

Heard at Field House
On 4 November 2002

Appeal No HX10353-2002

HF (Persecution-Discrimination-Yibir-Occupation-Caste) Somalia CG [2002] UKIAT 05520

IMMIGRATION APPEAL TRIBUNAL

Date Determination Notified

..... 29 November 2002

.....

Before

Mr S L Batiste (Chairman)
Mrs M L Roe

HIDAYA ABDULLA FARAH
(and 1 Dependant)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant, a citizen of Somalia, appeals, with leave, against the determination of an Adjudicator, Mrs C M Graham, dismissing her appeal against the decision of the Respondent to refuse leave to enter and refuse asylum
2. Mr A Rhys-Davies, instructed by Messrs White Ryland, represented the Appellant. Mr D Ekagha, a Home Office Presenting Officer, represented the Respondent.
3. The Appellant's family comes from Hargeisa, the capital of Somaliland, an area of Somalia. They are members of a minority clan, the Yibir, which is also one of the small group of clans known as the occupational castes. These clans suffered during the civil war in Somalia, and the Appellant's family suffered in particular from the activities of a major clan in Somaliland, known as the Isaaq clan. The Appellant's father was severely beaten and her mother and sister were raped on another occasion. The Appellant was herself and beaten and burned. The family was forced to flee from Somalia in 1988 when they went to Ethiopia, remaining there until March 1991. On their return to Somalia they were harassed until they left again in June of that year for Dubai. They remained in Dubai until 1997 when they were deported back to Somalia. In 1999 members of the Isaaq clan killed the Appellant's mother during a robbery, and the family returned to Dubai, where they remained until May 2001. The Adjudicator

accepted this evidence as credible and held that this treatment in aggregate constituted past persecution. Mr Ekagha has not been challenged this.

4. The Adjudicator did not accept however the Appellant's account of events in and from May 2001, when the family was in Dubai. The Appellant claims that on 12 May her father and brothers were arrested on their way to the mosque. They were in Dubai illegally and were detained pending deportation back to Somalia. The Appellant and her two sisters were not detained with the others. Whilst in detention, her father allegedly arranged through a friend to obtain from an uncle in the United States the money needed to send the Appellant and her younger sister to the UK. Their older sister did not accompany them, as there was insufficient money to pay her passage. There is no evidence of what happened to her. The Appellant and her younger sister, who was then only 17, arrived in the UK on 18 May and claimed asylum a few days later. The Adjudicator did not accept the Appellant's father could, whilst in detention and within five days of being so detained, have made contact with his friend in Dubai and the uncle in the US, obtained the passage money, and made the arrangements for the Appellant and her younger sister to travel to the UK. Nor did she accept that the money from the uncle in the US would have been used to enable two daughters to escape to the UK, leaving the third on her own unprotected and without funds. Furthermore she did not accept the Appellant's claim that she does not now know the whereabouts of her father, brothers and older sister and has made no effort to locate them. Finally she concluded that, in her home area in Hargeisa in Somaliland, there had been sufficient improvements that the Appellant and her sister would no longer have a well founded fear of persecution there if returned.
5. Leave to appeal was granted on the basis that the Adjudicator had little evident regard to the skeleton argument before her. Mr Rhys-Davies relied on his grounds of appeal and also the skeleton argument, which he amplified in oral evidence. There were essentially two distinct limbs to his submissions.
6. The first is that the Adjudicator's adverse credibility finding was in error because she did not follow the Surendran guidelines and, in the absence of any representative for the Respondent at the hearing, failed to put the issues relating to credibility to the Appellant direct. However this is a misconception of what the Surendran guidelines actually require. They state that
“Whilst a special Adjudicator is under no positive duty to point out to an Appellant inconsistencies in accounts given, the overriding duty in asylum cases is to ensure that on Appellant has a hearing conducted to the highest standards of fairness..... The concept of fairness is not rigid and will vary according to the circumstances of a particular case..... Where a party is legally represented by competent practitioners, consideration of the presentation of a party's case is not normally a matter in which a Tribunal should intervene
7. The Court of Appeal in Maheshwaran C/2001/1631 considered when credibility issues must be put to a party and held that
“Undoubtedly a failure to put to a party to litigation a point which is decided against him can be grossly unfair and lead to injustice. He must have a proper opportunity to deal with the point. . . . Where much depends on the credibility of a party and that party makes several inconsistent statements which are

