LSH
Heard at Field House

On 21 August 2003
Prepared: 21 August 2003

FJ (Risk-Return-Tuni) Somalia
CG [2003] UKIAT 00147

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....14th November 2003.....

Before:

Mr H J E Latter (Chairman)
Mr M L James

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the appellant: Ms L Sayers, of Counsel, instructed by Maliks, Solicitors
For the respondent: Mrs L Singh, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Somalia, appeals against the determination of an Adjudicator, Dr O T C Ransley, who dismissed his appeal against the decision made on 20 April 2002 refusing his claim for asylum but granting him limited leave to remain until April 2003.

2. The appellant says that he was born in Mogadishu and is a member of the Tunni tribe. He went to college after completing his intermediate school education but did not complete his final year as he left Somali in March 2002. He says that his father was killed on 11 September 2001 when a gang raided and robbed his shop. The appellant witnessed what had happened. It was a local gang and he recognised that some of the members of the gang belonged to the Hawiye tribe. The gang heard that he knew their identities and came to his home. The appellant was at a neighbour's house. The gang demanded to know

where the appellant was and threatened to rape his wife and his family members. The appellant was told what had happened. The gang returned the following day and ordered everyone out of the house. Again they threatened to rape and kill the appellant's wife and mother and hit them with the butt of their guns. They threatened to kill the appellant if they found him. He learned what had happened the following morning and decided that he could not remain there. He went to another village where he stayed with a relative for 6 days but the relative decided that he should leave. He then returned to Mogadishu and hid with friends who lived 2 minutes walk away from his home. His mother sold the family home to raise money to pay an agent to take the appellant abroad.

3. It was his claim that there is no police force or other authority to whom he could report what happened and seek protection. He belonged to the Tunni, a minority tribe throughout the country and he could not move to another part of Somalia where the Tunni may be able to offer him protection. Civil war was raging in Somalia and there was no central or local government to maintain law and order.

4. The Adjudicator heard oral evidence from the appellant. She had before her documentary evidence and in particular the CIPU October 2002 report and the Report on Minority Groups in Somalia by the Joint British, Danish and Dutch Fact Finding Mission (September 2002).

5. The Adjudicator found that the appellant's credibility had been undermined by his insistence that the Tunni were a minority tribe in Somalia and that there was no safe place in the country for them. This was contrary to the objective evidence. She accepted that he did in fact belong to the Tunni tribe which she described as a large tribe or a tribal confederacy of mixed clans including the Hawiye. His claim that he feared persecution from the Hawiye by reason of being a Tunni was not credible.

6. The Adjudicator also regarded his credibility as undermined by the fact that he was a vague and evasive witness at the hearing. There were inconsistencies and implausibilities in his account. The Adjudicator said that he had lived in Mogadishu since his birth in 1983 but there was no evidence before her that he or his family had experienced any trouble by reason of their race. She did not believe the account of his father being attacked and killed for a racial reason. She did not find it credible that the appellant would be able to hide in a friend's house for 22 weeks without being found by the local gang. She went on to consider the availability of internal flight. It was her view that there was a local administration in place in Mogadishu but accepted that state protection in Somalia may not be wholly effective across the country. However, the appellant made no attempt to seek the protection of the authorities in Mogadishu. There were effective local administrations in the north east and north west of the country. The appellant appeared to have lost touch with his family in Mogadishu. Given that he was young, healthy and educated it would not be unduly harsh for him to relocate to those regions with well established local administrations.

7. In these circumstances the appeal was dismissed on both asylum and human rights grounds. The grounds of appeal assert that the Adjudicator made a material error in finding that the Tunni were a large tribe or tribal confederacy rather than belonging to a minority group. She had failed to consider all the evidence. The fact that the minority report described the Tunni as a "large tribe" did not preclude them from being a minority group or minority clan. The Adjudicator had failed to note that the Tunni were also classed as a Bravanese. The Adjudicator had failed to give proper weight to the Tribunal determination in Hanaf [2002] UKIAT 05912 that the Tunni tribe were a minority group in need of international protection. Her findings on credibility were flawed. She had failed to give reasons for disbelieving the account given by the appellant. There would be no adequate protection in Mogadishu. The Adjudicator was wrong to find that the appellant could relocate in other areas in Somalia such as Somaliland or Puntland.

