

JH  
Heard at Field House  
On 24 October 2002

APPEAL NO HX17991-2002  
SA (Persecution-Eyle-Weak)  
Somalia CG [2002] UKIAT  
06665

**IMMIGRATION APPEAL TRIBUNAL**

Date Determination notified:

....20.02.2003.....

**Before:**

**Mr J R A Fox (Chairman)**  
**Mr A Smith**  
**Mrs E Morton**

**Between**

**Suleykha Abdi Ali**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**DETERMINATION AND REASONS**

1. The appellant, a citizen of Somalia, has been given leave to appeal against the determination of an Adjudicator (Mr A J E Eames) allowing her human rights appeal against the respondent's decision of 2 November 2001 to give directions for removal from the United Kingdom and refuse asylum and dismissing her refugee Convention appeal.
2. At the hearing the appellant was represented by Miss Wolfe of Counsel and the respondent by Mr Jones of the Home Office.
3. The issue before the Tribunal is the asylum appeal. The appellant does not wish to appeal against the human rights decision. The appellant is a citizen of Somalia who claims to have been born 17 June 1984. She arrived in the United Kingdom on 23 September 2001 and claimed asylum at the Asylum Support Unit on 24 September 2001.

4. She completed an SEF form and was interviewed and made a statement which was recorded. The respondent then heard her application and refused the same and the reasons for refusal are set out in a letter dated 27 October 2001.
5. The appellant appealed. Her appeal was heard by an Adjudicator who in a determination promulgated on 10 July 2002 dismissed her asylum appeal and allowed her appeal on human rights grounds.
6. The appellant has appealed in relation to the asylum decision. The grounds of appeal are as follows:

“1. The appellant does not seek to appeal against the decision of the Adjudicator allowing her Human Rights Appeal. Her appeal is only against the decision of the Adjudicator to reject her asylum appeal.

2. The Adjudicator concluded at paragraph 35 of his determination that the appellant failed to show that her persecution and that of her family was for a Convention reason over and above the ordinary risks of clan warfare. In so doing the Adjudicator failed properly to consider the evidence.

3. The Adjudicator at paragraph 32 accepted that the appellant’s evidence was “generally credible”. At paragraph 34 he accepted objective evidence that the Eyle Clan was a minority clan without protection from the main Somali clans and that relationship with clans in the home areas of the Eyle was not good.

4. In reaching the conclusion which he did the Adjudicator failed properly to assess the appellant’s position in the context of the civil war in Somalia. The harm suffered by the appellant and her family was not an instant of civil war, ordinary or otherwise because:

- a) The appellant was not a member of a warring clan;
- b) She was not targeted in the course of or as a means to prosecute the civil war;
- c) The harm suffered by the appellant and her family was not inflicted during the course of or as a means to prosecute fighting between “warring clans”;
- d) She had not been “caught up in the fighting”;
- e) Nor was the appellant merely “caught in the cross fire”.

5. The appellant and her family were deliberately targeted by armed gunmen. Albeit that this occurred against the backdrop of civil war and state collapse, it amounted to persecution and not an incident of the civil war. In the absence of significant change of circumstances there is a real risk that the appellant will suffer similar persecution in the future.

6. If Adan requires that an asylum seeker establish that s/he is more at risk than the population in general in order to show well

founded fear of persecution, it is submitted that the following factors establish such a risk:

- a) The appellant is a young woman and therefore more vulnerable to abuse by militia men and bandits than men are;
- b) She is a member of a clan that does not have a militia to protect its members;
- c) Her clan does not have control over any territory in which its members are safe from the militias of other clans.

7. Further it is submitted that if what the appellant and her family suffered are found to be "incidents of civil war", they are no "ordinary incidents of civil war". The treatment inflicted on them, whilst they were taking no active part in hostilities, amounted to "serious violations" of Common Articles C and A3 of the 1949 Geneva Conventions including "(a) the killing of the appellant's father and subsequent step father; (b) the rape of the appellant and of her sisters; (c) the repeated looting of the appellant's family home.

8. The above amounted to persecution rather than "ordinary incidents" of civil war. The flagrant disregard for international humanitarian law by all of the militias in Somalia is such that manifestly the appellant does not have the protection of the 1949 Geneva Conventions so as to obviate protection by the Refugee Convention.

9. For the above reasons the appellant submits that the Adjudicator erred."

7. At the hearing the Tribunal was advised that the appellant had exceptional leave to remain until 2006 and then it would be open to her to apply for indefinite leave to remain.
8. Miss Wolfe submitted the appellant was a member of the Eyle clan in Somalia and that she was a young and vulnerable woman and a member of a minority clan.
9. The Adjudicator had made findings of fact which showed that she was credible and that she had suffered ill treatment including being raped and her father being killed.
10. In her submission the Adjudicator had applied the test wrongly as set out in Adan. It was capable of showing a differential impact.
11. The Eyle clan was regarded as a religious outcast clan which numbered some 200 to 300 members. She referred us to Dr Luling's report which described the clan as being one of the most vulnerable.
12. In her submission, as a woman in Somalia she was even more vulnerable. She refers to the passages in the US State Department in relation to women in Somalia.

