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Heard at: Field House

_A (Benadiri - Findings of
Fact - Somaliland) Somalia
[2004] UKIAT 00080

On:19 March 2004

IMMIGRATION APPEAL TRIBUNAL

notified:

Date Determination

.....

.....23/04/2004.

Before

:

His Honour Judge N Ainley (Chairman)
Mr F T Jamieson
Ms V S Street

Between

APPELLANT

And

SECRETARY OF STATE FOR THE HOME DEPARTMENT
RESPONDENT

Representation:

For the appellant: Ms. S. Naik

For the respondent: Mr. A. Sheikh

DETERMINATION AND REASONS

1. This is an appeal by the claimant from the determination of Mr Woodcraft sitting on 27 June 2003.
2. The claimant is a Somali who was born in 1981 or 1982 and who arrived in this country on 22 January 2001 claiming asylum on 2 February 2001. His claim was refused on 15 March 2001.

3. Not all the grounds of appeal were pursued before us. The ground of appeal that was pursued before us was that the claimant was a Benadiri who would thus be at real risk of persecution if returned to Somalia. It was argued that the Adjudicator had made no specific finding as to whether the claimant was of that clan albeit the claimant had given evidence to the effect that he was and that the Secretary of State had conceded the claimant's mother was Benadiri. The Adjudicator made a blanket credibility finding against the claimant and against a lady whom he said was his mother who also gave evidence. It will be necessary for us to deal with the various accounts that have been given and with the finding of the Adjudicator.
4. In his first statement he said that he was born on 2 May 1981 in Mogadishu. He said that his parents separated when he was very young and that his father was a Reer Hamar of the Benadiri and that his mother was of the Issaq clan. The Issaqs are one of the dominant clans in Somaliland.
5. When his parents separated he went to live with his mother and siblings in Hargeisa in Somaliland which is where his mother had come from originally.
6. Presumably he was stating in his account that he had moved to north in the mid or late 1980s. He said that prior to 1991 he remembered the family had to live in the bush on the outskirts of Hargeisa because the Issaq tribe were at odds with Siad Barre who was then President. By 1993 his family were able to return to the towns although his mother, having married a Benadiri, was never accepted by her own clan. She went to live in Berbera, also in Somaliland but some distance from Hargeisa. When his mother left he went to live with two uncles. This situation did not last because in 1993 and 1994 there was inter-clan fighting and one of his uncles was killed. He then managed to gain employment, although he would only have been about thirteen or so but said that in 1998 he was the victim of three attempts on his life and he was sacked from the employment he then had as a bus conductor in Hargeisa.
7. He was asked when he left Somaliland and he said he left on 10 February 2001 going via Mogadishu to Kenya and thence to the United Kingdom. He was asked why he had come to the United Kingdom rather than joining his mother in Berbera and he said that his mother wanted him to learn a trade and work for the family and he said that, and to study were the reasons why he had come to the United Kingdom.
8. There was a refusal letter which of course relied heavily which was in the statement. The contents of that letter are perhaps not particularly germane to this appeal.

9. His second statement, upon which he now wishes to rely is rather different. He states that he was born in 1982 rather than 1981 although he still insists that he was born in Mogadishu. He also continues to maintain that his father was a Benadiri. He said, however, that the account he had given about his upbringing was not correct. He called as a witness a lady called Muna Hassan Sharif who he said was his mother. He said that she was not the woman he had grown up with in Hargeisa and Berbera. He said that what had happened was that he had separated from his mother in about 1991 to live at the home of his mother's cousin who is called Maymuna. His mother was a Benadiri but Maymuna was an Issaq. For a year after going to Maymuna's house he carried on living in Mogadishu, scarcely seeing his mother although she seemed to live quite nearby. What then happened was that it was Maymuna who went north to Berbera and he accompanied her. The two uncles who had helped look after him were Maymuna's brothers and not his mother's. He then says that he lived as a "hustler" for seven years until he left Somalia. He also described the attack on him in Hargeisa as being in 1996 or 1997 when he would only have been fourteen or fifteen. In his earlier account he stated he was beaten up and stabbed with a screwdriver but this time said he was beaten with sticks and struck on the head. He said this happened because he was identified by men who knew he was not from the Issaq clan. He says that he left Somalia on money provided by an elderly man whom he befriended, travelling by land to Nairobi and then flying to the United Kingdom.
10. The lady claiming to be his mother said in her evidence that she had been separated from her husband in 1991 and also separated from her son but was reunited with her husband in 1993. She said she left Somalia on 2 July 2002 coming to the United Kingdom later that month.
11. Whatever the circumstances of her arrival in the United Kingdom she was granted refugee status on the basis, it would appear, of a postal application that was made by her in about October 2002. It is stated by Counsel appearing for the claimant that the Home Secretary gave her asylum on the basis that she was Benadiri. This is not conceded nor is there any evidence before us as to this matter. We were given no satisfactory reason as to why that evidence was not placed before us.
12. An account was given as to how it was that mother and son were reunited in the United Kingdom but we need not deal with the circumstances of that because they are not relevant to this appeal.
13. When dealing with credibility the Adjudicator found that neither the claimant nor his witness were credible.

