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MM (Risk-Return-Tuni) Somalia CG [2003] UKIAT 00129

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 3 October 2003

Date Determination notified:

04 November 2003

Before:

Mr P R Lane (Chairman)
Mrs M L Roe
Mr N Kumar, JP

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation

For the appellant : Mr R. Blackford, counsel, instructed by Pearson & Winston

For the respondent : Miss A. Holmes, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, a citizen of Somalia, appeals with leave against the determination of an Adjudicator, Mr C.B. Buckwell, sitting at Bromley, in which he dismissed on asylum and human rights grounds the appellant's appeal against the decision of the respondent to refuse his asylum claim and grant him only limited leave (which has in fact now expired).
2. The appellant's account was as follows. He said he was a member of the Tunni clan, living in Hamarwyne, Mogadishu, Somalia. He had suffered ill-treatment as a result of his membership of the Tunni clan. His brother had been killed. The family had attempted to relocate to the

coastal area in 1993 but had not been made welcome and thus returned to Somalia.

3. The appellant said that he was a businessman, selling goods from a shop. He had to pay protection money to bandits or 'Mooryaan' who particularly preyed upon minority clans whom the bandits knew 'have no protection or help from their clans or from the majority clans' (statement of 2 July 2002).
4. In that statement the appellant said that 'At the beginning of this year [2002] I have to sell the shop, as I was no longer able to keep it under these conditions, I even sold it cheaper than the normal price in order to sell it quickly'.
5. With the US \$3000 which he received from the sale of the shop, the appellant obtained the services of an agent. This agent posed as his wife, taking the appellant to Dubai. The appellant did not claim asylum there. Instead, he travelled on to the United Kingdom.
6. According to the appellant's interview record, he left his wife, son and brother's son behind in Mogadishu. When asked why he had left them, the appellant replied 'My life comes from first' (B6).
7. The Adjudicator did not find the appellant to be credible. He noted that, in the statement of 2 July 2002, the appellant said that he had sold his shop at the beginning of the year. However, in his interview, he said that the last difficulty with the militia had occurred on 10 June 2002 and that his shop was looted then by the Hawiye. He then said that 'After that I sold my shop'. If that was the correct timescale then the Adjudicator found it surprising that the appellant was able to make arrangements within four days to depart the country. However, the Adjudicator noted the discrepancy between this account and the statement of 2 July 2002, in which the appellant said he sold the business at the beginning of that year. The Adjudicator considered this to be 'a very serious discrepancy' which 'seriously damages the credibility of the appellant' (determination paragraph 32).
8. The Adjudicator went on to analyse the evidence regarding the nature of the Tunni clan. His findings are set out at paragraphs 33 and 34. The Adjudicator concluded that the Tunni appear to have a connection with the Digil who are a major Somali clan family. The Adjudicator considered 'that the Digil do not appear to be a persecuted minority, nor is there evidence that the Tunni, particularly those who have lived in Mogadishu for some time, form part of a persecuted minority group' (paragraph 34).

9. At paragraph 35, the Adjudicator concluded that the appellant had made payments, probably protection money, to a group of individuals, and that he

'may well have been a victim of the general lawlessness that resulted from the problems which arose as from 1991 in Somalia. Nevertheless it is the case that during this period people continued to live in Mogadishu despite all the difficulties and the attacks from various groups and militia which took place in the period which followed the start of the troubles. It may well be that the appellant became involved on one or more occasions, but I believe that if so he is the victim of general lawlessness, or of those seeking protection money, rather than being an individual who was persecuted on account of his clan background or ethnicity I take the view that he, like many thousands of other innocent Somalians, may well have been the victim of the general chaos and lawlessness which Somalia experienced. I do not believe he has made out his case that any suffering he endured was based upon his clan or ethnicity.' (paragraph 35).

