

Heard at Field House

SN (1999 Act - Article 8)  
Somalia [2004] UKIAT 00073

On: 26 March 2004  
Prepared on: 26 March  
2004

## **IMMIGRATION APPEAL TRIBUNAL**

notified: Date Determination  
.....22/04/2004...  
.....

**Before**  
:

**HH Judge N. Huskinson Vice - President**  
**Mr. M. E. A. Innes**  
**Mrs. S. Hewitt**

**Between**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

### **Representation:**

For the Appellant: Mr. Z. Jafferji (Counsel - instructed by Johar & Co.)

For the Respondent: Mr. J. Jones (Home Office Presenting Officer)

### **DETERMINATION AND REASONS**

1. The Appellant was born on 15 March 1977. He claimed to be a national of Somalia and to be a Brava and a member of a minority clan. He appeals to the Tribunal, with permission, from

the determination of Mr. R. J. Pooler, Adjudicator, promulgated on 4 July 2003 whereby he dismissed the Appellant's appeal on asylum grounds and human rights grounds against the Respondent's decision to refuse asylum to the Appellant and against his decision to refuse him leave to enter the United Kingdom and to give directions for his removal to Somalia.

2. The Respondent in his Reasons for Refusal Letter dated 29 October 2002 made clear that he did not believe that the Appellant was Bravanese or that he was even a national of Somalia. Paragraph 5 of the Reasons for Refusal Letter is in the following terms:

*"5. The Secretary of State is not satisfied that you are a Somali and has refused your claim for asylum and your human rights claim on the basis that you are not Somali. Directions will be given for your removal to Somalia as this is the country of which you claim to be a national. This is being done solely in order to enable you to appeal to an adjudicator and enable the decision to refuse your claim for asylum to be reviewed. If you appeal against the refusal of your claim for asylum and the special adjudicator also concludes that you are not Somali, we will seek to establish your true nationality."*

3. The Adjudicator in his determination agreed with the Respondent on his contention regarding nationality. The Adjudicator expressly found in paragraph 46 that the Appellant had not satisfied him, even to the lower standard of proof, that he is a national of Somalia or that he is Bravanese. Accordingly the Adjudicator dismissed the asylum and Article 3 appeal.
4. The grounds of appeal to the Tribunal did not seek to challenge the Adjudicator's decision on this aspect, nor was permission to do so granted nor was any attempt made to challenge this finding before the Tribunal. Accordingly it is common ground that the Adjudicator's conclusion on this aspect stands and that the Appellant has been found not to be a citizen of Somalia.
5. Having made this finding, the Adjudicator went on to consider an Article 8 argument. This argument was based upon various matters including the following:
  - (i) The Appellant on 26 May 2000 married a British citizen, Dilshad Noor.
  - (ii) The Appellant's wife is partially sighted and registered as disabled.

- (iii) The Appellant and his wife have two children, Sulaik Noor who was born on 9 July 2001 and Mohammed Sadeem Noor who was born on 19 December 2002. Immediately after the hearing before the Tribunal, the Tribunal was handed a fax indicating that the Appellant's wife is expecting a third child in August.
  - (iv) The younger child has medical problems as described in the Adjudicator's determination and in the medical reports referred to therein. It is not necessary to examine the details of this problem for the purpose of the present determination.
  - (v) Evidence was given regarding the mutual reliance between the Appellant and his wife and the difficulties that would be caused if the Appellant were removed from the United Kingdom.
6. The Adjudicator considered and dismissed the Appellant's Article 8 appeal. In introducing his analysis in paragraph 49, the Adjudicator shows that he is considering the case:

*"If the Appellant is removed to Somalia ..."*

7. At the hearing before the Tribunal there was discussion between the Tribunal and the representatives as to whether in fact there could have been any Article 8 appeal for the Adjudicator to consider, bearing in mind that he had concluded that the Appellant was not a citizen of Somalia. The point which troubled the Tribunal was as follows. The appeal to the Adjudicator was (as the Adjudicator pointed out) an appeal under Sections 69(1) and 65 of the Immigration and Asylum Act 1999. So far as human rights is concerned therefore, the Article 8 argument would need to involve an allegation that the Respondent, in taking any decision under the Immigration Act relating to the Appellant's entitlement to enter or remain in the United Kingdom, acted in breach of his human rights, see Section 65(1) and (3). However the decision which the Respondent took was a decision as recorded in paragraph 5 of the Reasons for Refusal Letter, set out above. In summary it was a decision to remove the Appellant to Somalia if, but only if, the Appellant truly was a citizen of Somalia (which the Respondent did not believe). The effect of the Respondent's decision, in the light of the Adjudicator's conclusion that the Appellant is not a citizen of Somalia, is that the Appellant faces no immediate prospect of being removed from the United Kingdom. As Mr. Jones put it, the Appellant faces no prospect of being removed to Somalia and no prospect of being removed anywhere unless and until the Respondent has made a decision as to where the Appellant can properly be removed to and has made a decision that it would be appropriate to remove him there.

8. In these circumstances both Mr. Jones and Mr. Jafferji accepted that there could not be a live Article 8 appeal before the Tribunal. Mr. Jafferji pointed out, correctly, that any proper consideration of an Article 8 appeal in relation to prospective removal of a claimant from the United Kingdom necessarily requires knowledge of where the claimant is to be removed – without such knowledge an analysis of whether any insurmountable obstacles exist to the rest of the family going with him to the destination country cannot be made. Nor in a case (such as this) where one or more members of the family have medical difficulties, can any consideration be given, so far as relevant to the Article 8 claim, to the difficulties which these medical conditions would place members of the family if they are returned with the claimant. It is necessary to know which country the claimant is being removed to before any such analysis can properly be made. Accordingly for both those reasons, namely no imminence of removal and separately no ability to analyse an Article 8 claim without knowing the destination country, both Mr. Jafferji and Mr. Jones agreed that the appropriate course of action was as follows. It was agreed, and the Tribunal also agrees, that once the Adjudicator had concluded that the Appellant was not a citizen of Somalia, the Appellant could have no present valid Article 8 appeal under Section 65 for the reasons already mentioned. Accordingly rather than examine the merits of an Article 8 appeal against a notional removal to Somalia (which everyone knows is not going to happen) the Adjudicator should merely have noted that no Article 8 argument was presently available to the Appellant. This is because the Secretary of State's decision as set out in paragraph 5 of the Reasons for Refusal Letter is not a decision which can be in breach of the Appellant's human rights. In the circumstances which have arisen the Respondent's decision is a decision not to remove the Appellant to Somalia but instead to seek to establish the Appellant's true nationality and then to decide what course to take in respect of him. Such a decision cannot be in breach of the Appellant's Article 8 rights – it involves no interference with the Appellant's family life or private life.
9. The Appellant's appeal must therefore be dismissed. If and when the Respondent decides to make any further removal directions in respect of the Appellant, to some other country, the Appellant will have all his potential arguments available to him, including arguments under Article 8 so far as appropriate. The Tribunal indicated that in dismissing the Appellant's appeal it would record that, while agreeing with the result that the Article 8 appeal must be dismissed, it took this view for the reasons mentioned in this determination (namely that there could not be a live Article 8 point before the Adjudicator bearing in mind his finding that the claimant was not a Somali citizen), rather than by a reason of an examination of the alleged merits

of an Article 8 claim against the background of a proposed removal to Somalia. The fact that this appeal is being dismissed is not intended as any endorsement by the Tribunal of the Adjudicator's reasoning in relation to the merits of the perceived Article 8 claim. This consideration of the merits was irrelevant and the Tribunal neither expresses agreement or disagreement with it.

10. In the result therefore the Appellant's appeal is dismissed.

**HH JUDGE HUSKINSON**  
**Vice President**