

Heard at Field House
On 14 July 2004

MN (Town Tunnis regarded as
Bravanese) Somalia CG [2004]
UKIAT 00224

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

16 August 2004

Before:

Mr G Warr – Vice President
Mr A Jordan – Vice President
Mr J Perkins – Vice President

Between

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. Before us the appellant was represented by Mr R Toal of Counsel instructed by South Manchester Law Centre and the respondent was represented by Mr A Sheikh a Senior Home Office Presenting Officer.
2. The appellant is a citizen of Somalia. He was born on 1 March 1987 and so is now 17 years old. He appeals the decision of the Adjudicator, Mrs A K Simpson, who in a determination promulgated on 7 January 2004 dismissed his appeal against the decision of the Secretary of State that he was not entitled to refugee status and that removing him from the United Kingdom was not contrary to his rights under the European Convention and Human Rights.
3. The appellant was given discretionary leave to remain until 28 February 2005. His appeal before the Adjudicator was brought under Section 83(2) of the Nationality, Immigration and Asylum Act 2002.

4. The appellant came from the Mini district of Brava. He speaks the Bravanese language, also called Chimina. He is a member of the Tunni clan. He is diabetic.

5. The Adjudicator considered leading cases of the Tribunal including J (Somalia) [2003] UKIAT 00147 and M (Somalia) UKIAT 00129. These cases both concern the circumstances of members of the Tunni clan and both decided, in general terms, that Tunnis did not normally risk persecution in the event of their return to Somali.

6. The Adjudicator also had before her a report and letter from Dr Virginia Luling. Dr Luling identified 2 sets of Tunni: those from Brava and those from the countryside. It was the appellant's contention, supported by the evidence of Dr Luling, that the Tunnis of Brava were identified with the Bravanese and thus at risk of persecution. The Adjudicator did not engage with that evidence. She clearly acknowledges it at paragraphs 21 of her determination and noted at paragraph 23 when considering J (Somalia) and M (Somalia) that "it is unfortunate that Dr Luling's report was not considered by either Tribunal". However the Adjudicator noted that those who prepared the British-Dutch-Danish Minority Report dealing with the situation of the Tunni discussed their circumstances with Bravanese elders and clearly distinguished between the Tunni from Brava and Tunni Torre, a Negroid group federated to the Tunni of Brava as vassals. The elders made no mention of the Tunnis from Brava being a separate group. The Adjudicator was clearly not satisfied with Dr Luling's evidence.

7. Having considered all the material before us we are satisfied that the Adjudicator here was wrong in law. She did not understand properly the evidence of Dr Luling and that led her to the wrong conclusion in the case before her.

8. Unlike the Adjudicator we have the advantage of reading the decision of the Tribunal in AH (Town Tunnis regarded as Bravanese)

Somalia [2004] UKIAT 00144 that was promulgated on 8 June 2004. One of the Vice Presidents in this Tribunal was a member of the Tribunal that had made that decision. Unlike the Adjudicator, the Tribunal in AH and in this appeal had the benefit of hearing Dr Luling give evidence and be cross examined. I set out below paragraphs 6 – 15 of the decision of the Tribunal in AH. The Tribunal said:

6 “We found Dr Luling a very authoritative and impressive witness. Dr Luling is qualified in social anthropology. She has a first degree awarded by the University of Oxford and a Masters and a Doctorate from London University. She has made a particular study of Somalia and a town in Southern Somalia. Although she did her initial field work in the 1960’s she has kept abreast with affairs in the country and most recently visited it in 1996. [The Presenting Officer] did suggest that she may have been a little out of touch because she had not been to the country more recently. We reject that submission. Dr Luling’s reputation depends on her being familiar with the current situation in Somalia and we are satisfied that she was able to, and did, give honest and sound evidence about circumstances there today.