10. The Adjudicator accordingly dismissed the appeal on asylum grounds and, at paragraph 39, found that there would not be a real risk of a breach of Article 3 or 14 of the ECHR, were the appellant to be returned to Somalia.
11. On 31 July 2003, the appellant sought to adduce a further statement. Permission was granted by a Vice President to give oral evidence before the Tribunal, in connection with this statement.
12. The appellant did so, with the benefit of a Somali interpreter. The statement says that 'approximately six weeks ago' (from when is unclear)

'I learned that members of a large clan in Somalia had murdered my young child, who was just two years of age. Her name was Abikar and she had been living with my wife and mother in Hamarwyne. I was informed of this tragedy from some Benadiri people who I had met in the United Kingdom. They had had contact with people who knew my family as

they told me the awful news. I am completely devastated and what makes it worse is that I have no way of personally contacting my family to share my grief and to ensure that they are alive. I know that they remain in danger in Hamarwyne as members of the Tunni clan and I know my life would be at risk if I were to return there.'

13. Expanding upon this statement, the appellant said that he met the people concerned in Wembley, where there was a large Somali population. The people had told the appellant that 'my son' was killed. When the appellant asked them why his son was killed, they said that it was during an attack by the militia on Hamarwyne.
14. The appellant confirmed that he was a Tunni and that the Tunni were not part of the Digil. Asked who the killers were, he said that the area was mainly controlled by Habergedir Murarsebe.
15. Cross-examined, the appellant was asked why his statement had referred to a daughter whereas he had referred in oral evidence to his son, as the victim of the killing. The appellant said that he did not have a daughter and that there must have been a mistake in the translation. Wembley was the contact point for Somalis living in the United Kingdom and different clans would meet there. The family who told him the news knew his family. His son had been killed during indiscriminate firing. His wife had also been injured. They were at home at the time, so he had been told.
16. The appellant was asked why, if he had learned of these events through his contacts, he could not use the same contacts to share his grief with his family in Somalia. He said that he did convey a message through these people but he had no means of contacting the family directly. He had asked the family to contact members of their own family in Mogadishu, and pass a message on to his family. The family who had given him the news, and whom he had asked to act as intermediaries, were members of the Reer Hamar.
17. There was no re-examination.
18. Mr Blackwood did, however, ask the Tribunal if we would give permission for him to adduce oral evidence as to the explanation for the discrepancy, referred to in the adjudicator's determination, regarding the date when the shop was sold by the appellant. The Tribunal gave such permission.

19. The appellant said that he had goods in his shop but the shop itself was owned by another person. When he had said that he sold the shop at the beginning of 2002, he actually had sold the goods in June 2002. There was no system of leases in Somalia. Everything was done orally. In other words, the appellant had 'had to sell the shop at the beginning of 2002'. He had not actually done so until later.
20. Cross-examined, the appellant said that he sold the stock from the shop in June. He had been looted several times at the beginning of the year. Asked why he had said otherwise in his statement, he said that he had not said that he had sold the shop at the beginning of 2002, but that he had had to sell it. That was a decision he had made. He had decided at the beginning of 2002 to sell the shop.
21. Asked why, therefore, it took him until June to dispose of the stock, the appellant replied that it was not easy to arrange for the sale of the stock and it took until June to do so. The stock had been sold through a broker.
22. Asked by the Tribunal why, therefore, he could not have sold the stock in January to the broker, he replied that things were not as easy in Somalia and everything was complicated. He could not get anyone to buy the stock until June. It was also a very difficult decision because he had to leave his family.
23. Asked by Miss Holmes why he had to leave his family, he said that they were all in difficulties and he decided to go to a safe country and bring them to him, wherever he chose to settle. The proceeds of the sale of the stock had not been sufficient for all of the family to go to a safe country. Asked why he had not been concerned about his family, since they came from the same clan, he said it was not possible for them all to leave at the same time and it had been decided that he would bring them to wherever he settled.
24. There was no re-examination.
25. The Adjudicator did not find the appellant to be credible. That he was fully entitled to that view is borne out by the oral evidence given by the appellant to the Tribunal itself.
26. The discrepancy regarding the point at which the appellant decided to sell his shop or, as he would now have it, the stock from the shop, was sought to be explained on the basis that what the appellant had actually meant in his statement was that he had 'had to sell the shop' at the beginning of 2002. That, clearly, carries the implication that the shop had

actually been sold at that time. In a further elaboration of his position, the appellant said that he had decided to sell the shop at the beginning of 2002 but had not been able to effect the relevant sale until June. This was because it was difficult to do so such things quickly in Somalia.

