

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 74515/03

AT AUCKLAND

<u>Before:</u>	P Millar (Chairperson) S Joe (Member)
<u>Counsel for Appellant:</u>	P Meyer
<u>Appearing for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	6 and 7 March 2003
<u>Date of Decision:</u>	19 March 2003

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant, a national of the Republic of Somalia.

INTRODUCTION

[2] The appellant is a 36 year old male from Somalia. He arrived in New Zealand on 7 October 2002 and applied for refugee status on 8 October 2002. He was interviewed by a refugee status officer on 30 October 2002 and his application was declined by the refugee status officer in a decision dated 13 January 2003. It is from this decision that he now appeals to this Authority.

[3] The appellant was taken into custody on his arrival in New Zealand as he did not have documentation to prove his identity. He was subsequently released from custody but required to report to the appropriate authorities regularly.

THE APPELLANT'S CASE

[4] The appellant and his family are members of the Ashraaf Sarman branch of the Reer Hassan sub-clan which is part of the Ashraaf clan.

[5] The appellant and his family come from the city of M in the lower Shabeellahah region in the central part of Somalia. M is situated on the coast some seven hours bus ride south of Mogadishu.

[6] The appellant's father worked for the Siad Barre regime in what the appellant described as military intelligence. He was responsible for surveillance of groups that were mobilising to oppose the government.

[7] The appellant's mother died in 1989 of natural causes.

[8] The appellant does not have any brothers. He has two sisters both of whom worked in a family shop owned by the appellant's father. The appellant himself worked in that shop after completing several years of private education.

[9] In 1988 the appellant married his wife who he met as she used to come to his shop. The appellant's wife is also an Ashraaf from M. They have five children from their marriage .

[10] In 1990 the appellant obtained a passport through the assistance of his father. The appellant was not planning to travel overseas but simply wanted to have a passport.

[11] In early 1991 the appellant's wife, who was three or four months pregnant with their third child, became ill and said that she wished to go to Mogadishu to obtain treatment. The appellant and his father thought that she had heart problems and as there were no doctors in M who could treat that condition the appellant agreed to go to Mogadishu.

[12] The appellant understood that at that time there was fighting taking place on the outskirts of some areas of Mogadishu but he was concerned for his wife's health. For that reason, they and their two children undertook the seven hour bus journey from M to Mogadishu. They stayed at the home of a friend of the appellant's father, Mr J, who worked in the military for the Siad Barre government.

The following day they went to hospital but the doctors would not treat the appellant's wife. She was told that there were many soldiers from the military who had been injured in fighting around Mogadishu and they had to be treated first.

[13] The appellant and his wife then remained at the home of Mr J for 10 days who, on their behalf, returned to the hospital a number of times to endeavour to obtain treatment for the appellant's wife. However he was unsuccessful.

[14] During this time the fighting around Mogadishu increased and parts of the district became engulfed in the fighting.

[15] For that reason Mr J said that they would have to go to another person's home to be safe. The appellant told Mr J that he would rather return to M but Mr J said that the situation had deteriorated so badly that it was too dangerous for him to go there.

[16] The appellant, his wife and children were then taken by Mr J to another place where they remained for 10 days. After that period, Mr J, the appellant's family and another family went in the car with them to the airport where they all boarded a plane.

[17] The appellant understood they were going to Kenya. However, the plane actually landed in Djibouti city and, on arrival, officials asked those with identification to come forward. As the appellant had his passport with him, he, his wife and children were given a one month permit to remain in Djibouti. As Mr J and his friends did not have any form of identification they had to remain behind and the appellant lost contact with them.

[18] A taxi dropped the appellant and his family in the city and they went to a place he described as a "Somali centre" being an area where there was a cluster of shops and restaurants all run by Somalis and where Somalis congregated. The appellant recalled that his father had a friend Ms A, who was Somali who lived in Djibouti city. He recalled that in 1988 Ms A had come to Mogadishu and M on business and was friendly with the appellant's father. The appellant asked other Somalis about her and was eventually taken to her home. This happened the same day as the appellant arrived in Djibouti. Ms A had a large garden attached to her house with people working on it and she derived an income through this means. She acknowledged her friendship with the appellant's father and agreed

to let the appellant and his family live in her home, provided they worked in the garden.

[19] The appellant then returned to the Somali centre making enquiries about his family. He was told to approach two ladies who had come from M and who were living in Djibouti city. These ladies told the appellant that they had heard that his father and two sisters had been killed in February 1991 in the family home by Haawiye clan members. The appellant understands that a major reason for his family being attacked would have been because of his father's work for the former regime.

[20] The appellant also made enquiries about Mr J in the Somali centre and was told that he had left Djibouti.

