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AW (Somalia - Clans- fair trial) Somalia [2004] UKIAT

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 10 March 2004

Date Determination notified:

29 April 2004

Before:

Mr P R Moulden, Vice-President
Mr P R Lane, Vice-President
Mr M E Olszewski

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia who has been given permission to appeal the determination of an Adjudicator, Ms P.S. Wellesley-Cole, dismissing on both Refugee Convention and human rights grounds, his appeal against the respondent's decision to refuse to grant him asylum, although he was granted limited leave to enter until 17 July 2003.
2. Mr R. Toal, of Counsel, instructed by Wilson & Co. solicitors, appeared for the appellant. Mr J. Gulvin, a Home Office Presenting Officer, represented the respondent.
3. The appellant arrived in the United Kingdom in 2001 and claimed asylum. The notice containing the decision against which he appeals is dated 17 July 2002. The Adjudicator heard the appeal on 21 November 2002 and

the decision to grant permission to appeal was promulgated on 14 March 2003.

4. The Adjudicator set out the basis of the appellant's claim in paragraph 4 of the determination in the following terms:

'The basis of his claim is that he allegedly fears persecution by the Habar Gidir clan. He claims he belonged to the minority Sarman clan which is the sub-clan of the Ashraf. He owned his own tailoring shop and he lived in Mogadishu. He fled Mogadishu on a few occasions when the fighting became severe and his shop was allegedly looted on several occasions. He further claimed that in 1998 militia would demand money from him and when they did this he refused and he fled to his uncle's home. Whilst he was in the market the next day the militia found him and abducted him. They took him and beat him and he was detained for three days. He claimed his brother paid for his release and then fearing for his safety, he fled with his family to Ethiopia. His brother made arrangements for him to leave the country.'

1. Both parties were represented at the hearing. The appellant gave evidence as did a Somali friend, Mr H. Mohamed.
2. The Adjudicator's conclusions in relation to the appellant's claimed clan membership are set out in paragraph 17 of the determination in the following terms:

'Having observed this young Somali appellant, who claimed to be a member of the minority Sarman clan, which is a sub-clan of Ashraf give evidence, his case was predicated on his persecution by the Habar Gidir clan.

- a. He fled the capital, Mogadishu, a few times when fighting became severe and his shop was allegedly looted several times. He was abducted by the militia. However, under cross-examination he not only displayed a lack of knowledge of his clan but also had a scant knowledge of his language and dialect. The Ashraf are divided into two sub clans; namely the Hassan and Hussein. Not only was he unable to give the answer Hussein when this was put to him; despite being asked twice; but he incorrectly replied that the Reersharif Magbuul was part of the Hassan. This is wrong; it is the Hussein. Nor was he able to give the

number of divisions of the sub clans of the Hassan; there are four - page 34 of the September 2000 report on minority groups a joint Danish Dutch and British Fact Finding Mission to Nairobi Kenya details all the groups and subgroups and their geographical distribution. 7.2 of this lengthy report at page 36 reads that the Benadir population is (sic) Somalia generally speak a dialect that differs from that of the major Somali clans. The dialect spoken by the Benadiri of Mogadishu is called Af-Reer-Hamar. Yet in court he said he did not speak any particular dialect or have any accent, despite having lived all his life in Mogadishu. The clan he claims to be a member of is divided into the Hassan and Hussein subdivisions - they were the sons of Fatima. He was unable to make this connection in his oral testimony and failed to say that Fatima had sons who were so called. He is not uneducated or illiterate having gone to school. He was a professional footballer and lived in Somalia all his life. I would therefore have expected him to be a more impressive and persuasive witness when asked about his clan identity. Although he got some answers right he stumbled over the other responses. He was undermined during the course of cross-examination. His clan is central to his appeal as he alleged persecution by the Habar Gidir militia. I therefore find he is not a member of the Hassan sub clan and Sarman sub clan which is a division of the Ashraf clan; as claimed.'