27. The Tribunal observes, however, that in his statement of 2 July 2002, the appellant said that 'I even sold it cheaper than the normal price in order to sell it quickly'. There is no suggestion at all in that statement that there was, nevertheless, a delay of some six months between the decision to sell and the actual sale to the broker.
28. The appellant's statement submitted in July 2003, regarding the alleged death of his child, in no way assists his case. She is referred to as a female in the statement, whereas the appellant says that it was his son who was killed and that there had been a mistake in translation. Given the discrepancies in the appellant's other evidence, referred to above, we are not prepared to accept such an explanation. On the contrary, everything points to this being a further embellishment of a false story.
29. The Tribunal finds further support for that conclusion in the remainder of the oral evidence given by the appellant. Contradicting what he had said at his interview, about putting himself first, when it came to escaping from the country, the appellant told us that his plan had been to settle in a country, and then arrange for his family to join him. Such a plan, however, completely depends upon the appellant having the ability at any stage to contact his family and arrange for them to join him. This flies completely in the face of the further written statement, which claims that 'I have no way of personally contacting my family to share my grief and to ensure they are alive'. As the evidence emerged, it was only through an apparent chance encounter with members of another clan, whom he met in Wembley, that the appellant learnt about the supposed death of his child.
30. Although the Adjudicator does not expressly say so, the clear implication of the adjudicator's conclusions is that the Adjudicator found to the requisite standard that the appellant was a Tunni, but that the Tunni are not a minority group in Somalia.
31. The nature of the Tunni is, accordingly, a matter to which we must now turn. Even if the appellant's account of his actual experiences in Somalia is false (which it is) he would still be able to contend that his removal to Somalia would violate both the Refugee Convention and the European Convention, if

the evidence shows that members of the Tunni are, at the present time, facing a real risk of persecution from majority clans in Somalia.

32. At page 36 of the joint British, Danish and Dutch Fact-Finding Mission Report (the so-called Report on Minority Groups in Somalia), contained in the appellant's bundle, we find this passage at page 36:-

'The elders from Brava told the delegation that they consisted of two subgroups: the Bravanese and the Tunni. Both groups are from Brava and they share to a large extent the same culture. They intermarry between their groups. However, the Bravanese consider themselves Benadiri, while the Tunni do not. The Bravanese are of Persian/Arab/Portuguese/Spanish origins. According to the Bravanese elders, the Tunni belong to the Digil clan-family. They are originally from the region of Brava. However, the elders gave the delegation a copy of a letter, written by the Bravani elders in Nairobi to a number of organisations (including UNHCR, the US Immigration Department and Amnesty International) on their situation in Kenya, in which the Tunni are mentioned with the Bravanese as part of the Bravani community.'

33. Immediately following this passage is this:

'The UNHCR overview classifies the Tunni with the Digil.'

34. The French researcher, Marc-Antoine Perouse de Montclos, is then recorded as having stated that 'Some of the Tunni Torre of the hinterland claim a relationship with the Adjuran and the Gurreh of the Hawiye clan family, while others claim a relationship with the Helai and the Hadam of the Rahanweyn clan-family. In concrete terms, they are the vassals of the Tunni Digils of the Brava coast.' (page 36).
35. Later on the same page, referring to the Somali of the Brava surroundings, it is said that their minority status 'is more doubtful because they are part of the Tunni lineage of the Digil'.
36. At page 30 of the same report, under the heading '6.4 Security and Human Rights Situation', the Bantu elders are recorded as saying that the Bantu 'are unarmed and are victims of serious human rights violations'. They also claim

that ‘their voice is not being heard’. Perouse de Montclos ‘comes to a similar conclusion when he makes a distinction between the Bantu and the so-called Sab castes (the Digil mainly the Tunni and Rahanweyn). The camel-herding clans of northern Somalia despise the latter, but they are still part of the Somali lineage system and they will still be able to negotiate ‘when the Arab reconciliation arrives in Somalia’. Minorities, who are not part of the lineage system, the Bantu and the ‘half castes argue that they will never benefit from any compensation mediation procedures amongst the Somali clans.’

