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Heard at: Field House
On 12 December 2002

APPEAL NO HX/11538/2002
FB (Risk- Class- Midgan)
Somalia CG [2002] UKIAT
06753

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:
21st February 2003
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Before:

Mr P R Moulden (Chairman)
Mr P Rogers JP

Between

Ferdowsa Ismail Beldeq

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Somalia. She has been given leave to appeal the determination of an Adjudicator (Mrs C A James) dismissing her appeal against the respondent's decision to give directions for her removal from the United Kingdom and to refuse asylum. Ms K Cronin of Counsel instructed by Southwest Law appeared for the appellant. Ms M Banwait, a Home Office Presenting Officer, represented the respondent.
2. The appellant arrived in the United Kingdom on about 10 November 2001. She claimed asylum on 15 November 2001. The notice containing the decision against which she appeals is dated 31 January 2002. The Adjudicator heard the appeal on 23 July 2002 and leave to appeal was granted on 29 October 2002.

3. The appellant claimed to fear persecution in Ethiopia, where she had lived in a refugee camp for a number of years, and in Somalia. She comes from a part of Somalia which is now Somaliland. She said that she suffered because of her membership of a minority group known as the Midgen. We use the word "group" although the words "caste" or "underclass" would also be appropriate. We have not used the words "clan" or "sub-clan" because the evidence before us indicates that the Midgen are, significantly, outside and beneath the normal Somali clan and sub-clan structure. It is said, and on the Country Information we agree, that there are similarities between the Midgen and those who belong to the lowest caste in India.

4. Whilst the Adjudicator did not specifically find that the appellant was a credible witness she accepted all material elements of her claim. Having done so she summarised the facts in paragraph 38 of the determination in the following terms:

"38. I find that the core of the appellant's claim is that, following the outbreak of war in 1998 when her family was harassed, she travelled with her parents, sister and brother from Hargesia to the Dulcat Refugee Camp. I find, against the background information, that it is more likely than not that, in 1991, she was raped but that she did not mention this by reason of her cultural background. I find that five years later her husband returned to their home in Hargesia where he was killed. The appellant remarried three years later. There is no account of any further trouble until an incident in July 2000 when I find that she and her brother were attacked, they were both beaten, she was raped and in the attack her arm was broken. In the course of the hearing the appellant showed me the scarring on her right elbow and also the scars on her knees, which Dr Nelki found to be compatible with her account."

"39. I find on her oral evidence that the money, which the appellant subsequently used to pay for an operation to her arm, in June 2001, came from the money she earned in the camp. I do not find that she ever claimed otherwise. I find, at the time, she stayed with Midgen business people in the Mekanisa area of Addis Ababa. In her oral evidence she confirmed that she stayed there for about four months with no problems."

5. The medical evidence shows that the second attack on the appellant was particularly severe. She has a number of scars on her head, forehead, elbow, forearm, wrist, knuckles, knees and on one thigh. Dr Nelki concludes that she suffered considerable trauma, her elbow was severely broken and the wrist was broken. "The multiple shapes, sizes, depths of the surrounding scars confirm the degree of trauma". She was raped by two men and probably by four. There were four assailants but she was not sure because she lost consciousness. Her younger brother was attacked at the same time.

6. The appellant said that she came to the refugee camp in Ethiopia in 1988 after civil war broke out. Men came to the family home in Hargesia, broke down the door, beat the appellant's father and sister and took money, bags and suitcases. The family moved to a different part of town and lived in a deserted house before fleeing the area on foot and crossing the border into Ethiopia to the refugee camp. In the camp they were treated badly because they were regarded as coming from an inferior class. The appellant married in the camp in 1990. Her father died in 1993. She had daughters in 1992 and 1996. In 1996 her husband returned to Hargesia to assess the situation. The appellant had heard through her mother that houses had been destroyed. There was a fight between her husband and some squatters and he was killed with a knife.
7. In paragraph 40 of the determination the Adjudicator concludes that the totality of what happened to the appellant did not amount to persecution. We do not agree. Ms Banwait conceded that it did amount to persecution. We do not agree with the Adjudicator that the appellant's delay in leaving the camp after the second occasion on which she was raped "weighs against her claim of persecution". The appellant gave a perfectly credible explanation for the delay. She had little money. What little money she had was earned by selling tea and chapattis. There appears to have been some sort of mutual fund within the camp from which the appellant was eventually able to obtain some of the money which she used to travel to Ethiopia for medical treatment and then to fly to the United Kingdom.
8. In paragraph 40 of the determination the Adjudicator concluded that the appellant had not established a Convention reason. We find that she has established a Convention reason, namely a particular social group. The particular social group is Midgen women. We also find that, within the context of the complicated clan and sub-clan structure in Somalia and the exclusion of the Midgen as an underclass from that structure, the persecution suffered by the appellant was by reason of her ethnicity and race. Midgen in Somalia are perceived as a race apart and there are substantial racial as well as historical and familial elements which establish whether an individual is or is not Midgen.
9. The conclusion that the appellant suffered past persecution for a Convention reason, whilst not definitive of a current risk of persecution, is relevant and persuasive, particularly where there has not been a material improvement in country conditions.
10. The best that Ms Banwait was able to put forward by way of country information in support of her submission that the appellant would not be at risk on return is contained in the October 2002 Country Assessment at paragraphs 4.4, 5.44 and 5.45. Paragraph 4.4 shows that the Isaaq dominate the appellant's former home area which is now "Somaliland" although this has not been internationally recognised.

