Asylum and Immigration Tribunal

HY (Yibir – YS and HA applied) Somalia [2006] UKAIT 00002

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 11 November 2005	**On 14 December 2005**

Before

Mr D K Allen (Senior Immigration Judge)
Miss B Mensah (Senior Immigration Judge)

Between

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Jorro, of Counsel, instructed by IAS (Tribunal Unit)
For the Respondent: Mrs M Tanner, Home Office Presenting Officer

*The finding of the IAT in **YS** and **HA** that a Midgan who had lost the protection of a local patron or patrons, and who had not found alternative protection in the city would be vulnerable to persecution is good law and applies to Yibir as well.*

DETERMINATION AND REASONS

1. The appellant appealed to an Immigration Judge against the decision of the Secretary of State of April 22nd, 2005 to remove him as an illegal entrant. Reconsideration of that decision was sought, and was granted on 7 July 2005. The hearing of the reconsideration took place before us on 11 November 2005. Mr P Jorro for the IAS appeared on behalf of the appellant, and Mrs M Tanner appeared on behalf of the Secretary of State.

2. The appellant is a citizen of Somalia, and it is accepted that his family belonged to the Yibir which is a minority group in Somalia. His evidence was that his father worked as a blacksmith. When the civil war broke out in 1990 his family was attacked by members of the majority clan who came to their home and demanded that his father hand over his tools. He was shot dead when he tried to resist and also the appellant's mother and some of his siblings were killed. The appellant managed to escape and he was taken in subsequently by a neighbouring family who were of the Habergedir majority clan. He lived in Jilib district, in the mid Shabelle region, part of the central Jubba region, near Kismayo. His evidence as to what happens thereafter was subject to some slight variations. At the screening interview he said that after his parents were killed he was taken by a man by force who ordered him to look after his livestock. In a subsequent rather more detailed form he said that when his parents died his neighbours took him in and he lived with them until he was 16. At interview when he was asked about the family which he said raised him, he said that this was because prior to the war they were his family's neighbours. In his statement he said he was taken in by the Habergedir neighbours and lived with them for many years and looked after their livestock. The Immigration Judge concluded on this that the appellant was consistent in all accounts of his evidence that following the demise of his parents and some of his siblings he was "taken in" by a neighbouring Habergedir family. She also considered that it was consistent with the background information that when old enough to do so the appellant would have worked for his benefactors which would have provided the only means of survival.

3. The appellant's evidence was that at 16 he was forcibly recruited into the Habergedir militia on the insistence of the head of the household with which he was living and that he served them for a period of some 3 years. He claimed that he was provided with a gun which was capable of being loaded with 30 bullets although he said he did not kill anyone during his time in the militia.

4. The Immigration Judge did not believe this aspect of his evidence. She noted that it contrasted with objective evidence in the form of a joint Danish, Finnish, Norwegian and British Fact-Finding Mission to Nairobi on 7 to 21 January 2004, which among other things stated that although the Somali militias forcibly recruited members of the minority clans, they were not used as fighters but rather they were forced to work for the militias and often would have to perform the domestic and menial roles. In the light of that and also the fact that although the appellant claimed to have been involved in fighting for the militia for the 3 year period he had escaped any form of injury, the Immigration Judge disbelieved this aspect of his claim. She found however that he might have had close dealings with the militia in that he may have been required to work for them in a subservient role. She also referred to his evidence that on three occasions he had been threatened with death at the hands of the militia. His evidence on this had been that twice he was tied up and threatened with shooting and the blame for things that had gone wrong was placed at his door and friends of his in the militia intervened on his behalf when he was released. He also claimed to have been arrested on the third occasion and threatened with shooting by the leader of the militia but again was released. In relation to this the Immigration Judge found that while incidents he described might have been true, she found that on each and every occasion he was released simply

by his friends interceding on his behalf which did not indicate to her that there was a serious threat to his life.

5. Thereafter the Immigration Judge found a lack of credibility in the appellant's claim to have left Somalia for Ethiopia having been befriended by an old man who gave him the equivalent of $4 and also considered the details he gave of how he had survived in Ethiopia were very vague. She did not therefore accept that he left Somalia and travelled to Ethiopia as claimed. She concluded that he had lived with the Habergerdir family in Somalia where he had worked for the family in return for food and clothes but was not satisfied that he joined the militia of that clan as a fighting soldier.

6. She then gave consideration to the guidelines set out in by the Tribunal in its country guidance case of ***YS and HA [2005] UKIAT 00088*** and on the basis of her application of those guidelines to the facts as found by her concluded that the appellant did not face a real risk of persecution or breach of his human rights on return to Somalia.

7. In the grounds for reconsideration it is contended that the Immigration Judge had not considered evidence showing that the appellant could not regain protection of a dominant clan, failed to make findings concerning the treatment should he refuse to serve a dominant clan, and criticised her for failing to make findings as to the conditions he would face if he returned to the service of a dominant clan.

8. In his skeleton argument and in his submissions before us Mr Jorro argued that on the basis of the Immigration Judge's findings the appeal should be allowed. Given that she had accepted how the appellant was treated, it was the case that he had been treated as a slave and had clearly not liked this situation and returning to that or being killed for refusing would give rise to a real risk of breach of his Article 3 and/or 4 rights as well as being persecution on grounds of race. He took us to paragraph 54 of ***YS*** and ***HA*** where it was said that with regard to the Midgan (we accept that the Yibir are treated in the same way as the Midgan for the reasons set out at paragraph 69 of that determination) in some cases the circumstances in which they have to perform their occupational work are tantamount to serfdom or even slavery. It is said however that there is no evidence that that is the common lot of the Midgan generally and for most Midgan it would appear that although they face widespread societal discrimination and work on very disadvantageous terms, their contract to work is voluntary; they are paid for the services they provide and they are able to trade freely.