Unfortunately, we cannot detect any finding on the papers before us to show that the Adjudicator came to any clear reasoned finding as to whether the claimant was Benadiri. It seems permissible to infer that he came to the conclusion that the claimant was not but we do not know what reasons lie behind that if that was the conclusion to which he came. Certainly the Adjudicator was mistaken when he said in the determination that the claimant in interview did not know what clan his father came from, it was the father's sub-clan that he was unaware of. Insofar as this may have influenced him plainly he was influenced by a mistake.

14. We are urged to conclude that the evidence in this case points to the claimant being Benadiri and he should be taken as being such for the purposes of the appeal before us. That argument is advanced on the basis that the Secretary of State has conceded that his witness was Benadiri and it is now said before us that there is DNA evidence showing with certainty that he is the son of the woman whom he claims to be his mother.
15. We have seen the DNA evidence and it is as near conclusive as makes no difference. The Home Secretary is, however, not disposed to accept that the DNA evidence actually relates to the claimant and his alleged mother. The Home Secretary states in plain terms that in a case such as this where it is admitted that lies have been told one is entitled to be sceptical about any evidence that is produced. He raised the issue of the possibility of impostors who are genuine mother and son going before the scientists to have their DNA tested.
16. We cannot deal with this assertion because it is impossible to do so on the material that we have. We can only say what appears to us on the material before us to be the case, which is that a mother and son claiming to have the identities of the claimant and the lady he says is his mother appeared before the scientists on a particular date and were tested.
17. It is further submitted to us that the Secretary of State is bound by the concession that he made as to the mother's Benadiri ethnicity. We do not consider on the material before us that there is anything to show that the Secretary of State was even told that the mother was Benadiri. We therefore do not feel that we have to consider this point.
18. The fact has to be faced, however, that the Adjudicator has not given any clear reasons for stating that the claimant is not Benadiri, in this case in the face of evidence from him and from a woman claiming to be his mother that he is. However unsatisfactory that evidence may have seemed to be it was to us important for the Adjudicator, if he was to dismiss it, specifically to isolate this fact as an important fact and then

give reasons for discounting the evidence of the claimant. That has not been done and therefore it seems to us that the options that are left open to us are to consider whether to remit this matter so that there can be findings of fact or to examine the claimant's case on the assumption that he is Benadiri and see whether even in those circumstances his case would fail. We have had the advantage of having a certain amount of background material submitted to us including the CIPU Report on Somalia for October 2003, the Operational Guidance Note on Somalia of February 2004 and the UNHCR Position Statement of January 2004.

19. We start from what is common ground which is that members of the Benadiri minority groups have been identified as targets of persecution and it has been held on a number of occasions that membership of the Benadiri group is a fact capable of causing a person of that group to be considered as a refugee in this country. But here the position is highly unusual because the claimant is not a Benadiri who would be returned to Mogadishu or to any of the areas where Benadiri have always lived between Mogadishu and Kismayo but he is a Benadiri who might have the option of going to another part of the country which is simply not open to the great bulk of those who are of his particular ethnicity. At least that is the submission of the Home Secretary before us. We feel it appropriate to examine this submission with some care. We have already stated that being Benadiri in itself is sufficient in many cases to give rise to what can almost amount to a presumption of refugee status but the position of the Benadiri in Somaliland has seldom been analysed by the Tribunal. The matter is touched on in paragraphs 6.68 of the CIPU Report in the following terms:

"Some areas have provided a safe refuge for people from other clans and minority groups displaced from elsewhere in Somalia. The Majerteen-led Puntland administration has, for example, permitted Somalis from all clans and non-Somali minority groups, even former supporters of Siad Barre, to move freely through and settle in the area under its control. The SNM administration in Somaliland has allowed Somalis who originate from the north-west and minorities such as the Bantu to settle in its territory. Even Ogaden clan members, who had moved into the north-west under Siad Barre's administration, have been able to remain in Somaliland and live without undue harassment. While occasional localised clan-based outbreaks of fighting may occur, there is no general clan-based persecution in Somaliland. The authorities in the Hiran region also allow all Somalis to move, and settle with permission, within their territory."

The material that has led to this paragraph was all dated 1996 to 1998 and thus it may reflect a position that no longer exists in Somaliland. It is referred to, however, in the recent operational guidance note at paragraph 3.7.5 which states as follows:

"In most cases 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 will need to be taken into account."

20. The UNHCR Position Statement contains a number of useful indications as to what the risks would be for a person such as the claimant in Somaliland. We will begin our citations at page 5 of that Position Statement:

"For purposes of voluntary repatriation, UNHCR policy divides the country into north and south, i.e. areas recognised as being stable (north) and areas recognised as not yet stable because of the absence of civil administrative structures to guarantee security (south). The areas administered by the Somaliland and Puntland authorities fall into the northern sector of the country, and the rest into the southern sector. Accordingly, UNHCR considers the part of the country from the city of Galkayo to the north as the northern sector. Areas south of Galkayo, constitute the southern sector of the country.