There is no reference to the position of the Midgen. Paragraph 5.44 states:

"The minority Gaboye/Midgen (usually referred to as Midgen but also known as the Madhiban) traditionally settle in areas where they obtain protection from a clan and build up an economic activity. Although minorities have usually been able to avoid involvement in clan disputes they have sometimes come under pressure to participate in fighting in areas of conflict. This happened to the Midgen in Mogadishu following the collapse of the Barra administration, although Midgen and other minority groups who may risk harassment by Somali clans in rural areas do not necessarily find themselves facing difficulties in Mogadishu now. Midgen have also been able to settle in Puntland."

11. Paragraph 5.45 states:

"The Midgen, or Madhiban, have always been placed at the lower end of Somali society, but their position improves at times of stability and recovery. In some areas their position can even be slightly better than that of the so-called "noble" Somali clans. Midgen can trade freely, although they are usually unable to own property and livestock. Although Midgen may have been easy prey for clan militias during the civil war, their situation improved and Midgen do not face deprivation at the hands of militias or face persecution merely because of their ethnic origin."

12. These passages, which do not contain clear statements that the Midgen are not at risk (for example "not necessarily find themselves facing difficulties" and "do not face deprivation etc. merely because of their ethnic origin") must be contrasted with the evidence submitted by the appellant. At page 30 of the appellant's bundle, which is part of the joint British, Danish and Dutch Fact Finding Mission of September 2000 relating to minority groups in Somalia relevant passages state:

"According to Lewis (1994) the Sab (indicating the Midgen, Tumul and Yabir) are attached to "noble Somalia tribes through patronage and perform specific duties, in return for which they are paid and allowed to remain in the territory of the tribe of attachment. The Sab attached to a "noble" tribe identify themselves with it in relation to other tribes. They have no recognised genealogy of their own. They are not land owning groups. Conventional paths to upward social mobility are not open to them. They are excluded from the Council of Elders. They have no right to claim compensation for murder from "noble" Somali except through the patron to whom they are attached, and the "lower" compensation is paid to the patron. They cannot contract legitimate marriages with Somalis."

"Although the position of the Sab had many points in common with slaves in Somali society, their position was nevertheless distinct. The Sab were a ritually impure group of people segregated from the

Somalis by general prohibitions, e.g. to eat together or to marry. Although they owned no land, they were nonetheless distinct communities with their own customs. Their adoption by 'noble' Somalis implied a voluntary contract, while ownership of slaves entailed absolute rights of possession. The Sab have the right to move from 'noble' family to family at will."

"In Somaliland their role in the conflict between Barra and the Isaaq-based Somali National Movement (SNM) earned them the hostility of the SNM rebels, and of the Isaaq as a group. Also, whereas other former adversaries in the area have reconciled, the Midgen, Tumul and Yabir have not been party to any peace agreement. They have found recovery after the war especially difficult and consider themselves as being discriminated against, in spite of the one seat they obtained in the Somaliland Parliament."

13. Both Counsel rely on the following passage from the same report:

"In recent years they (the Midgen) have started to come back, and returnees have been able to reclaim some of the land and property taken from them in the civil war. In 1998, for example, some 2,000 Midgen, Tumul and Yabir returned to Somalia from Ethiopia, mostly to Hargesia."

"Midgen, Tumul and Yabir today live scattered all over Somalia, but mostly in northern areas. There is little specific information available on their human rights and security situations. There are no indications that the security of Midgen, Tumul and Yabir is at risk from targeted action by the clans. At the same time, indications are that their relationship with the major Somali clans have not improved much from traditional times, and that they are still discriminated against in the social and economic spheres."

14. Whilst there is no reference to Midgen in Somaliland in the Country Assessment, the Fact Finding Mission states, "In Somaliland, Midgen Tumul and Yabir find recovery from the civil war especially difficult. They feel that they are under-represented politically, with one seat in the Somaliland Parliament. Economically they still find themselves mostly in menial jobs, and do not feel sufficiently secure to conduct any business as other clans could confiscate their possessions. A UN Report on the conditions of returnees and internally displaced person (IDPs) in north west and north east Somalia found that in Puntland approximately 10,000 Madhiban from Mogadishu and Bay and Bakool regions live in camps for IDPs. The report also found that IDPs from the south are generally worse off than town residents, but that the problems of the returnees were also quite severe. Both IDPs and returnees face severe problems in terms of integration within the depressed local economy. The IDPs around Bosasso face great risks in terms of sanitation and health. The meagre shelter available is vulnerable to fires. The Madhiban IDP is especially vulnerable to

spontaneous and forced relocations, and IDPs cited the insecurity of land tenure and ownership as their primary concern".