7 Dr Luling is very familiar with the documents that are commonly produced at hearings concerning Somalia. She knows the Report on Minority Groups in Somalia which was the result of a joint British, Danish and Dutch Fact-Finding Mission to Nairobi in September 2000 and the Somalia Country Report. We look to the report dated October 2003. Section B of the CIPU report sets out major Somalia clan families and under number 5 it mentions the Digil clan family made up of the Dabarre, Jiddu, Tunni, Geledi and Garre. Dr Luling agreed that this annex does identify correctly the major Somali clan families but said that it had to be understood that “major” in this sense meant the major groups within the Somali clan family structure. This was not the same as saying that the groups were politically powerful or important. By and large Digil land has been occupied by Hawiye armed groups and Digil cattle have been confiscated. Whilst it is correct to think of the

Digil as a historically significant group it is wrong to think they are powerful and able to protect themselves against others.

8 Dr Luling then explained to us something about the Tunni sub-clan.

9 The background material identifies a group known as the “Tunni Torre”. This appellant is not a Tunni Torre and this determination is not about Tunni Torres. We mention them simply to distinguish the present case from them.

10 Dr Luling said that the background material failed to recognise that there were two distinct Tunni groups and their circumstances and problems were not the same. At paragraph 6.5 of the report on minority groups in Somalia the relationship between Brava and Tunni are considered. The reports states:

“The elders from Brava told the delegation that they consisted of two sub-groups: The Bravanese and the Tunni. Both groups are from Brava and they share to a large extent the same culture. They inter-marry between their groups. However, the Bravanese consider themselves Benadiri, while the Tunni do not. The Bravanese are of Persian/Arab/Portuguese/Spanish origin. According to the Bravanese elders the Tunni belong to the Digil clan family. They are originally from the region of Brava. However, the elders gave the delegation a copy of a letter, written by the Bravani elders in Nairobi to a number of organisations (including the UNHCR, the US Immigration Department and Amnesty International), on their situation in Kenya, in which the Tunni are mentioned in Bravanese as part of the Baravani Community.”

11 Dr Luling agreed with all this but said that the comments had to be explained further to be understood properly. Those Tunnis who live away from Brava have preserved, and would be seen to have preserved, their own distinct identity. They would be recognised as part of the Digil clan family and should be considered accordingly. However, those

Tunnis who lived near to Brava have been practically simulated into the Bravanese community.

12 Dr Luling had spoken to the appellant and understood her to have come from a particular village near to Brava. Dr Luling did not herself know that village but she knew of it and its whereabouts. She was entirely satisfied, and the Tribunal finds, that the appellant was a member of the group of Tunnis closely associated with the Bravanese and she accepted the Tribunal's slightly tongue in cheek suggestion that that group could be identified as "Town Tunnis".

13 Dr Luling explained that although the "Town Tunnis" and the Bravanese, as explained in the report on minority groups, inter-marry and to a large extent share the same culture, they remain aware of their own identity. The Bravanese believe that they are of Persian/Arab/Portuguese/Spanish origin and the Town Tunnis, in contrast, are aware that they come from the Digil clan family. A Town Tunni who was asked to describe his clan origins would see himself as separate from the Bravanese and connected to the Digil clan family. Similarly a Bravanese who was asked the same question would identify himself with the Benadiri and would see himself as someone of Persian/Arab/Portuguese/Spanish origin. Dr Luling accepted entirely that the elders from Brava would have explained that the Bravanese and the Town Tunnis were separated groups. That is how the people saw themselves. However they preserved their sense of ethnic identity by descent through the male line. Inter-marriage was common and, in reality, the two groups were intermingled.

14 Dr Luling's point was that the "Town Tunnis" would be perceived by others as Bravanese.

15 In the simple terms, a "Town Tunni" faces exactly the same problems, including the risk of persecution, as does a Bravanese. A decision maker assessing the risks faced by a Town Tunni should assess them as if they were Bravanese."