[21] The appellant also enquired about his wife's family. In this regard the appellant's parents-in-law had died before his marriage. His wife had only one sibling, a sister. The appellant learned from other Somalis in the Somali centre that, sometime after he left Somalia, people from another clan had made his sister-in-law enter a "forced marriage".

[22] Two weeks after the expiry of the appellant's permit he decided not to go outside of Ms A's house as he was afraid of being arrested by the police. The appellant's wife gave birth to her Djibouti born children at home and recovered from her illness through some tablets obtained for her by Ms A.

[23] In late 1993 the police in Djibouti began raiding peoples' homes looking for illegal immigrants. They came to Ms A's home and the appellant hid. However they took his wife to the police station, detained her overnight, and released her when Ms A paid a bribe.

[24] After this event the appellant was taken from his home by police on 10 occasions, kept overnight and released after Ms A paid a bribe.

[25] In late September 2002 the appellant was taken to the police station during one of these operations and was kept there while police negotiated with Ms A for a bribe. However because high-ranking officers were involved on this occasion the police demanded a large amount which Ms A could not afford to pay.

[26] The appellant was detained at the station overnight and kept in a cell which opened on to the reception area of the station. At some stage the door to the cell was opened because the police had rounded up other illegal immigrants and were going to detain them. When the door opened the appellant simply ran out through the reception area, out of the police station and into a crowd. Although he was chased by police the appellant was able to evade them and went to Ms A's home. Ms A then related how she had been unable to pay the bribe demanded by the police and she said the appellant should go into hiding at a her friend's home.

[27] The appellant was then taken to Ms A's friend's house where he remained for several days and understands that the police came to Ms A's home looking for him. During this time his wife sold some jewellery she had brought with her from Somalia and Ms A contacted a friend in Malaysia to arrange for the appellant to go to that country. An air ticket from Djibouti to Malaysia was purchased and on 3 October 2002 the appellant left Djibouti city through the airport using his own passport. He did not encounter any difficulties in doing so as Ms A had bribed officials to allow him to proceed.

[28] On 4 October 2002 the appellant arrived in Malaysia and after obtaining a false passport through his agent boarded a flight to come to New Zealand.

[29] Since his arrival in New Zealand the appellant has attempted to make contact with both Ms A and Ms A's friend, with whom he remained just prior to escaping from Djibouti. These efforts have proved unsuccessful.

[30] Instead, the appellant has attempted to make enquiries of expatriate Somalis in France referred to him by Somalis in New Zealand as possibly being able to assist him in contacting his family in Djibouti.

[31] The appellant has yet to receive any news through these contacts.

[32] About three or four weeks ago the appellant was in a café in the city when he met a Somali man who turned out to be the son of a friend of the appellant's father. This person's name was SA and he is an Ashraaf from Mogadishu. The appellant stated that he first met SA in 1989 when SA and SA's father came to the appellant's family home in M to see the appellant's father after the death of the appellant's mother. The appellant could recall that they stayed for about three

hours before returning to Mogadishu and the appellant had no further contact with them.

[33] SA gave evidence at the appeal hearing relating a similar account as to how he and the appellant met in Somalia and also how they came to meet in New Zealand.

[34] SA reiterated that he is from the Ashraaf clan and stated that the appellant belongs to the same clan. SA owned a shop in Mogadishu and left Somalia in early 1992 due to the fighting taking place. He went to Kenya and then arrived in New Zealand in May 1999. He has been able to remain here after being granted refugee status.

THE ISSUES

[35] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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."

[36] 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?

[37] Because the issue of internal protection arises in this case, the decision of this Authority in *Refugee Appeal No 71684/99* (29 October 1999) requires a third and final issue to be addressed:

- (c) Can the appellant genuinely access domestic protection which is meaningful?

In particular:

- (i) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (ii) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (iii) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

ASSESSMENT OF THE APPELLANT'S CASE

[38] Before the Authority can determine the framed issues an assessment must first be made of the appellant's credibility.

[39] The Authority had some concerns about the appellant's claim to be from the Ashraaf clan and also concerns arising from the fact that a number of significant events in the appellant's account appeared to be coincidental. However, after hearing the appellant's account over two full hearing days and questioning him closely about not only his ethnicity but also the events upon which he relies, the Authority cannot conclude that the appellant has been untruthful as to his clan or origins. His account was also generally consistent with that given at earlier stages of the determination of his claim. As to his account in general, the Authority has been mindful of the situation in Somalia at the relevant time and the general chaos and disorder that then prevailed. The Authority, while having concerns about his credibility, extends to him the benefit of the doubt.

[40] Accordingly, the Authority accepts the appellant's account of events as credible.

[41] In *Refugee Appeal No 72168/2000* (12 October 2000) the Authority examined country information on Somalia, in particular, the situation in the lower Shabeellaha region where this appellant comes from finding that it was subject to chronic instability.

