

Heard at Field House

IJ (Article 3 - Return -  
Country and Individual  
Circumstances) Somalia  
[2004] UKIAT 00071

On 11 March 2004

Prepared 11 March 2004

## **IMMIGRATION APPEAL TRIBUNAL**

notified:

Date Determination

19 April 2004

**Before**

:

**Mr H J E Latter (Vice President)**

**Mr P Rogers JP**

**Mr G H Getlevog**

**Between**

**The Secretary of State for the Home Department**

**APPELLANT**

**and**

**RESPONDENT**

Representation

For the Appellant: Miss T Hart, Home Office Presenting Officer

For the Respondent: Mr R Ghaffer of Counsel

### **DETERMINATION AND REASONS**

1. The Secretary of State appeals against the determination of an Adjudicator, Mrs S M Walker, who allowed the respondent's appeal on human rights grounds against a decision made on 10 January 2003 issuing removal directions. In this determination the Tribunal will refer to the respondent of this appeal as the applicant.

2. The applicant arrived in the United Kingdom with his wife and two dependent children on 8 November 2002. They had travelled from Ethiopia on false Kenyan passports. The applicant claimed asylum on 11 November 2002.
3. The basis of his claim is that he is a member of the Tunni clan (Shangammas sub-clan) from the lower Shabelle region. He had been a farmer but his farm was taken over by the dominant Hawiye clan in 1991. He was forced to work for them. In 1998 the farm was attacked by another rebel faction from Kismayo. He managed to get away with his family taking with him \$6,000 which the outgoing Hawiye had left behind at the farm. He moved to Bulo Hawo for four years while he worked in Luuq, Gedo region preparing cattle for export to Kenya. He left because of problems with armed gangs of the Ogaden region. At times there would be cross-fire between these Somali gangs and the Ethiopian authorities. The applicant fled to Garbaharry. One one occasion he was detained by one of the gangs and they insisted that he should join them in fighting the Ethiopians. He refused but after two days he was released. This incident made him decide to leave Somalia. He travelled to Ethiopia where he stayed with his wife's uncle. An agent arranged for their travel to this country.
4. The Adjudicator commented that there were some aspects of the account which were surprising but she found that the applicant had given an essentially truthful account. On the evidence before her she was not able to determine whether the Tunni were a minority clan but she accepted that he was from that clan and that his farm had been taken over. His description of finding the money strained credibility but the militias had a reputation for looting and it was not impossible that money was hoarded. She found it difficult to accept that he had been able to travel with the money and keep a substantial amount of it for four years. However, she found that a significant part of his account was correct and that he did re-locate to Bula Hawa. He lived there for four years and was able to work. The situation there led him to leave Somalia. Life was not easy. The Adjudicator accepted that what motivated the applicant to leave was his detention by a rebel group. This was consistent with the background material which referred to the Al-Itihaad operating in Gedo.
5. The Adjudicator said that although being of the Tunni clan would on the basis of the Operational Guidance probably bring him within those groups of asylum seekers deemed to be likely to qualify for international protection, she had to look at his individual circumstances. He had relocated his family to what for them proved to be a place where they did not suffer on account of clan membership. Such suffering as he incurred was because of the attempt to force him to join a rebel group. This was not related to clan membership. It was to boost the ranks

of the rebels. However frightening and unpleasant, this did not constitute persecution for a Convention reason. On this basis the asylum appeal was dismissed.

6. The Adjudicator went on to consider whether to return the applicant to Somalia would be a breach of Article 3. The situation in Somalia was extremely difficult and there must be a likelihood that many returned asylum seekers would become displaced persons. There was also a risk that the applicant and his family would be caught up in the continuing conflict, lawlessness and insecurity. If a return were contemplated, it would be to the Gedo area or the lower Shabelle. Although the information about the latter area in the CIPU report was very limited it did seem that the TNG may have some control over it.
7. The Gedo region was relatively unstable. The Adjudicator commented that it was accepted by the respondent that there were currently no flights to Mogadishu and the return of asylum seekers to Somalia at present seemed more of a theoretical concept than a real possibility. On the evidence available and looking at the situation of this applicant and as a whole the Adjudicator found that to return him and his wife, particularly with two young children would be a breach of Article 3 because there must be a real risk that they would suffer inhuman and degrading treatment. The applicant's medical condition was one factor but not the only one which she weighed in looking at the impact of a return to Somalia at the present time. The appeal was allowed on human rights grounds.
8. In the grounds of appeal it is contended that the Adjudicator erred in law by failing to give adequate reasons. Having found that the applicant would not be persecuted for a Convention reason, the Adjudicator failed to explain what would lead to a breach of Article 3 on return. The Adjudicator had not identified any factors which would put the applicant at greater risk than any other person in Somalia nor had she explained how the general situation would itself breach Article 3. She had not addressed the Home Office refusal letter which stated that conditions of general lawlessness, poverty and lack of resources were not sufficient to amount to a breach of the Human Rights Convention. If the Adjudicator had not made these errors of law, she would not have allowed the appeal.
9. Miss Hart adopted these grounds. She submitted that the general situation in Somalia did not justify a finding that there would be a breach of Article 3. The applicant's medical condition did not approach the high threshold. She referred to the Court of Appeal judgment in N [2003] EWCA Civ 1369 . Even when assessing the risk to the applicant in the area where he had been living before leaving Somalia she had referred to it as unpleasant and frightening. This did not establish a risk of treatment which could be properly described as inhuman or