15. The following passages from the Oxford House Report are material:

"The inhabitants from Somaliland divide themselves socially into GOB (gentry) and Sab (low born or outcast), of these two social groups the Midgen, Yabir and Tumul fall into the category of Sab. The intelligence department in the précis on Somaliland ranks these tribes as 'not only outcast but as outside the pale of classification. These groups make up less than one per cent of the Somali population.' And 'these three groups perform tasks that Somali would not carry out.... This is also one of the reasons that they cannot go to Mosques to practice religion even though they are Muslims. In Somaliland each tribe or sub-tribe has recognised territories. It may be wrong to think of the Midgen, Tumul and Yabir as a sub-division of one tribe as their origins are quite unknown and as such are a scattered people of no fixed home. These three groups are not a tribe or a sub-tribe but a caste. The three castes have suffered greatly in the current crisis as they are not allied with the major clan families and they do not have any power base that this affords. This also has the effect that they can be attacked without impunity in the current crisis as there is no retaliation or revenge taken by other clans. They often attach themselves to another tribe as servants all over the country. Other tribes will not recognise them as of Somali birth and nor will they eat or intermarry with them. Their testimony also is not applicable in a Court of Law because they are 'not Somali'. Because of them not being able to marry other Tribes they marry between three tribes and also intermarry, which is looked on with great disdain by other Somalis. If these three tribes do marry outside their "caste" then the consequences can be catastrophic and range from acts of persecution to the murder of one or both parties by members of their families or the Somalian society.' And 'It is possible to see from this brief account of these caste that they are a very persecuted and oppressed group in Somalian society. Their ultimate fate depends not on their own strength as they are so small and powerless but that of their neighbouring tribes. They are periodically killed and abused by other clans with no recourse to justice or retaliation, which in Somalia puts them in a very disadvantaged position'."

16. The tenor of these reports is confirmed by the expert report from Mr Gilkes from whose report dated 9 October 2001 we draw the following information relating to the refugee camps occupied by Somalis and in particular Dulad, which is where the appellant lived. He says, "As usual, the women in these camps are particularly vulnerable, and those from minority clans more than most. The majority of the refugees in these camps are from Somaliland, and while they certainly do include some members of minority clans, most are from major clan families, Isaaq and Dir, with relative few Daroods and Hawiye from the south. With the political situation and the clan alliances of Somalia

replicated in the camps, members of minority clans and low caste groups take second place. They are treated as badly in the camps as outside, and the low caste groups and minority clans, without clan networks for support, are particularly vulnerable to exploitation." He goes on to say, "however, within the parameters imposed by this general state of lawlessness, there is also clear evidence that members of minority clans and low caste groups like the Midgen, have been, and still are, singled out for specific attention, identified on the basis of their membership of a particular social group, together with a possible element of ethnicity". We have been referred to and are assisted by the Tribunal determination in Mohamud Osman Amin [2002] UKIAT04084. In which the Tribunal considered the position of a "Jaajji" which, in paragraph 16, is said to be included in the term "Midgen" The Tribunal found, in paragraph 17, that the appellant belonged to a defined and recognised sub-group in Somali society who could not in general terms place any reliance on the traditional infrastructure of clan support. Their vulnerability needed to be approached on a case-by-case basis depending on the specific facts, although that appellant was found to be at risk in Mogadishu.

17. We accept Ms Cronin's submission that the situation which this appellant encountered in the refugee camp is likely to be a microcosm of the situation which she is likely to face in her home area (now Somaliland) and throughout Somalia. She belongs to a vulnerable underclass. It is likely that she was persecuted because she belonged to such a vulnerable underclass. It is likely that those who attacked her family and attacked and raped her on two occasions would have been well aware that she belonged to the underclass and, as a result, she was vulnerable, without protection from the normal clan and sub-clan structure and with nobody of any influence who could take up her cause or retaliate. It is not suggested that she should be returned to a refugee camp in Ethiopia.
18. If the appellant is returned to her home area, which is now Somaliland, we find that on the totality of her evidence and the Country Information she is at risk of persecution for a Convention reason and infringement of her Article 3 human rights.
19. Ms Banwait submits that the appellant could avail herself of internal relocation to Mogadishu or Puntland. We find that it would be unreasonable and unduly harsh to expect her to do so. If her second husband and her children are still alive it is likely that they are still in the refugee camp where they were last heard of. If the appellant is returned to Puntland or Mogadishu she will be a woman without a husband or family support in an area where she will be a stranger, with no means of support or accommodation. Moreover, she will be doubly vulnerable, as a member of the Midgen underclass. The Country Information shows that the Midgen in Somalia are spread across the country without any recognisable Midgen communities from which she might otherwise be able to gain support.

20. We allow the appellant's appeal on both Refugee Convention and human rights grounds.

**P R Moulden
Vice President**