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Heard at: Field House

FK (Shekhal Gandhershe)
Somalia CG [2004] UKIAT
00127

On: 15 April 2004
Prepared 15 April 2004

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

4 June 2004

Before:

Mr H J E Latter (Vice President)
Mr M E A Innes

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT
RESPONDENT

Representation:

For the appellant: Miss I Sibic of Counsel.

For the respondent: Mr M Blundell, Home Office Presenting Officer.

DETERMINATION AND REASONS

1. The appellant, a citizen of Somalia, appeals against the determination of an Adjudicator, Mr R J Manuell, who dismissed his appeal against the decision made on 20 August 2003 giving removal directions following the refusal of his claim for asylum.
2. The appellant arrived in the United Kingdom on 16 October 2001 using a passport to which he was not entitled. He applied for asylum on 26 October 2001. On 9 January 2002 he was interviewed about his claim to be from Somalia. He said that he was a member of the Shekhal clan and the Gandhershe sub-clan. He submitted a statement of evidence form with a further written statement dated 21 January 2002. He was interviewed about his claim on 21 March 2002. In the reasons for refusal letter dated 6 August 2003 the Secretary of State indicated that it was his view that the appellant would not be subjected to persecution from the USC militia as the Shekhal were not a minority clan but were associated with the Hawiye. He also doubted the credibility of the account given by the appellant of the events in Somalia which had led

him to leave. It was the Secretary of State's view that the appellant did not qualify for asylum or humanitarian protection.

3. The Adjudicator heard the appeal against this decision on 11 November 2003. The Adjudicator summarised the appellant's written claim as follows. He was from the Gandhershe clan, a sub-clan of the Shekhal tribe which was an ethnic minority. He had been attacked by members of majority clans on three occasions. In 1994 members of the Hawiye put a gun to his head and demanded money. The second incident was in 1999 and the third time he was attacked was in 2001. On that occasion he had been detained in a hole in the ground of an old house. He had managed to escape during a gun battle between two factions. Some days later his wife was raped. He could not continue living in that manner and decided to flee to Kenya from Somalia. He could not remain in Kenya because he did not have the necessary documents granting him permission to live there. His wife and family had fled to Ethiopia.
4. In his oral evidence before the Adjudicator the appellant was asked to clarify the circumstances surrounding the rape of his wife. He said that he and his wife were abducted on the same day. He was picked up from his shop and his wife was picked up from their house. He had been asked for money. He had forgotten lots of things and sometimes could not say what had happened to him the previous day. He could not recall each and every incident. He had made a mistake in his second witness statement. His wife had been raped in 2001. He was asked whether he believed that he had been targeted because he was rich or whether he thought there was some other reason. The appellant replied that rich people within the minority clans were targeted because people thought they were unprotected. He had not sought protection from the majority clans because they were the attackers. Although his clan bore the same name as the Shekhal majority clan they were not of the same ethnicity.
5. The Adjudicator commented that the broad outline at least of the appellant's testimony was plausible. The appellant had placed greater emphasis on the clan involvement in his second witness statement. In the Adjudicator's view his knowledge of his own clan was limited. He suggested he had been targeted because he was a wealthy member of a minority clan but it seemed to the Adjudicator that in any lawless environment the "haves" will always be at the mercy of the "have nots" or simply the greedy. In respect of the incident in 2001 it seemed that two factions were at war with one another which was how the appellant had been able to escape. The incident appeared to be no more than random or opportunistic violence.
6. The Adjudicator found that the appellant had suffered the three incidents which he claimed but they were not persecutory incidents based upon his membership of a minority clan. They were instances of lawlessness or of the tide of a civil war. He regarded the appellant's account of his clan membership as vague and substantially embellished. The appellant was the victim of a civil war who first fled to Kenya where he gave no instance of any problem other than lack of documentation

who then came to the United Kingdom seeking better living conditions. The October 2003 CIPU Assessment indicated no deterioration in the general situation in Somalia with basic law and order the norm in most locations but with sudden changes possible as was inevitable when no final peace settlement had been agreed and when large numbers of weapons remained in private hands. The Adjudicator was not satisfied that the appellant had proved that he had a well-founded fear of persecution for a Convention reason. He was fortified in those conclusions by the appellant's resort to illegal entry to the United Kingdom and his delay in claiming asylum following his arrival.

7. In the grounds of appeal it is argued that the Adjudicator was wrong to find that the appellant had been the victim of indiscriminate attacks. He had not made a finding that the appellant did not come from the Shekhal tribe when the Secretary of State had been satisfied that he did. The central issue was whether members of the Shekhal tribe were a minority group who risked persecution. Alternatively, it was argued that in the absence of a finding that the appellant did not come from the Shekhal tribe and that he was a member of a majority tribe, the Adjudicator's reasons for concluding that the attacks were indiscriminate were unfounded. As the Secretary of State had not challenged the appellant's tribal membership it was not permissible for the Adjudicator to find against the appellant on that issue.
8. Ms Sibic adopted these grounds in her submissions. The first issue was whether the Adjudicator was entitled to find that the appellant did not belong to the Shekhal clan. She referred the Tribunal to the determination in Mohammed [2002] UKIAT 08403. There was no evidence to contradict the findings in that determination which accepted that the Shekhal Gandhershe was a minority group at risk on return to Somalia and could properly be regarded as among the Benadiri groups. There would be a continuing risk of persecution. The Adjudicator had found that the events described by the appellant had taken place. The Operational Guidance Note for Somalia February 2004 confirmed that there was a continuing risk to minority groups who remained vulnerable.
9. Mr Blundell submitted that the Secretary of State's view was set out in the reasons for refusal letter. It was his contention that the Shekhal were not a minority group. He conceded that he had no further expert evidence to put before the Tribunal to contradict the findings in Mohammed. He submitted that nowhere in the background evidence are the Shekhal or Shekhal Gandhershe classified as Benadiri. The Adjudicator was entitled to conclude that the appellant had not been targeted because of his ethnicity but as a result of the general lawlessness in Somalia.
10. In his determination the Adjudicator said that he regarded the appellant's account of his clan membership as vague and substantially embellished. Ms Sibic argued that in the light of his findings that the broad outline of the appellant's evidence was plausible and that the three incidents described had taken place, there was no proper basis for rejecting the appellant's evidence that he was a member of the Shekhal