37. At 11.1 of the report, at page 48, there is an analysis of the Digil and Mirifle (Rahanweyn) clan. The relevant passage is worth quoting in full:

‘The Digil and Mirifle, or Rahanweyn, seem to take a middle position between the Somali clan and a minority. They are considered as a minority group by some experts (such as the UN Special Rapporteur on Human Rights in Somalia, Ms Mona Rishmawi). By others they are considered as clans related to the Somali clans, both considered as less “noble”. In the Transitional National Assembly (TNA) recently formed in Djibouti, the Digil and Mirifle have been included as one of the major Somali clan-families (with thirty-three subclans) and allotted forty-nine seats, distinct from the recognised “official” minorities grouped together at Arta under the title “Alliance Clans Community”.

Different use is made of the names Digil, Mirifle (Mirifle) and Rahanweyn. A UN source in Nairobi explained that this is the consequence of an effort made by Siad Barre to amalgamate all these clans under one name, Rahanweyn (the largest group). Originally, however, the Somali distinguished two clan-families, one called the Digil and another variously called the Rahanweyn or the Mirifle.

The Digil and Mirifle are related ethnically to the four main Somali clan-families in various ways. Both Somali and Digil-Mirifle trace their origins back to the same ancestor, at the highest genealogical level: the ancestor of the Digil-Mirifle, Sab and the ancestor of the four main Somalia clan-families, Somali (or

Samale) are traced back to the common ancestor, Hill, who is believed to have had Arabian origins. The descendants of Sab are segmented into three families: the Digil, the Mirifle (or Rahanweyn) and Tunni; the Mirifle and Tunni derive from Digil. The Mirifle and Tunni are numerically the most important, but the Digil survive as a small independent confederacy.'

38. It should be mentioned at this stage that the four major clan-families, referred to in the passage just quoted, are the Isaq, Hawiye, Daroud and Dir.
39. On page 47, Lewis, another expert, 'describes the Tunni as a large tribe, or rather tribal confederacy'.
40. At paragraph 6.79 of the April 2002 Country Assessment, we find material which broadly reproduces that set out in the passages from the Minorities Report, to which we have made reference.
41. At Annex B of that Country Assessment, there is a list of major Somali clan families, derived from the Minority Group Report and also the Netherlands Situation in Somalia Report. Under 'Digil' are to be found the following subclans:-

Dabarre
Jiddu
Tunni
Geledi
Garre

42. From this, the Tribunal considers that it is apparent that the predominant view (including that of the UNHCR, notwithstanding the view of the Special Rapporteur) is that the Tunni, whilst originating from Brava, where there are also to be found the Benadiri peoples, belong to the Digil clan-family. The Digil are, in turn, part of (or, at the very least, closely associated with) the Rahanweyn.
43. None of this material demonstrates that the Tunni are a minority clan, currently persecuted in Somalia by other, majority clans or groups.
44. The Tribunal was referred to a Tribunal determination in the case of Hanaf [2002] UKIAT 05912. This case is cited as authority for the proposition that the Tunni are a persecuted minority. Reading paragraph 26 of the determination in that case, however, it is apparent to this Tribunal that the Tribunal

in that case did not have available to it the range of materials which we have before us. The submissions in Hanaf appear to have proceeded on the basis that the Tunni were part of the Brava people. As is apparent, however, that is not the case.