9. Dr Luling gave substantially the same evidence on these points before us and was cross-examined by Mr Sheikh. The reliability of her evidence was not in any way diminished by the questions asked and the answers given. While it is undoubtedly the case that Dr Luling has even greater expertise about different parts of Somalia we were quite satisfied that the opinions she gave us were the result of proper academic analysis of relevant and recent evidence about the circumstances in Somalia. Contrary to Mr Sheikh's suggestions in cross-examination it is not important that Dr Luling has not visited the country since 1996 or that she did not supplement her report with copies of the interview notes made when she has discussed the situation with Somali people. Dr Luling was not sharing her holiday memories. She was offering an informed opinion arising from her academic work. We are quite satisfied that Dr Luling's conclusions were the result of proper academic analysis consistent with her role and reputation as anthropologist.

10. It is significant that Dr Luling did not suggest that the other sources of evidence before us were wrong. She did not take issue with any of the descriptions of the clan origins of the Tunnis that were given in the Secretary of State's evidence. It was Dr Luling point that the evidence relied on by the Secretary of State was incomplete in this particular respect. Dr Luling was satisfied that the Tunnis from Brava were a distinct group different from other Tunnis and they should be regarded as Bravanese when their risk of persecution was being considered.

11. We do not find it in the slightest bit significant that the other background material does not comment on this. There is no suggestion that enquiries were made about there being a group of Tunni people who would be regarded as Bravanese. There is no reason why anyone should ask such a question unless they were expressly prompted so to do. We do not know what the Somalia elders would have said if they had been asked. They were not asked. We have every expectation that they would have said much the same as did Dr Luling. As indicated above it was not her point that she uniquely was right. It was Dr Luling's point that she had

spotted a gap in the report and had explained how a person who identified himself as Tunni would be regarded as a Bravanese.

12. There is no evidence before us that Dr Luling is wrong. However Mr Toal also drew to our attention parts of the background material that supported Dr Luling's description of the inter-mingling of the Town Tunnis in Brava with the Bravanese and this reinforced our finding that Dr Luling was not "on a frolic of her own" but was explaining how people from Brava who thought of themselves as Tunnis would be regarded as Bravanese.

13. We are quite satisfied that she is right and, as the Tribunal said in AH, a decision maker assessing the risks faced by Town Tunni should assess them as if the claimant were Bravanese. AH is not a country guidance case. This is. On this point it should be followed unless there is clear evidence that Dr Luling is wrong, in which case the point will have to be reconsidered.

14. This is not to say that every "Town Tunni" is entitled to refugee status anymore than is every Bravanese.

15. Mr Sheikh submitted that the appellant would not be at risk because his family had been able to stay in Brava for many years after the troubles started and we should infer that he would be safe in the event of his return. We do not find any merit in this submission. We do not know how the appellant's family managed to live safely in Brava. The appellant cannot be expected to tell us because he was a boy aged about 10 when he left. There is no reason at all to find that the protection mechanism that appeared to have lasted until 1998 would be available to him in the event of his return now or that the appellant could look to his family in Kenya for any kind of financial or other support. It is a reasonable assumption that they had money and used some of it to get the appellant to the United Kingdom. That is not any kind of evidence that members of his family have money now.

16. Dr Luling said that the appellant, who she had not met, would be recognised as Bravanese because he speaks Chimina. She said that she has never met anyone who spoke Chimina who was not Bravanese (a word that was clearly intended to include Town Tunnis).

17. Additionally Dr Luling said that Bravanese people are also often recognised by their fairer skin colour and their features. She was shown a picture of the appellant. She initially said that she did not regard him as fair skinned in his picture but modified that answer slightly on reflection to say that he was “fairly fair skinned”. We did not find questions about the fairness of the appellant’s skin to be particularly helpful. The photograph was an integral part of a Home Office identification document. We do not know how accurately the photograph reproduced the appellant’s complexion but, for what its worth, the Tribunal has seen Somali people with apparently darker skins. Dr Luling also said that the appellant’s features look Bravanese. Unlike his skin tone, his features are less vulnerable to the whims of the camera and printer. These are not decisive points but do tend to suggest that the appellant would be recognised as a member of a minority clan whenever he travelled.