In view of the improvements in peace, security, stability and governance in northern Somalia (Somaliland and Puntland), UNHCR is promoting the voluntary repatriation of Somali refugees originating from there. The reintegration of returnees is assisted primarily through community-based activities. Voluntary repatriation of refugees who wish to return to pockets of peace in southern Somalia has been facilitated by UNHCR on an individual basis.

When UNHCR promotes repatriation to any area, the understanding is that the factors that drove refugees out of that area have broadly ceased to exist.

In the case of Somalia, UNHCR has assessed that the majority of refugees who fled areas which are now in the northern sector can safely return to their habitual areas of former abode, although their right to return is

seriously challenged by the over-stretched absorption capacity. Also, importantly, it cannot be ruled out that some individuals originating from Somaliland and Puntland may have a well-founded fear of persecution. Claims to this effect should therefore be dealt with in line with global standards of refugee status determination.

Prior to arranging repatriation movements, UNHCR Somalia requests clearance from the local authorities for all refugees wishing to repatriate to Somalia. This is to ensure that repatriants are welcome in their area of return, and to avoid any negative consequences arising from their being possibly considered to belong to an area different than their chosen destination. This is of particular relevance in Somaliland, which, because it considers itself an independent state, considers non-Somalilanders as foreigners.... Clan considerations play an important role. Generally, the lack of local clan and other support-systems forces most Somalis who do not originate from the area to join the misery of the 31,000 IDPs, who live in squalid conditions below the poverty line with very limited access to basic services and physical and legal protection. "

The position paper goes on at page 8 as follows:

"The general pattern of human settlements prevailing in many parts of Africa, including Somalia, is often characterised by common ethnic, tribal, religious and or/cultural factors, which enable access to land, resources and protection from members of the community. Consequently, this commonality appears to be the necessary condition to live in safety. In such situations, it would not be reasonable to expect someone to take up residence in an area or community where persons with a different ethnic, tribal, religious and/or cultural background are settled, or where they would otherwise be considered as aliens.

The only conceivable alternative could be to move to the slums of a big city, where internal migrants from the countryside lead a precarious existence, often in appalling living conditions. Persons with a rural background may be rendered destitute there and thus be subjected to undue hardship. Therefore, it would be unreasonable to expect a person to move to an area in his or her own country other than one where he or she has ethnic, tribal, religious and/or cultural ties.

This is true also in Somaliland and Puntland. They already host some 60,000 and 31,000 IDPs respectively, which by far exceeds their absorption capacity. In the

absence of clan protection and support, which means weak or negligible social networks, a Somali originating from another area would be likely to join the many other underprivileged IDPs who suffer from lack of protection, limited access to education and health services, vulnerability to sexual exploitation and abuse and labour exploitation, eviction, vulnerability to sexual exploitation and abuse and labour exploitation, eviction destruction and confiscation of assets. Specifically, in Somaliland, a self-proclaimed independent state, those not originating from this area would be considered as foreigners, and face significant acceptance and integration problems, particularly taking into account the extremely difficult socio-economic situation of those native to the territory.

.....

In this regard, it should be noted that 'place of origin' should not necessarily be equated with 'place of birth'. ...A case to illustrate this point is the voluntary repatriation by air to Puntland of Somali refugees from the Dodaab camps in Kenya. Whilst most of them fled to Kenya from the south of Somalia they returned to their clan basis in Puntland. Therefore the determining factor in defining where a person originates from is where the person has effective clan and family ties and where clan protection is thus available."

21. It seems to us that the position for someone who is a Bajuni and has no connections whatever with Somaliland would be such as to render it wholly impracticable to consider his relocation to that part of the country. That is not the position here. On the claimant's own case he has lived since childhood from the age of nine to about nineteen in the Hargeisa area of Somaliland. During that time there has only been one incident where he has been attacked. He plainly has family members who live in that area. He has one uncle who remained, he may have brothers and sisters there although there is no clear evidence about that and we will not assume that he does. He either had a mother or a cousin of his mother who lived there and plainly during the time of his childhood and adolescence he was living among the Issaq who are the dominant clan of the area. No doubt life was difficult for him but this clan treated him as family and they must have known what his actual clan background was.
22. In those circumstances it seems to us that this is a very different case from the ordinary run of cases that one would come across, even when considering a Bajuni who is being considered as a candidate for relocation to the north of the country, for this is someone who has lived in the north of the country without encountering persecution for a Convention

reason and it seems to us that if he were to go there he would not be cast adrift, for he has established a family network of some sort there. That must be the case for him to have survived as he did and to have obtained some employment at some stage as well.

23. It thus seems to us that in the circumstances of this case, even if he is a Bajuni, and this is putting his case as high as it fairly can be put, we do not feel that he is at any real risk of persecution if he is returned to the Somaliland part of Somalia. Accordingly, and for the reasons given above we feel that this appeal must be dismissed for it cannot succeed even on his own account. Accordingly, we consider that a remittal would serve no purpose.

**His Honour Judge N Ainley
Vice President**