45. Putting this analysis together with the Adjudicator's credibility findings, and those of the Tribunal, concerning the appellant, a clear picture emerges. As a person living and working in the Mogadishu area, the appellant has, no doubt, suffered in common with all other inhabitants of that area from the lawlessness that has resulted from the collapse of a central administration in Somalia. He may well, on a relatively regular basis, have had to pay protection money in respect of his business. Any problems faced by the appellant, however, were clearly not of such severity as to have impelled him to flee with his family, for their own safety. On the contrary, the appellant chose to dispose of his business in what can only be said to be a relatively relaxed manner. With the US\$3000 he obtained from the proceeds of sale, he could quite clearly have removed himself and his family to Kenya. At 4.3 of the Report on Minorities, at page 20, the UNHCR is recorded as saying that 'No Somali citizen - whether a person from a minority group or a person from one of the major Somali clans - recognised as a refugee in Kenya has been deported to Somalia', although the informant was (quite understandably) unable 'to exclude fully the possibility that this has ever happened'.
46. Instead, the appellant chose to travel to the United Kingdom, there being content to wait until he was able to call for his family to join him.
47. Looking at the evidence as a whole, the Tribunal finds that there is nothing to show that this appellant left Somalia at a time when he was at real risk of persecution or treatment contrary to Article 3 of the ECHR. There is nothing in the documentary evidence to show such a deterioration in the position of people living in Mogadishu as to require the Tribunal to find that he would face such a real risk, if returned today.
48. Even if that were not the case, however, it is apparent from the documentary materials that, as a Tunni and, as such, associated with the Digil (one of the Rahanweyn clans) the appellant could relocate to South West Somalia. Paragraph 6.80 of the April 2003 Assessment is of particular relevance in this regard:

'The Rahanweyn clans were largely excluded from political participation in the Rahanweyn-populated Bay and Bakool regions following their capture by General Aideed's Hawiye-based USC/SNA in September 1995, when the Rahanweyn-supported SDM regional administration was ousted. Since then the RRA has fought to reassert Rahanweyn control, capturing Huddur town from the USC/SNA in October 1998 and taking Baidoa in June 1999 with Ethiopian assistance. The [Rahanweyn Resistance Army] set up a regional administration for a Bakool region in December 1998. In March 2002, the RRA set up a new regional administration, SWS [South West Somalia] effectively covering Bay and Bakool but claiming to cover other regions.'

49. Paragraph 4.67 of the same Assessment tells us more:

'The decision to establish the SWS Administration was taken at a meeting in Baidoa of the RRA's Central Committee and over seventy Elders from the Digil and Mirifle (Rahanweyn) clans. The meeting elected RRA Chairman, Colonel Hassan Mohammed Nur 'Shaatigaduud' as President of the new regional state to serve for a four years term. There was speculation that the establishment of a new autonomous state would lead to the demise of the SSRC, of which the RRA is a member. The RRA governor of Baidoa announced that the RRA will attend the peace talks due to take place in Nairobi as the new state but that they would, however, 'still be under the SSRC umbrella'.

50. In April 2002, there appears to have arisen a power struggle within the RRA. This is noted at paragraphs 4.68 to 4.70 of the Country Assessment. The resultant fighting seems to have centred around control of Baidoa. As a result, security conditions in Baidoa and its environs were described, in 2003, as 'deteriorating' (4.70). Paragraph 6.141 of the Assessment notes that 'Humanitarian agencies have not been able to access Baidoa since July 2002. There has been a reported increase in the number of people killed because of their clan affiliations.'
51. Whilst the situation in South West Somalia is, at present, far from ideal, the information which is available does not

indicate that the whole area is in anything approaching turmoil. The internal rivalries that have resulted in fighting appear to have centred upon control of a particular town. There is no suggestion that this appellant would have to go to Baidoa. Nor can the 'reported increase in the number of people killed because of their clan affiliations,' at paragraph 6.14, be properly interpreted as indicating that the appellant, as a Tunni, would as such be at risk in South West Somalia. There is no evidence that the fighting within the RRA has assumed such a dimension.

52. At page 51 of the July 2002 Joint British/Danish Fact Finding Mission to Somalia, President Nur Shaatigaduud discussed with the delegation the possibility of European governments returning persons to South West Somalia. Whilst the discussion clearly shows that the President will be looking for some form of assistance from such governments, in return for accepting failed asylum seekers, there is nothing in what he says to suggest that, rather than fleeing to the United Kingdom, this particular appellant could not have used his financial resources to establish himself in South West Somalia. Nor does the evidence show that, if the appellant were to be returned to that part of Somalia, he would face such a situation as to make it unduly harsh (with reference to the Refugee Convention) to expect him to live there, or as to put him at real risk of inhuman or degrading treatment or punishment.

53. This appeal is accordingly dismissed.

P.R. LANE

VICE PRESIDENT