was affected and he faced some discrimination at school. Yet he went to school and he got a job by someone not from his tribe

that the claimant referred to as an uncle and as a good man. I therefore find that the claimant faced some discrimination but was not persecuted because of his tribal background in **XXXXX**. This is even if I take his cumulative experiences into account.

[16] However, if the claimant were to go to a part of the country where Al-Shabaab has no real presence, such as in Somaliland, his tribal background becomes more of an issue. According to the country documents, including the *U.K. Country of Origin Report* at paragraph 18.03. The clan system is the most important social factor among nomadic pastoral Somalis. Ms. M. Lewis wrote in 1961 that the segmented clan system remains the bedrock foundation of the pastoral Somali society and clannishness and the primacy of clan interests is a natural divisive reflection on the political level.

[17] At paragraph 18.04, large swaths of the country have reverted back to a style of clan government that predates colonialism. If the claimant returned to Somalia and went to a part not controlled by Al-Shabaab, such as the north, the claimant would be alone and therefore more vulnerable. Coming from a minority tribe would not allow him to count on a powerful clan for protection and he would most likely be exploited and persecuted by it. Therefore, I find that if he were to relocate to a part of the country with little Al-Shabaab presence, he would face more than a mere possibility of persecution because of his membership in minority tribe.

[18] I find that the U.N.-backed government faces many challenges, including from Islamic groups and does not have the means of protecting its citizens against those groups, including Al-Shabaab. It also does not have the proper infrastructure of a functioning state with police and impartial courts. Therefore, I find that the claimant cannot expect any protection against either Al-Shabaab or any persecutory act by a majority tribe from the state.

[19] As stated above, I find that regardless of where the claimant goes, he will face a reasonable possibility of persecution either from Al-Shabaab or from a majority tribe. He will therefore have no internal flight alternative available to him either. In light of the foregoing, I accept the claimant's claim as a refugee claimant.

*Edited for spelling, grammar and syntax.*

*(signed)*

**“Negar Azmudeh”**

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**Negar Azmudeh**

**23 January 2013**

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**Date**

**KEYWORDS: REFUGEE PROTECTION DIVISION – NATIONALITY – RELIGION – IMPUTED  
POLITICAL OPINION – DISCRIMINATION – AL SHABAAB – POSITIVE – SOMALIA**