

KH
Heard at Field House

FE (Risk-Minority group-Yemeni
Background) Somalia CG [2003]
UKIAT 00115

Date: 14 August 2003
Prepared 14 August 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....24/10/2003.....

Before:

**Mr H J E Latter (Chairman)
Mr R Hamilton**

Between

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation:

For the appellant: Miss A Hall of Counsel instructed by Adams, solicitors.
For the respondent: Mr J McGirr, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, a citizen of Somalia, appeals against the determination of an Adjudicator (Mr J R Devittie) who dismissed his appeal against a decision made on 5 February 2002 giving directions for his removal following the refusal of his claim for asylum.
2. The appellant arrived in the United Kingdom on 31 July 2000 claiming asylum the following day. He claims that he had left Somalia in 1991 and then lived in Yemen for nine years. He was asked in interview why he had not stayed in Yemen. He replied that it was impossible

for him to stay as he was a refugee there: Q6. He went to Yemen because he believed that was where his uncle and father had come from originally. He had no other option. He had to survive on a daily survival job. The appellant then travelled to Russia where he stayed for six months. He did not stay there because there was no life in Russia and no way he could continue staying there.

3. He had managed to obtain a false Djibouti passport which had enabled him to leave Yemen. He then travelled to Poland where he remained for two months. He commented that the situation was no better than in Russia. He then travelled by lorry from Poland to the United Kingdom. He did not know through which countries he travelled. The Secretary of State set out his reasons for refusing the claim in his letter dated September 2001 and set removal directions for Somalia on 5 February 2002. The Adjudicator heard the appeal against this decision on 13 December 2002.
4. The Adjudicator accepted that the appellant was of Yemeni background and that his family were third generation Yemeni descendants in Somalia. It was the appellant's account that the Hawiye Clan began to persecute them in 1991. He says that he was detained for a few months and then released in June 1991. In September 1991 the militia returned to his home and took him to a detention centre where he was beaten and tortured. He managed to escape in November 1991 by walking out of the detention centre by the rear door. A car was waiting to pick him up. He then realised that the escape had been carefully planned by those of other ethnic minorities with whom he escaped. Within a few days he was able to leave for Yemen.
5. He stayed there for four years but was unable to trace his relatives. He obtained work as a painter but those he shared a house with looked down on him and frequently insulted him. In June 1992 policemen carried out a random search of his room and one of the policeman assaulted him. In 1999 there was an incident when he came across the same policeman who had harassed him in 1992. He was detained and only released after payment of a bribe. He was advised to leave or there would be further trouble. He bought a passport and obtained a visa to travel to Russia.
6. It was argued on the appellant's behalf that he faced a risk of persecution in Somalia firstly because a political opinion would be imputed to him as a result of his father's involvement with the Barr regime. It was also argued that he would be at risk because he did not belong to any major clan group. The Adjudicator found it unlikely that after so many years the appellant would face a risk of persecution because of his family's involvement with the Barr regime. The appellant had asserted that he would be at risk because he did not belong to any majority clan. Having considered his evidence in the context of the objective evidence the Adjudicator was not satisfied that Somalis of Yemeni extraction were singled out for persecution as a minority group. He did not believe that the appellant had been persecuted on account of being a member of the Yemeni minority but

he commented that this was not to say that Somalis from Yemen did not suffer disadvantages as a minority group. They probably did but the Adjudicator did not accept the appellant's evidence that he had suffered persecution because of his Yemeni origins.