Gandhershe sub-clan. Mr Blundell conceded that the Secretary of State had never sought to put the appellant's clan membership in issue. It had been accepted in the reasons for refusal letter. The Tribunal note that in the Somali screening interview the appellant gave a number of accurate answers about Somalia. At the hearing before the Adjudicator the respondent was not represented. In his oral evidence he commented that his clan bore the same name as the Shekhal majority clan but they were not of the same ethnicity. This evidence is consistent with the findings of the Tribunal in Mohammed which we will refer to below.

11. In the light of these factors and in particular the concession made by Mr Blundell that the appellant's clan membership had not been challenged by the Secretary of State, the Tribunal accept Miss Sibic's submission that there was no proper basis for the Adjudicator to reject the appellant's evidence of his clan membership.

12. The Tribunal will proceed on the basis that the appellant is a member of the Shekhal Gandhershe clan. There is very little objective evidence before the Tribunal about the status of this sub-clan. We have been referred to an extract from the Minority Report of December 2000 at A374-376. According to this information, one source considers the Shekhal to be a minority group although other sources consider them as associated to the Hawiye, as a sub-clan or even as a separate clan family. According to one source, the Shekhal should not be considered as a minority group but as a Hawiye clan that seceded from them five to ten years ago. There is reference to information from Professor Lewis considering the Shekhal Lobogi as a sub-clan of the Hawiye. According to a UN source in Nairobi the Mogadishu-based Shekhal Gandhershe is one of the minority clans and is an unarmed community which has been receiving threats in their traditional areas since 1990.

13. These issues were considered by the Tribunal in Mohammed. That Tribunal had before it the Minorities Report and evidence from Dr Luling. Paragraph 19 of that determination reads as follows:

"The Shekhal are not one but several groups not necessarily related and with different cultures and dialects. The word is simply the plural of Sheikh and signifies the lineage who have an inherited religious status. They all trace descent from the same ancestor Sheikh Faqi Cumar who travelled around Somalia and married wives in each location.

The Shekhal of Jasira and Gandhershe are ethnically distinct from other groups such as the Shekhal Loboge. Jasira and Gandhershe are both places on the coast between Mogadishu and Merce. Shekhal in that area belong to the light skinned Benadiri population of Arab descent who are found along the coast, like the Bravenese and the Reer Hamar of Mogadishu."

14. Having reviewed all the evidence before it, the Tribunal concluded that the Shekhal Gandhershe and the Shekhal Jasira were minority groups which were not protected by the Hawiye. The respondent had failed to

make an important distinction between the Shekhal Gandhershe and the Shekhal Jasira on the one hand and the Shekhal Loboge on the other. The latter group were protected by the Hawiye. The Shekhal were not one discrete sub-clan but were distinct and separate groups and as such ethnically distinct from the majority of the Somalis. The Tribunal found that members of the Shekhal Gandhershe were a minority group then at risk if returned to Somalia. It went on to find that a member of the Shekhal Gandhershe clan would be considered to be a Benadiri and as such among the groups recognised by the Home Office as qualifying for refugee status. On that basis the appeal was allowed.

15. The Tribunal heard the appeal of Mohammed on 18 October 2002 and notified its determination on 29 November 2002. No evidence has been put before us to show either that the Tribunal's finding that Shekhal Gandhershe was a minority tribe was wrong or to show that there has been any particular change in circumstances which would now make it safe for members of the Shekhal Gandhershe clan to return to Somalia.
16. The Tribunal is aware that the Secretary of State now takes the view that membership of a minority clan does not without more entitle an applicant to refugee status. In the Operational Guidance Note of February 2004 in paragraph 3.7.5 it is said that most members of minority groups other than the Bajuni, Bravanese/Benadiri are unlikely to qualify for asylum or humanitarian protection unless they demonstrate individual circumstances to the contrary. There is no specific risk to members of minority groups who originate from or have been permitted to settle in Somaliland or Puntland. However, members of minority groups in southern Somalia are inevitably at a greater degree of risk and the circumstances of each individual case needs to be taken into account.
17. The Adjudicator accepted that the appellant had been the victim of violence on three occasions. It was the appellant's claim that this was because of his membership of a minority group. The Tribunal accepts that the appellant is a member of the Shekhal Gandhershe who can be regarded as being among the Benadiri group. He therefore falls into the category of someone who is unable to secure protection from human rights abuses from the armed militia of other clans and remains vulnerable: para 3.7.3. In the light of these factors, the Tribunal is satisfied that the Adjudicator was wrong to conclude that the appellant would not be at risk of persecution for a Convention reason on return to Somalia. He has been a victim of lawlessness but there is a reasonable degree of likelihood that this was because he is an unprotected member of a minority group. There remains a real risk of similar treatment on return.
18. In these circumstances this appeal is allowed on both asylum and human rights grounds.

H J E Latter
Vice President