1. In paragraph 18 of the determination the Adjudicator found that the appellant was largely consistent in his various accounts of events. However, she went on to find

'But I do not consider that the militia have any further use or interest in him after releasing him when his brother paid a bribe. If he had been of any interest they would not have released him. I accept that what he said transpired may well have occurred. But there is nothing to suggest he would be of current interest to the authorities or militia as he appeared to be the unfortunate victim of sporadic violence which is not to be condoned.'

2. The grounds of appeal submit that, having accepted the appellant's account of events, the Adjudicator should not have found that he did not belong to his claimed clan, sub clan and sub sub clan. In the grounds of appeal, and the accompanying witness statement from the appellant, it is alleged that the interpretation of the hearing was defective which vitiated the determination because of procedural unfairness. It is argued that the Adjudicator gave too much weight to the appellant's failure to answer all questions about the Ashraf and failed to give proper weight to the evidence supporting this claim. The appellant should not be expected to display as much knowledge about the Ashraf as a group of elders. There was no evidence before the Adjudicator to support the contention that all members of the Ashraf would be so knowledgeable. It is also argued that the Country Information supports the appellant's claim that members of his clan were treated in the manner he claimed.

3. The appellant's representatives made an application in the following terms.

‘1. The appellant seeks directions and disclosure in the following matters relevant to this application for leave to appeal;

- a. the name and address of the interpreter employed by the IAA on 21 November 2002 so that he can be written to by Wilson & Co. to request that he give evidence for the appellant (Wilson & Co. is prepared to undertake to maintain confidentiality in respect of the said interpreter's address)
- b. alternatively, that the IAA agree to pass a letter from Wilson & Co. to the interpreter referred to in (a) above requesting that he contact Wilson & Co. as a potential witness in the appeal;
- c. that the IAA disclose details of the said interpreter's qualifications to act as an interpreter for native Somali speakers (including details of how long he has lived in Somalia, when he lived there and which parts of Somalia he has lived in);
- d. details of when and where the said interpreter will be engaged by the IAA to enable the appellant's expert to attend a sample of

hearings in which he will interpret in order to assess his ability as an interpreter. This is to enable an expert to be instructed by Wilson & Co. to assess the said interpreter's ability.

e. alternatively to (d) the court is to consider the parties to the appeal being directed to instruct a joint single expert to prepare a report in respect of observations obtained in (d) above.

f. a copy of the Adjudicator's record of proceedings.'

1. This was dealt with by a Vice President who, in a letter to the appellant's Counsel dated 9 June 2003, said,

'Interpreters are employed by the Appellate Authority in order to assist it in its work. They are subject to external assessment by the Institute of Linguists and to internal assessment by the Authority's own interpreter department. You seek directions enabling you to make a further assessment for your own purposes, of the general competence of one of these interpreters. The purpose of that assessment is entirely obscure. There is no reason to suppose that an assessment arranged by yourselves would be superior to that to which the interpreter has already been subject. The question at issue can only be whether the actual interpretation provided at the hearing was misleading. On that, I note that no complaint was made at the hearing, either by the appellant or his representative. For the above reasons I decline to make the direction sought.'

2. It is unfortunate that the letter was sent only to the appellant's Counsel, but it did eventually reach the representatives and nothing turns on this.
3. Insofar as it is necessary for us to revisit the Vice President's decision, as the application has been repeated, we agree with it. It is difficult to understand why if, as the appellant states in paragraph 3 of the witness statement, he had difficulty in understanding the court interpreter from the outset, he did not mention this. In paragraph 4 of the statement the appellant accepts that at the beginning he was asked whether he could understand the interpreter

and he said that he could. There is no satisfactory explanation why the appellant did not raise the point at this stage or at any other time during the hearing. The terms of the application by the appellant's representatives indicate that they intended to instruct an expert, presumably an expert in Somali languages and dialects, to shadow the court interpreter. The appellant has experienced solicitors. We enquired of Mr Toal why, as it was apparent that his instructing solicitors knew there were experts in Somali linguistics, such an expert had not been employed to interview and test the appellant and then give expert evidence as to his linguistic abilities and whether these indicated a connection with a particular clan, sub-clan or sub sub clan. Such expert evidence is often combined with detailed testing of an individual's knowledge, for example, of particular parts of Somalia, clan history and social customs. Whilst it would not have been appropriate for the appellant's representatives to test the court interpreter, the difficulties the appellant faced in relation to his linguistic abilities and related matters could have been addressed by obtaining such expert evidence. Mr Toal had no information as to why this had not been done.