degrading. Miss Hart referred to the Tribunal determination in J(Somalia) [2003] UKIAT 00147 and the Tribunal referred the parties to the determination in W(Somalia) [2003] UKIAT 00111.

10. Mr Ghaffer submitted that the Adjudicator had not just considered the general situation in Somalia but the applicant's own circumstances. She accepted that he was a member of the Tunni clan who had relocated within Somalia. If he went back to that area there was a continuing risk that he would again be targeted by the rebel groups. He referred to the report of Professor Lewis at B3-7 and to the US State Department report at C37 on the issue of internal flight.
11. In W(Somalia) the Tribunal considered whether the security situation in Somalia in general and in Mogadishu in particular was such that returning failed asylum seekers generally to Somalia would be a breach of Article 3. The Tribunal concluded that although the situation in Mogadishu was far from settled or satisfactory there were some signs of hope. It concluded that the general security situation was not such that it could properly be said that a return to Mogadishu would by itself constitute a breach of Article 3. In J(Somalia) the Tribunal were dealing with whether the Tunni were a majority tribe. It came to the view that it was impossible to say that membership alone of the Tunni clan was sufficient without more to show a well-founded fear of persecution on return. It also held that the Adjudicator was entitled to conclude that the applicant in that case could relocate in safety to areas where there was effective local administration.
12. There is no challenge to the Adjudicator's findings that the applicant would not be at risk of persecution for a Convention reason in Bula Hawa. The issue is whether she was entitled to conclude that there would be a risk of a breach of Article 3 on return to Somalia. The factors relied upon by the Adjudicator were that the situation in Somalia was extremely difficult and that there must be a likelihood that many returned asylum seekers would become displaced persons. She identified a risk that they would be caught up in the continuing conflict and the general lawlessness and insecurity. The situation in both the lower Shabelle and the Gedo region were unstable. The applicant had a young family. His medical condition was a matter to be taken into account.
13. In so far as the Adjudicator based her decision on the general situation on return to Somalia, the Tribunal are satisfied that she was wrong to find that those conditions would amount to a breach of Article 3. It would only be in the most exceptional cases that general conditions would amount to a breach of Article 3. The fact of lawlessness, insecurity and instability does not reach the high threshold required for a breach of Article 3. The applicant's medical condition is that he has been diagnosed

with hypertensive disease, non-insulin dependent diabetes mellitus and obesity. He is on medication to treat the blood pressure and diabetes. In the light of the guidance of the Court of Appeal in N, the applicant's medical condition does not add anything of substance to the Article 3 claim.

14. Mr Ghaffer argued that the Adjudicator had taken the applicant's own circumstances into account and that at the heart of her determination was the risk to this applicant from rebel groups in Bula Hawa area. On his own account the reason why he left Somalia was because he had been detained for two days by such a group. When he refused to join he was released. The Tribunal are not satisfied that even on the basis of his own account the applicant was subjected to persecution by this action. We are not satisfied that there is any real risk of it recurring. The applicant's individual circumstances do not add to the risk of treatment contrary to Article 3 on return.
15. It follows that in the judgment of the Tribunal the Adjudicator's assessment of the risk of a breach of Article 3 was wrong and not properly open to her on the evidence. On the basis of the Adjudicator's findings of fact set against the background evidence the Tribunal is not satisfied that there would be a real risk of the applicant being subjected to treatment contrary to Article 3.
16. Accordingly, this appeal is allowed.

**H J E LATTER  
VICE PRESIDENT**