[42] According to the United States Department of State "*Country Reports on Human Rights Practices – 2001*" (4 March 2002) Somalia has been without a central government since 1991 and subsequent fighting among rival faction leaders resulted in the killing, displacement and starvation of thousands of persons. In the year 2001 serious inter-clan fighting occurred in the central and southern regions (including the appellant's region) with many civilians being killed (*ibid*).

[43] The most recent country information available to the Authority indicates that during 2002 the inter-clan violence generally escalated especially in Mogadishu but also in what were previously regarded as safe regions namely Baidoa and Puntland ("*Somalia: Review of 2002*" United Nations Office for the Co-ordination of Humanitarian Affairs 24 February 2003 obtained from the Internet at <http://www.IRINnews.org/plant.asp?reportID=31758>).

[44] At the end of 2002 Somalia is said to have remained mired in conflict, insecurity and instability (*ibid*). Although peace talks were conducted in October 2002 with agreement by Somali groups to suspend all hostilities for the duration of the talks, there is said to be little chance of the cease-fire holding (*ibid*). Other more recent sources of country information available to the Authority are to the same effect ("*UNICEF Humanitarian Action: Somalia Update – 27 Jan 2003*" UNICEF 27 January 2003 obtained from the Internet at <http://www.ReliefWeb.Int>).

[45] The appellant is from the Ashraaf clan which are part of a group referred to as Benadiri who mainly live in the central and southern coastal areas including the appellant's native town (*Minority Groups in Somalia: Joint British, Danish and Dutch Fact Finding Mission to Nairobi, Kenya*" Danish Immigration Service, 2000). Country information available to the Authority indicates that the Benadiri people are one of a number of minority groups who have been particularly disadvantaged and targeted by clan militia since 1991 ("*Somalia Assessment*" Country Information and Policy Unit, Home Office, United Kingdom, October 2002). The dominant clan in any particular area has generally excluded other clans and minorities from participation in power and Benadiri are said to have suffered particularly badly at the hands of armed militia and bandits as their home areas were fought over by the competing factions (*ibid* at 5.41 and 5.36).

[46] In the light of that information in particular, the fact that the appellant's own region is engulfed in inter-clan fighting, the fact that the appellant comes from a

group which appears to be particularly vulnerable, and in light also of the murder of the appellant's father and sisters (apparently because of his work for the former regime), the Authority finds there is a real chance that if the appellant returns to his native city he will suffer persecution on the grounds of his race and adverse political opinions imputed to him by opposing clans due to his father's former occupation.

[47] The Authority also finds that in view of his clan, the absence of a central government and continuing instability in the rest of the country, there is not an internal protection alternative available to this appellant.

[48] Country information indicates that the only area of Somalia at present which is not engulfed in violence is Somaliland (see "*Somalia: Review of 2002*" United Nations Office for the Co-ordination of Humanitarian Affairs 24 February 2003 cited above). Accordingly, the Authority has considered whether an internal protection alternative is available to the appellant there.

[49] However, in Somaliland, tensions with neighbouring Puntland are said to remain high ("*UNICEF Humanitarian Action: Somalia Donor Update 27 Jan 2003*" UNICEF 27 January 2003). According to the Home Office Report, the administration in Somaliland has allowed Somalis who originate from the north-west and minorities such as the Bantu to settle in its territory (see 5.26). Somalis from southern Somalia and the Bantu minority have been attracted to Hargeisa by the economic recovery and job opportunities (see 4.7). However, elsewhere in the report it states (albeit in November 1995) that Somaliland authorities issued a statement explaining their policy on UNHCR repatriations, confirming that any "Somalilander" has the right to return and that other Somalis may only transit through Somaliland. It is not entirely clear to the Authority that persons from the appellant's clan would actually be allowed to permanently reside in Somaliland.

[50] More recent information available to the Authority indicates that in July 2002, Somali refugees were repatriated to north-western Somalia, presumably Somaliland (United Nations Security Council "*Report of the Secretary-General on the situation in Somalia*" (25 October 2002) S/2002 1201). However it is not clear to the Authority whether these are persons who were originally from that part of the country or whether they are persons from the central and southern regions like the appellant.

[51] As the country information available to the Authority does not clearly demonstrate that people with the appellant's background from his part of Somalia are allowed to permanently reside in Somaliland, the Authority finds that the real chance of persecution is not eliminated. An internal protection alternative is not available to him in Somaliland.

CONCLUSIONS

[52] Objectively, on the facts as found, there is a real chance the appellant will suffer persecution if he returns to Somalia. The relevant convention reasons are race and imputed political opinion.

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

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P Millar
Chairperson