4. In paragraph 19 of the determination and in relation to the evidence of Mr Mohammed, the Adjudicator said,

‘Although I place considerable weight on some but not all of the oral testimony of Mr Hussan Mohammad, and accept they may well have been neighbours, gone to the same school and played football together, although he maintained the appellant hailed from Ashraf – Hassan subsubclan, I do not believe this is the position as the appellant's own testimony wavered in this regard.’

5. We do not think it appropriate to place too nice an interpretation on the precise order in which the Adjudicator reached her conclusions, nor do we find, looking at the determination as a whole, that the Adjudicator failed to assess the evidence in the round. It was open to her to find against the appellant's claimed clan membership for the reasons set out in paragraph 17 of the determination and then, whilst accepting that the appellant and the witness were known to each other, to reject the witness's evidence as to the appellant's clan membership. It is not appropriate to look at the passage in paragraph 19 on its own and claim that the only reason for the rejection of part of the witness's testimony was that

the appellant's own testimony 'wavered'. There is nothing inconsistent in accepting a witness's evidence about some aspects of his relationship with the appellant but rejecting that part of the evidence relating to his clan membership.

6. We find that the Adjudicator did not fail to take into account the Country Information or to give weight to the extent to which this corroborated the appellant's account of events. In paragraph 19 of the determination the Adjudicator states that she has taken into account the relevant Country Information. We see no reason to doubt this. In paragraph 18 the Adjudicator accepted much of the appellant's account of events and, taken in context, it is clear that she did so by reference to the Country Information. There are frequent references to this in the determination. The fact that what the appellant claimed happened to him was consistent with what happened to some members of the Ashraf does not of itself mean that the Adjudicator erred in her conclusions that he was not an Ashraf.
7. We find that the reasons given by the Adjudicator in paragraph 17 of the determination support her conclusions about the appellant's clan membership. The reasons are clear and were open to her on the evidence. There might have been some merit in the argument that the appellant should not have been expected to display the same breadth of knowledge as that possessed by a group of elders interviewed for the purpose of the Joint British/Danish and Dutch Fact Finding Mission, which commences at page 195 of the appellant's bundle, if the questions he was asked were esoteric or obscure. However, the questions were basic and go to the heart of the identity of the Ashraf.
8. On page 200 of the appellant's bundle, in this report, there is the passage

'The Ashraf elders trace their origins to the Prophet Mohamed, whose daughter Fatima had two sons with Ali, named Hassan and Hussein. Any member the Ashraf community belongs to one of these two lines of descent, from Hassan or Hussein, and any Ashraf (both females and males from the age of two) is able to identify or her or himself as belonging to one of these two lines.'

9. Two of the matters referred to by the Adjudicator in paragraph 17 of the determination are drawn from this passage.
10. Mr Toal asked us not to endorse the Adjudicator's finding that the appellant would not be of any current interest to the militias. He explained that the reason was that the appellant did not wish to be bound by this finding, applying Devaseelam principles, when consideration was given to extending his period of leave or there was a further appeal. It appeared to us that Mr Toal was in effect seeking to add another ground of appeal. We declined to allow an amendment at so late a stage and in any event can find no fault with this conclusion.
11. This determination is reported for what it says about two matters, the position of official interpreters and the core of being Ashraf.
12. The Adjudicator reached conclusions which were open to her on the evidence. The appellant has had a fair hearing and there is no error of law. We dismiss this appeal.

**P.R. MOULDEN
VICE PRESIDENT**