before the decision maker that party manifestly has a forensic problem. Some would choose to confront the inconsistencies straight on and make evidential or forensic submissions on them. Others will hope that "least said, soonest mended" and consider that forensic concentration on the point will only make matters worse and that it would be better to try to switch the Tribunal's attention to some other aspect of the case. Undoubtedly it is open to the Tribunal expressly to put a particular inconsistency to a witness because it considers that the witness may not be alerted to the point or because it fears it may have perceived something is inconsistent with an earlier answer which in truth is not inconsistent. Fairness may in some circumstances require this to be done but this will not be the usual case. Usually the Tribunal, particularly if the parties represented, will remain silent and see how the case unfolds. The requirements of fairness are very much conditioned by the facts of each case."

8. In this appeal, as Mr Ekagha pointed out, all the material issues relating to credibility were raised by the Respondent in his refusal letter. If Mr Rhys-Davies had wanted the Appellant to give evidence concerning these matters he was on notice to do so. The Adjudicator could not engage in cross-examination and there was only one point that required clarification in accordance with the Surndran guidelines, which in fact she did raise. Moreover as the Tribunal observed to Mr Rhys-Davies but without effective response, there is no new evidence before us to suggest what answers the Appellant might have been able to give at the hearing had she been asked, or could give now, which might cast a different light on the matters which formed the substance of the adverse credibility finding.
9. The Tribunal therefore concludes that the Adjudicator acted fairly in the conduct of the hearing and her adverse credibility finding was properly justified on the evidence. In particular, we agree that the Adjudicator was justified in her belief that the Appellant's claim not be in continuing touch with her family in Somaliland lacked credibility. The Appellant is now only 24 and her sister is younger and will have a powerful and natural wish to be in touch with their family. The Appellant could have discovered further information from her father's friend in Dubai, who arranged for her journey to the UK. She could have contacted her uncle in the United States who paid for her journey. Both are obvious points of contact and could reasonably be expected to have information about the family's current whereabouts. It is not credible that the Appellant would not have made any effort to discover this information from either or both of them, and would not even have made an approach for information through the Red Cross. This was true in the period up to the hearing before the Adjudicator, and the absence of any such enquiries after the Adjudicator's dismissal of their appeal is even more incredible, given the observations made in the determination. Mr Rhys-Davies could offer us no explanation for this failure to make enquiries. We therefore conclude that the Appellant is in contact with her family, who according to her own evidence must be in Somaliland if they were to be deported from Dubai, but she is seeking to conceal this information in order to enhance her claim. In particular we conclude that were she and her younger sister to return to Somaliland, it would be to her own family and she would not therefore be without the support of her male relatives. We also conclude that if there were any evidence from her family of continuing difficulties experienced by them in Hargeisa, they would have informed the Appellant and she would have raised this in evidence. On this basis, we have moved on to assessing the second limb of the appeal.