18. We accept Dr Luling’s evidence that Somali people are expected to state their clan when mixing with Somalis who do not know them. Doubtless some Somalis are accomplished liars but we accept that people who claim untruthfully to be a member of a particular sub-clan are taking a huge risk which could lead them into serious trouble if they are caught out. We do not accept that this appellant would be able, or should be expected, to pass himself off as a member of a different clan.

19. The report on minority groups in Somalia in the appellant’s bundle confirms that the Bravanese were those most affected by the civil war. Bravanese people lost their homes although sometimes were allowed to remain in one room. Political control in Sudan is often in a state of flux and from time to time the Bravanese people are able to resume some degree of control of their lives. Dr Luling had only a limited

understanding of how people managed in Brava but, based on her experience and understanding of the country, suggested that some reached an arrangement with other clans. Essentially they pay protection money. We accept that that is a likely explanation of how some cope. We are aware that there is some evidence of calm and stable government in Bay and Bakwol but we can see no sensible reason to find that this appellant, as a young man without any known connections or wealth will be able to establish himself there.

20. The plight of internally displaced people (IDPs) in Somalia is a matter of considerable concern. A United Nations Report on Somalia for 2004 shows that about 5% of the population of Somali are internally displaced, that is about 350,000 people. The report noted “that they are largely from minority groups, and despite their often extended periods of displacement, have not been integrated geographically, economically, socially or politically into their host communities. For many, income received from regular, cheap casual labour barely covers all their food needs and, isolated from their relatives, they often face difficulties accessing transport systems and receiving remittances. Moreover, they lack full protection and, often viewed as undesirables or “guests” by the local community, can be subjected to an array of human rights violations, including beatings, robberies and other forms of harassment, especially if they compete with local labour or beg in the streets. Most live in sprawling shanty towns on the outskirts of urban areas.” The same report showed how the growing number of IDP’s arriving in Southern Somalia in Puntland and Somaliland are causing difficulties to the social structures there. They often find themselves at the mercy of “camp managers” who restrict their movements and dishonestly use aid for their own purposes. Such IDP’s are vulnerable to prostitution, human trafficking and forcible recruitment by militia leaders. The same report shows how nearly half a million exiles have returned with some form of international assistance, mainly to Northern Somalia. This is clear evidence that the situation is not necessarily hopeless. It is not the case that no citizen of Somalia can return there. Neither is it any evidence that an isolated young person

such as the appellant would be safe. The same report emphasises the extreme difficulties facing members of minority groups.

21. We also have to consider the ability of the appellant to travel to a point where there might be some chance of his establishing himself safely. We accept that a person returning to Somalia would attract interest and would be suspected to have access to considerable funds. This would make the appellant a target for kidnap and extortion. This danger could arise anywhere in the country. We accept that travel is hampered by numerous internal road blocks where inquiries are made of travellers and bribes have to be paid.

22. As indicated above, we are entirely satisfied that this appellant is a “Town Tunni” and therefore would be treated as a Bravanese.

23. It is not the case that every Bravanese necessarily risk persecution in the event of return. We are satisfied that such a risk exists in the case of this appellant who is a young man with little experience of life in Somalia and no support system that he can access or funding. He would be extremely vulnerable and we are satisfied there is a real risk of him being persecuted or otherwise severely ill treated.

24. He is entitled to refugee status and returning him would be contrary to his rights under Article 3 of the European Convention and Human Rights.

25. In the circumstances we allow this appeal.

26. In summary, the adjudicator erred by not paying proper regard to expert evidence. Unlike the adjudicator we had the advantage of hearing the expert give evidence. If the adjudicator had been able to do that she would have reached a different conclusion.

27. This case is reported as a “country guideline case” to support the proposition that a “town Tunni” would be regarded as Bravanese (see

paragraph 13 above). Unless there is fresh evidence to show that Dr Luling is wrong the matter should be regarded as settled.

28. We allow this appeal.

Jonathan Perkins
Vice President

15 July 2004