9. Mr Jorro argued that was not the case of the appellant in the past and nor would it be on return. He had worked for the family for nothing and had worked for the militia on the same basis. He was effectively a serf or a slave. His position could be contrasted with that of his father who worked as a blacksmith presumably for pay, albeit low pay. On the logic of the Immigration Judge's findings that he would regain his former position, the only protection he would receive was from the very group from which he had escaped and it was clear from ***YS*** and ***HA*** that internal relocation was not an option.

10. In her submissions Mrs Tanner argued that there was not an error of law in the Immigration Judge's determination. It hinged upon whether the appellant would be a slave or not. She referred us to the decision of the House of Lords in ***Ullah [2004] UKHL 26***, where it was held that there needed to be a flagrant denial of an appellant's human rights to give rise to a breach. The adverse credibility findings should be borne in mind. Minority clans who had to live in the way in which the appellant had lived could not be regarded as slaves or at risk of persecution. The Adjudicator was satisfied that the appellant was not a slave and nor would he be. Even if what he would face was harsh and possibly degrading it did not amount to an error of law to come to the conclusions to which the Immigration Judge had come.

11. By way of reply, Mr Jorro argued that the fact the appellant was forced to work for nothing was servitude or slavery. There could be a breach of Article 4, and in that regard he referred us to paragraphs 16 and 41 of the decision in ***Ullah*** where Lord Bingham and Lord Steyn had considered the point. The error of law lay in the Immigration Judge's failure to allow the appeal.

12. We raised with the representatives whether the effect of their submissions was that either we would have to allow the appeal outright as contended for by Mr Jorro or dismiss it outright as contended for by Mrs Tanner. It was agreed that the possibility of reconsideration was a matter that was before us in the light of the matters raised in the grounds for review and in that regard in particular we mentioned to the representatives our concern as to an arguable lack of clear findings at paragraph 33 of the determination concerning the nature of the work which the Immigration Judge considered the appellant had done for the militia. We then adjourned the hearing to enable us to consider the relevant issues.

13. Although we expressed to the representatives concerns about the findings of paragraph 33 of the determination, upon reflection we consider that they can be seen as tied in to the objective evidence quoted at paragraph 31 where it is said with regard to the use made by Somali militias of members of minority clans that they are not used as fighters but rather are forced to work for the militias and often will have to perform the domestic and menial roles. In essence we take it that the Immigration Judge was paraphrasing that evidence in her findings at paragraph 33.

14. When one turns to consider the country guidance case in ***YS*** and ***HA***, it is clear that the essential context of that decision was that of the situation of the minority caste groups vis-à-vis the noble clans who in general offer them protection. The essential reason for the finding that the minority caste groups are in general not at risk, subject to the risk factors identified at paragraph 73 of that determination, is because there is protection from the noble clans in general although clearly in some circumstances that may be lost.

15. We consider that it is of relevance to note paragraph 54 to which Mr Jorro took us where the Tribunal accepted that in some cases the circumstances in which the minority groups have to perform their occupational work are tantamount to serfdom or even slavery. This is contrasted with the common lot of the Midgan (the particular minority group under consideration, but, as we have explained above, the determination deals with the minority groups including the Yibir generally as can be

seen from paragraph 69 of the determination). It is said that for most of the Midgan although they face widespread societal discrimination and work on very disadvantageous terms, their contract work is voluntary; they are paid for the services they provide and they are able to trade freely.

16. In our view the situation described above can properly be contrasted with the situation of a person who is forced to work for a militia and has to perform domestic and menial services, summed up by the Immigration Judge in her finding that the appellant may have been required to work for the militia in a subservient role. There is therefore an absence of the limited degree of autonomy in the form of the contract work being voluntary and being paid for the services provided and the ability to trade freely. The particular situation of this appellant is that with regard to his work with the militia he was forced to work for them and perform domestic and menial roles.

17. The question that then arises is whether facing this situation on return if he does face it would give rise a real risk of breach of his rights under either Convention. In this context we note the finding of the IAT in ***YS*** and ***HA*** at paragraph 73(viii) that a Midgan who has lost the protection of local patron (or local patrons) and who had not found alternative protection in the city would be vulnerable to persecution. And also at (ix) it is said that a Midgan who has lost protection from a noble clan patron or patrons in his home area would not be able to relocate safely within Somalia.

18. We have concluded that, on the Immigration Judge's findings, in the context of what was said by the IAT in ***YS and HA*** at paragraph 54, following its careful assessment of the relevant expert and other objective evidence, that the appellant faces a real risk of inhuman or degrading treatment if returned to Somalia, where the only "protection" he could expect to find would take the form of, at least forced labour, if not servitude at the hands of the Habergedir militia. He has made out his claim under Articles 3 and 4 of the Human Rights Convention and under the Refugee Convention. We conclude that the Immigration Judge materially erred in law in finding that he was not at risk on return, and for her decision dismissing the appeal is substituted a decision that the appeal is allowed.

Signed Date
D K Allen
Senior Immigration Judge