10. The second limb of the appeal is whether the Appellant has now a well founded fear of persecution or a breach of her Article 3 rights if returned to Somaliland in the light of the current evidence concerning the situation there.
11. Mr Rhys-Davies accepted that the Adjudicator applied the right test, given her finding of past persecution, of assessing whether there had been significant change. As the president of the Tribunal noted in the case of Sijakovic 01/TH/0632
“The Appellate authority in question must look at all the evidence and decide whether at the time of the hearing any fear of persecution is well founded. If there is no significant change in the situation and the Appellant was persecuted for a Convention reason before he left, it would be difficult to see how the decision could not be favourable to him.”
12. Mr Rhys-Davies criticised the Adjudicator for her heavy reliance upon the CIPU material, but as Mr Ekagha observed, Mr Rhys-Davies himself relied upon the CIPU material quite extensively in his submissions to us. The reason of course is that the CIPU reports draw upon many other sources, representing a variety of opinions and is properly sourced so that the conclusions can be evaluated in the light of their provenance. That is why CIPU reports are so useful and why they are so often quoted.
13. The Adjudicator made an extensive assessment of the objective material. It is contained in paragraphs 22 to 27 of the determination. As we have indicated, her conclusion was that there would no longer be a well founded fear on return. However there was little specific reference to the items referred to in Mr Rhys-Davies’ skeleton argument and the Tribunal has accordingly made its own analysis to see whether this conclusion is justified on the basis of the current evidence as a whole. In doing this we have had regard to all the relevant material before us and are grateful both to Mr Rhys-Davies and Mr Ekagha for their valuable assistance in referring us to the relevant passages.
14. Somalia has had a very troubled history. It has a small population estimated variously to be somewhere between seven and nine million. It has been without a central government since its last president, the dictator Mohammed Barre, fled the country in 1991. Subsequent fighting among rival faction leaders resulted in the killing displacement and starvation of thousands of persons. The UN intervened militarily in 1992, and following this periodic attempts at national reconciliation were made but did not succeed. In March 2000 a new reconciliation effort began with small focus group meetings of various elements of Somali society in Djibouti. In May 2000 delegates representing all clans and a wide spectrum of Somali society were selected to participate in a conference for national peace and reconciliation. More than 900 delegates attended the conference. The conference adopted a charter for a three-year transitional government and selected a 245 member transitional national assembly, which included 24 members of Somali minority groups. In August 2000 the assembly elected Abdiqassim Hassan as transitional president. A Prime Minister was appointed in October 2000 and he appointed a 25 member cabinet. However the country remained fragmented. Administrations in Somaliland and Puntland, important areas of the country, did not recognise the results of the Djibouti conference. Various problems arose within the transitional assembly. A new Prime Minister was appointed in November 2000. According to the US State Department report, serious inter-clan fighting continued to occur in parts of the country in 2001 though no indication was

given as to the parts of the country where this occurred, as the report does not differentiate between Somaliland, Puntland and the rest of the country. No group controls more than a part of the country's overall territory. There is no national judicial system.

15. It is however in Hargeisa in Somaliland, where the Appellant lived, and to where she will be returned, and it is therefore on this area that we must focus. Lying in the north-west of the country, the "Republic of Somaliland" has continued to proclaim its independence within the borders of the former British Somaliland. Somaliland has sought international recognition since 1991 without success. Somaliland's government includes a parliament, a functioning civil courts system, executive departments organised as ministries, six regional governors, and municipal authorities in major towns. During 2001, 97% of voters in a referendum voted for independence for Somaliland and for a political party system. Presidential and Parliamentary elections were scheduled to be held in February 2002. However the president requested and parliament granted a one-year extension to the next elections. After the withdrawal of the last UN peacekeepers in 1995, clan and factional militias, in some cases supplemented by local police forces established with UN helping the early 1990s, continued to function with varying degrees of effectiveness. In Somaliland more than 60% of the budget was allocated to maintaining a militia and police forces composed of former troops. Of particular significance in ascertaining what is happening on the ground is the fact that in Hargeisa, local NGOs continue to operate freely and without harassment.
16. An independent expert, acting on behalf of the United Nations, visited Hargeisa in Somaliland from 18 to 20 November 1999 and prepared a report. It was her fourth such visits since December 1996. The report observed inter alia that
"Although the international community and United Nations, which upholds the territorial integrity of Somalia, have not recognised the separate status of Somaliland, the international community has acknowledged with deep appreciation the good level of security and stability that Somaliland has achieved over the years. The continued increase in the level of stability and improvement in the quality of life of the residents of Somaliland impressed the independent expert.
However it was also observed that human rights defenders reported to the independent expert that there are many cases of sexual abuse of women and children, particularly among the internally displaced population.
17. Freedom House, an American human rights organisation, reported in June 2001 that the local administrations in Somaliland and Puntland have conducted some form of elections and installed apparently stable governments with functioning legislative arms and courts. Somaliland is far more cohesive than the rest of the country, although reports of some human rights abuses persist. The CIPU report records that conditions in Somaliland are considered favourable for the return and reintegration of large numbers of displaced persons that originate from there. UNHCR reached an agreement with the Somaliland authorities to provide for the return of 25,000 Somalis during 1999. 48,100 Somalis returned to Somaliland from Ethiopia in 1998.
18. All this presents a positive picture of the current situation in Somaliland. The Appellant and her family are however of the Yibir minority clan and their position requires careful

and specific attention. They are described in the CPU report on minority groups in the following terms.