8. At the hearing before the Tribunal Ms Sayers adopted these grounds. She relied on Hanaf and the conclusions reached by the Tribunal that the Tunni were part of the Bravanese minority group and were at risk of persecution. There were two further witness statements from other members of the Tunni clan who had been granted asylum: A83, 88. She submitted that the Adjudicator's findings on credibility were unsafe. She had over emphasised the issue of credibility. Her findings on internal flight were not properly open to her. The Secretary of State's decision letter had argued that the appellant could relocate in Bay and Bakool regions but when evidence was produced to show that those areas were unsafe, it was then suggested that the appellant could relocate in Puntland or Somaliland. The evidence showed that the Tunni in that area lived in such appalling conditions that it would be unduly harsh to expect the appellant to relocate.

9. Mrs Singh submitted that it was for the Adjudicator to assess whether the appellant would be at risk on return. She had accepted that he was a member of the Tunni clan. She had been entitled to reject his account of events in Somalia and it followed in the light of his history that he would not be at risk on return. Even if he was at risk in his home area there was no reason why he could not relocate in another area.

10. The first submission put on behalf of the appellant in substance argues that once the Adjudicator accepted that the appellant was a member of the Tunni clan, it followed that he was entitled to asylum. Reliance is placed on Hanaf. In that case it was submitted that the sole issue was whether the appellant was from a minority group which was persecuted in Somalia. The appellant had given a history of sexual assault and of violence in 1991 and 1992 which the Adjudicator had accepted but then went on to express doubts about his description of events between 1993 and 1999. The Tribunal noted in paragraph 17 that the Adjudicator had accepted at least in part the appellant's account of being persecuted. It referred to the objective evidence that members of minority clans were "likely to be able to establish a need for international protection". The Tribunal looked at the background evidence in paragraph 26 of its determination and in paragraph 27

found that the appellant as a member of a persecuted minority clan would himself be at risk of persecution. The Tribunal accepted that the Tunni were a sub-group of the Brava clan.

11. The Tribunal have been referred to the Report on Minority Groups in Somalia. This report confirms how complex the clan structure is in Somalia. In dealing with the Benadiri in section 7 it is recorded that elders from Brava told the delegation that they consist of two sub-groups, the Bravanese and the Tunni. The Bravanese considered themselves Benadiri whereas the Tunni do not. According to the Bravanese elders the Tunni belong to the Digil clan family (and the UNCHR overview does classify the Tunni with the Digil: see Annex 3 to the report). The Tunni explain that they were sub-divided into the Tunni Torre plus five sub-groups. According to one source in Brava the Arabs from Zanzibar allied with the Tunni, a Digil clan, to counter the Hawiye from the hinterland. Because of the historical background in Brava, the races in the city were completely mixed up. Those in the city suffered common hardships and tragedies during and after the civil war which reinforced the sentiment of an identity and uniqueness but there remain immigrants of Arab origin while on the other hand there are Somali of the Brava surroundings whose minority status is more doubtful because they are part of the Tunni lineage of the Digil.

12. The Digil and Mirifle are considered in section 11 of the report. They are considered a minority group by some experts but by others they are regarded as clans related to the major Somali clans. The report says that they seem to take a middle position between a Somali clan and a minority. The report refers to mixed clans with a founding lineage acting as a thread around which successive groups crystallise. In this way stable confederacies bound together by reciprocal relations of aid and defence are formed. Such unions are first organised on the lineage principle but this usually disappears in their further development. The end point in the process of the federation is the mixed village where lineage segmentation no longer corresponds to territorial distribution. An example is the Tunni confederacy which is formed by a number of Hawiye and Mirifle, Dir, Galla, Gobawein (Bantu) Ashraf, Ajurn and Boon groupings with each segment containing an original Tunni lineage.

13. One source describes the Tunni as a large tribe or rather tribal confederacy eventually setting in or around Brava. They have a mixed cattle-cultivation economy. The Tunni Torre, a Negroid group were federated to the Tunni of Brava as their vassals. Section 11.4 confirms that the Digil and the Mirifle have repeatedly been the victims of lootings and killings under human rights violations by the various militias. Since 1999 their main home areas, Bay and Bakool have improved and can be regarded as zones of transition whereas other parts are considered to be zones of conflict. Many Digil and Mirifle have relocated in north west Somalia where they are a visible minority. These displaced people were well received in1997-98 but are no longer welcome. In Somaliland, the Digil and Mirifle live in very poor circumstances, in slum conditions and there is no place for them in society. They are not systematically threatened.