13. The Home Office report indicated the Eyle clan was one of the most vulnerable. She had been targeted as a member of a minority clan and as a female.
14. In her submission the manner in which the Adjudicator had interpreted the test meant that no Somali clan could seek international protection.
15. The harm that she had suffered was not evidence of a civil war. She was not a member of a warring clan. Ill treatment is not part of a civil war.
16. She drew our attention to the Tribunal decision in Ndilingham.
17. Mr Jones submitted that the Adjudicator had found at paragraph 35 that he did not accept that the persecution the appellant had received was above a clan war. She had been born into a clan without influence and protection.
18. He accepted that the authority was Adan and the consideration would have to be given is to the motives of those who persecuted her. She was a victim of the civil war, she was not a refugee. The Adjudicator had been entitled to make those findings.
19. The objective evidence showed that the Eyle clan were treated as slaves. It showed that they had no protection. They were in a weak position because they did not bear arms. There was no evidence they were involved in the civil war because they had been attacked because they were weak. There were no indications that this appellant had been targeted. He referred us to her witness statement and again pointed out that she came from an unprotected clan. They were in a weak and vulnerable position.
20. In his submission the Adjudicator had quite correctly found that she was not entitled to refugee status.
21. Miss Wolfe made further submissions by way of reply.
22. In this appeal the relevant rule is paragraph 336 of HC395. The appellant has to demonstrate a reasonable likelihood that she will be persecuted for a Convention reason on return to Somalia.
23. The Tribunal has regard to the guidance given in Sivakumaran and the majority decision in Kacaj and it has also referred to the guidance given in Adan.
24. In Adan it indicates that killing and torture incidental to a clan and sub-clan based civil war did not give rise to a well founded fear of being persecuted within the meaning of Article 1A(2) where the asylum seeker was at no greater risk of such ill treatment by reason of his clan or sub-

clan membership than others at risk in the war. Lord Lloyd in Adan stated:

“I conclude from these authorities and from my understanding of what the framers of the Convention had in mind that where a state of civil war exists it is not enough for an asylum seeker to show that he would be at risk if he were returned to his country. He must be able to show what Mr Pannett calls a differential impact. In other words he must be able to show fear of persecution for Convention reasons over and above ordinary risks of clan warfare.”

25. The basis of the appellant's claim is that she believes that she was born in the Hamerweyn district of Mogadishu in June 1984 and was a member of the Eyle clan. The Eyle are a minor clan and do not bear arms. The family lived on land owned by the major Hawiye clan for whom her father worked. In 1991 when she was aged 7 inter-clan fighting broke out and Hawiye militia looted the family home, beat her father and shot dead her maternal great uncle. The family immediately located to Burhakaba near Biadoa where her parents had been born. The area was controlled by the Rahanwe clan. In 1993 the Hawiye militia invaded the lands of the Rahanwe and her father was shot dead when he resisted their efforts to steal his working tools. A few days later the militia returned, looted the house and raped the appellant's two oldest sisters. The family remained in the area. Her mother married a relative supported by the family by working as a butcher (a traditional trade of the Eyle).
26. In 2000 inter-clan violence again erupted. The Hawiye militia again raped her two eldest sisters and a week later they returned and raped the appellant (then aged 16) and her mother. The family were unable to move anywhere more safe so they remained in the Biadoa area. Eventually a relative living in an Arab country provided money for the appellant to leave Somalia. She travelled to Addis Ababa and from there was assisted by an agent to travel to the UK.
27. The objective evidence reveals that the Eyle were hunters and agro-partialists. They believed themselves to be of Falasha (or Jewish) origin before they were Islamised. They were treated by the main Somali clans as religious outcasts.
28. Before the wars there was some 1,000 Eyle families living scattered throughout southern Somalia up to and including the Hiran region but the majority lived in two districts, Buloburte in the Hiran region and Burhakaba in the Biadoa regions. These remain today the two principal areas where the Eyle live in Somalia. Presently there are approximately 200 to 300 Eyle families in Somalia. They are despised by the Hawiye and the Digir.

29. Their numbers have been constantly in decline since the 1960s due to assimilation with the Rahaweyn and the Bantu agricultural communities or through migration to large towns such as Mogadishu where they found employment as butchers.
30. In 1992 in Mogadishu the eight minority groups combined to create an NGO in order to appeal for help to the international community. The NGO implemented a number of projects but in 1998 the members of the executive committee founded by Aideed'USC after which they fled to Kenya.
31. The CIPU refers to the fact that they were treated as slaves by the main Somali clans. They had no protection from any clan and their relationships with the clans in their home areas, the Rahaweyn and the Hawadle were not good. For religious reasons they were treated as outcasts. There are not physical differences between the Eyle and the surrounding Somali clans. There was no inter-marriage between the Eyle and the major Somali clans. There are no Eyle in the government institutions and there are no Eyle involved in the Arta peace process at the present time. They could inter-marry with some Benadiri and with the Tumaal but not with the Ebur.
32. During the civil war many Eyle fled Somali for Kenya, Ethiopia and the Yemen. No Eyle have fled to the northern part of Somalia.
33. At the present time there are some to 200 to 300 Eyle families remaining in Somalia mainly in the districts of Buloberti in the Hiran region and Burhakaba in the Bay region. They are still in a weak position as they do not bear arms. They cultivate and suffer from the drought that reigns in southern Somalia.
34. There are no indications from other sources that the Eyle are at present targeted by the main Somali clans. So far as they live in unstable areas they could become victims of armed conflicts.
35. As Mr Jones put it, the Eyle were attacked because they were a weak tribe which did not bear arms. Sadly they are victims of armed conflicts in the clan warfare. They are an unprotected clan who are in a weak and vulnerable position.
36. There is no evidence before the Tribunal to show that the appellant was targeted. She was a member of that clan at no greater risk of ill treatment than others at risk in the civil war.
37. There is no error of law in the finding on the part of the Adjudicator that she does not have a well founded fear of persecution if returned to Somalia for a Convention reason.

38. Accordingly the appeal is dismissed.

**J R A Fox**  
**Vice President**