“In traditional Somali society a number of occupational castes live scattered in a client status among the majority of noble Somali clans. The northern Somali pastoral society distinguishes three occupational castes, the Midgan, Tumul and Yibir. They are collectively referred to as Sab [though other names are used] The Sab have a reputation for witchcraft and magic. The Midgan’s poisoned hunting arrows are feared. The Yibir are despised by all Somalis, who never speak to them if they can avoid doing so, and are feared for their skills in witchcraft. Whenever a son is born to a noble Somali and at marriages, a Yibir has the right to a gift in return for an amulet and blessing..... In Somaliland, their role in the conflicts between Barre and the Isaaq-based Somali National Movement earned them the hostility of the SNM rebels and of the Isaaq as a group. Also, whereas other former adversaries in this area have been reconciled, the Midgan, Tumul and Yibir have not been party to any peace agreement. They have found recovery after the war especially difficult and consider themselves as being discriminated against, in spite of the one seat they obtained in Somaliland Parliament.

19. The report goes on to observe that

"During the civil war from 1991, the occupational castes were in general not specifically targeted, although as groups without natural clan allies they were sometimes attacked with impunity. Moreover particular individuals and families who had visibly supported the Barre regime were vulnerable to targeted retaliation..... Many fled in fear of retaliation to Ethiopia and Puntland. In recent years they have started to come back and returnees have been able to reclaim some of the land and property taken from them during the civil war. In 1998 for example some 2000 returned to Somalia from Ethiopia are mostly to Hargeisa..... There are no indications that their security is at risk from targeted actions by other clans. At the same time indications are that their relationships with the major Somali clans have not improved much from traditional times and that they are still discriminated against in the social and economic spheres.

20. From the information before us, it is apparent that the situation in Somaliland is far more stable and secure than in most other parts of Somalia, where there is still inter-clan violence. For this reason many of the passages in the objective material referring to Somalia as a whole are of little assistance in helping us in our specific assessment of the current situation in Somaliland. The administration in Somaliland operates the main functions of a government and spends a large proportion of its annual budget on security and law and order. Whilst it is not recognised as an independent state because the international community still recognises the integrity of Somalia, nevertheless there has been appreciation from the United Nations for what they have achieved. UNHCR has entered into agreements with the administration to facilitate returns of refugees. There have been a substantial number of returns to the country of refugees who had previously fled abroad to avoid the fighting. Of these, some 2000 returnees in 1999 came from the three occupational castes, which include the Yibir. This has to be seen in perspective. The total population of Somalia is only between 7 and 9 million people. The occupational castes in all comprise less than 1% of that population. This means that the three castes have between no more than 70,000 to 90,000 members. Some of them

fled from Somalia to escape the civil war and some remained. There is no information about the size of the respective groups. However by any reckoning 2000 returnees in one year to Hargeisa is a very substantial proportion of the overall membership of those clans. With the independent and fully functional NGOs operating in that area, one would expect reports from them if material problems had emerged relating to the returnees or any particular group of them. If there were such problems, one would expect evidence from UNHCR advising against such returns. Instead there is agreement between UNHCR and the Somaliland administration to actively assist returns there. The UNHCR report from its visiting expert considered the position of the occupational castes specifically and considered that they were socially discriminated against but did not give any indication of more serious problems affecting their security, save that some recent cases of inter-clan marriage had resulted in some communal violence, but the police had intervened to resolve it.

21. We appreciate that the Appellant's family did themselves return briefly in 1999 and then left again after the murder of the Appellant's mother in a robbery. However violent robberies and murders occur in all countries. We have to assess the real risk on return of conduct sufficiently severe to constitute persecution or a breach of Article 3 rights. The objective material as a whole shows that the situation in Somaliland is now, and has been for several years, safe for returnees including returnees, including those from the occupational castes. The Appellant and her younger sister will on return be reunited with their family and will not be young single women on their own. As we had previously indicated, it is not credible that the Appellant has not been in touch with her family over the last 18 months since she came to the UK and they returned to Somaliland. If the family had faced further problems in Somaliland after their return, they would have informed the Appellant. We conclude that the Appellant and her younger sister will face traditional caste based social discrimination on their return to their home area of Hargeisa, but that discrimination falls far short of constituting persecution or a breach of Article 3.
22. For the reasons given above this appeal is dismissed.

Spencer Batiste
Vice-President