14. From this complex background it is clear that the risks faced by particular clans or sub-clans can only be broad generalisations. The Tribunal in Hanaf appears to have proceed on the basis that the Tunni are a sub-group of the Brava clan without reference to their linkage with the Digil. In the light of the complex clan structure in Somalia and the inter-mixing of the groups leading to what the minorities report describes as a process of federation, in our view it is impossible to say that membership alone of the Tunni clan is sufficient without more to show a well-founded fear of persecution on return.

15. Each appeal must be considered on its own merits. Clan membership will normally be an important consideration but must be taken into account along with the appellant's own history and profile. In this case the appellant was born in 1983. He claims to have lived in Mogadishu. His claim arises from a fear of reprisals from a gang which he says raided and robbed his father's shop and killed his father. He says that it was a local gang and he recognised that some members of the gang belonged to the Hawiye tribe. Even if his account is accepted, the Tribunal find that there is an insufficient evidential basis to move from this account to an assertion that the appellant is at risk because of his clan membership still less from members of the Hawiye tribe. His account in reality is based on a fear of general lawlessness not on a fear of persecution for a Convention reason.

16. It is argued that the Adjudicator erred in her approach to the assessment of credibility. She described the appellant's evidence as vague and evasive. She did not accept that his father had been killed for a racial reason as alleged. She commented that she did not find it credible that he would be able to hide in his friend's house for 22 weeks as he asserted without being found by what she described as a local gang. One aspect of her reasoning which has caused the tribunal concern was her comment in paragraph 15 that the appellant's credibility had been undermined by his insistence that the Tunni are a minority tribe in Somalia and that there is no place in the country for Tunnis. However, even leaving this fact out of account, in the view of the Tribunal the Adjudicator was entitled to reach her conclusions on credibility for the other reasons she gave. Her findings cannot be categorised as wrong or not sustainable on the evidence.

17. The final issue is the availability of an internal flight alternative. In AE and FE [2003] EWCA Civ 1032, the Court of Appeal considered the issue of undue harshness in refugee claims. In paragraph 64 of his judgment, the Master of the Rolls said that so far as refugee status was concerned, a comparison must be made between the asylum seeker's conditions and circumstances in the place where he has reason to fear persecution and those he would be faced with in the suggested place of internal relocation. If that comparison suggests that it would be unreasonable or unduly harsh to expect him to relocate in order to escape the risk of persecution, his refugee status is established. He commented that the unduly harsh test had been extended in practice to have regard to factors which are not relevant to refugee status but which might be very relevant to whether exceptional leave to remain

should be granted having regard to human rights or other humanitarian considerations.

18. In paragraph 67 of his judgment the Master of the Rolls, said it was important that the consideration of immigration applications and appeals should distinguish clearly between (1) the right to refugee status under the Refugee Convention, (2) the right to remain by reason of rights under the Human Rights Convention and (3) considerations which may be relevant to a grant of leave to remain for humanitarian reasons. So far as the first was concerned, the consideration of the reasonableness of internal relocation should focus on the consequences to the asylum seeker settling in a place of relocation instead of his previous home. A comparison between the asylum seeker's situation in this country and what it would be in the place of relocation was not relevant for that purpose although that may be very relevant when considering the impact of the Human Rights Convention or the requirements of humanity.

19. In the light of those guidelines, in our view, the Adjudicator was entitled to conclude that the appellant could relocate in safety in areas where there were effective local administrations in the north east and north west regions of Somalia. It is argued that this would be unduly harsh in the light of the information in the Minority Group Report that such displaced people are no longer well received in Somaliland or Puntland. It is reported that they live in very poor circumstances and there is no place for them in society. However, in our judgment that is not sufficient without more to show that it would be unduly harsh to expect the appellant to relocate there. The Adjudicator commented that he was young and healthy. She was entitled to conclude that it would not be unduly harsh for him to relocate.

20. In any event as the Tribunal have already indicated we are not satisfied that the appellant's fears arise for a Convention reason. His fear is of reprisals arising from lawless behaviour. His claim did not engage the United Kingdom's obligations under the Convention. In so far as it is argued that this country's obligations are engaged under the Human Rights Convention, they have been met by the grant of exceptional leave.

21. Accordingly, for the reasons the Tribunal have given, this appeal is dismissed.

H J E Latter
Vice President