7. The Adjudicator noted that the appellant had stayed in Yemen for nine years where he had worked and established a family life. He had left his wife and children in Yemen in 2000. When interviewed he had said nothing about the police persecuting him there. This issue was raised in a subsequent witness statement. The Adjudicator did not believe the evidence of persecution in Somalia nor of persecution or ill-treatment in Yemen. He was not satisfied that there was any basis for finding that the appellant would be at risk in Somalia. He did not fall within a minority group that was specifically mentioned as being at risk. It would be safe for him to be returned. The appeal was dismissed on both asylum and human rights grounds.
8. When granting leave to appeal the Vice President commented that the key issue was whether the appellant would now be at real risk on return to Somalia. He said that it was arguable that the determination did not address the risk on return today for a person in the appellant's position.
9. Miss Hall submitted that the appellant would be at risk because he belonged to a minority group of Yemeni Somalis. She referred the Tribunal to the Danish Report and in particular to paragraph 283 at page 37. This appears to be the only reference in all the background evidence to the Yemeni minority. It is said that ethnic minorities faced social segregation while occupational groups are denied the right to inter marry and they both have limited political representation. The CIPU Report confirms that those in a minority group would be at risk. Miss Hall referred in particular to paragraphs 6.1, 6, 60, 62, 64 and 73. The Adjudicator found that the appellant was of Yemeni ethnicity. This placed him in a minority group. He had accepted the probability that this group had suffered disadvantages. It followed in the light of this profile when assessed against the background evidence that the appellant would be at a real risk bearing in mind that the risk had to be established only to the lower standard of proof.
10. Mr McGirr submitted that the heart of the determination was in paragraph 7. The appellant was not within a minority group which had been identified as being at particular risk. He referred the Tribunal to paragraph 6.85 of the CIPU Report which indicated that persecution solely on the basis of clan membership or ethnicity was now very unlikely in most areas of Somalia.
11. The Tribunal are not satisfied that there is any substance in the submission that the Adjudicator failed to consider the issue of whether the appellant would be at risk on return to Somalia. At the beginning of paragraph 5 the Adjudicator correctly identified that the issue for him was whether there was a reasonable degree of likelihood that the appellant would suffer persecution for a Convention reason on return to Somalia. The Adjudicator did not accept the appellant's evidence of

persecution in Somalia nor his account of ill-treatment in Yemen. In our view this finding was properly open to the Adjudicator on the evidence. The appellant is someone who on his own account left Somalia in 1991. He stayed in Yemen for nine years. The Adjudicator did not believe his account of his reasons for leaving. He went to Russia where he stayed for six months without claiming asylum and then Poland for two months again without seeking asylum. Inevitably he would have travelled through a number of countries before arriving in the United Kingdom. The appellant purports not to know which countries he travelled through. He certainly did not claim asylum in any of them. Looking at this background, it is impossible to argue that the Adjudicator's findings on credibility were not properly open to him.

12. It is clear that the Adjudicator accepted that the appellant was a member of a minority group in that he was of Yemeni background. When interviewed the appellant described his clan as Ridaaci (a Yemeni clan). The Tribunal have not been referred to anything in the documentary evidence showing that this clan is at any particular risk in Somalia. Miss Hall argues that the appellant as a member of a minority group is, if anything, worse off than a member of a minority clan. She refers the Tribunal to the general background situation set out not only in the CIPU Report but also in the Amnesty International Report 2003 and the US State Department Report. There is a reference in the Amnesty Report at page 2 to Somali minorities being at risk of inter-factional and inter-clan fighting in the south. The general security position for minority groups is set out in the CIPU Report at paragraph 6.83-5. In paragraph 6.84 it is recorded that some minority groups such as the low cast Midgan, Tomal, Yahar, Iyle and Yabr may risk harassment by Somali clans in rural areas but do not necessarily find themselves facing particular human rights or security problems in Mogadishu.
13. There was no mention of the Yemeni minority clan or the Ridaaci. The Tribunal are fully aware of the unstable situation in Somalia although it is worth noting from paragraph 6.2 that there are areas of the country where the situation is virtually stable and that basic law and order is the norm in most locations. There is evidence that members of particular minority clans may be vulnerable. In paragraph 6.85 it is reported that while many displaced minority groups would not necessarily face persecution on the basis of clan membership or ethnicity were they to return to the home areas, they may well face difficulty in regaining land and homes seized by the clan militia which took control of their territories. It also reported that members of smaller clans and minority groups such as the Benadiri have been able to settle in Somaliland and Puntland.
14. In summary the Adjudicator did not believe the account that the appellant gave of his reasons for leaving Somalia in 1991. The Tribunal have not been pointed to any particular background evidence relating to the Ridaaci or a minority group comprising Yemeni Somalis to show that they are at any particular risk. In these circumstances the Adjudicator was fully entitled to conclude looking at the evidence as a

whole that the appellant had failed to demonstrate that there would be a real risk of persecution for a Convention reason or a breach of his rights under Article 3 were he now to be returned to Somalia.

15. Accordingly, this appeal is dismissed.

H J E Latter
Vice President