Appeal No. HX12876-2002
AH (Midgan-Disabled Woman-Relocation-Mogadishu) Somalia CG [2002] UKIAT 07343

IMMIGRATION APPEAL TRIBUNAL

Date heard: 4 February 2003
Date notified.: 20…03.2003.….

Before:-

DR H H STOREY (CHAIRMAN)
RT HON THE COUNTESS OF MAR
MR A A LLOYD JP

Between

MRS ASHA MOHAMED HIRSI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The appellant, a national of Somalia, has appealed with leave of the Tribunal against a determination of Adjudicator, Mr J G Macdonald, dismissing the appeal against the decision of the Secretary of State giving directions for removal having refused asylum. Mr A Miah of Counsel instructed by Gadwah and Co Solicitors appeared for the appellant. Miss M Banwait appeared for the respondent.

2. The Tribunal has decided to dismiss this appeal.

3.The adjudicator accepted that the appellant was a member of the sub-minority Midgan tribe who had experienced several attacks at the hands of Hawiye militias in particular in 1991 in Mogadishu and in 1999 Balhad where two of her children died. She was registered disabled, having a left femur fracture. A medical report described her as traumatised both physically and psychologically by Hawiye tribesmen.

4.The adjudicator did not accept, however, that the appellant faced a current risk of persecution. He referred to the CIPU Country Assessment for Somalia for April 2002 which in his view did not indicate that members of the Midgan

tribe remained at risk either in Mogadishu or in Somaliland or Puntiland. He did not think, following the House of Lords judgement in the case of *Adan* [1998] Imm AR 338, that the appellant had established she faced a current fear of risks over and above those facing civilians exposed to a civil war situation. Nor did he accept that the appellant`s disability meant she would be exposed to a real risk of treatment contrary to Articles 2 or 3 since there were hospitals in Mogadishu and indeed she had received treatment in one in Mogadishu after her 1991 injury.

5. The grounds contended that the adjudicator wrongly interpreted the objective country materials. In support they cited paragraph 5.44 of the CIPU report. However that passage does not in our view make out the appellant`s case: It states:

> "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 Midgan in Mogadishu following the collapse of the Barre administration, although Midgan and other minority groups who may risk harassment by Somali clans in rural areas do not necessarily find themselves facing difficulties in Mogadishu now".

6. That does not in our view indicate that the Midgan remain at real risk of difficulties in Mogadishu now. It must also be borne in mind that at 5.45 the same report continues:

"…Although Midgan may have been easy prey for clan militias during the civil war, their situation improved and Midgan do not face depredation at the hands of militias or face persecution merely because of their ethnic origin".

7. We consider that the adjudicator was fully justified in concluding that the objective country materials did not indicate that the appellant`s position as a member of the Midgan tribe would be at risk in Somalia upon return to Mogadishu. Notwithstanding his acceptance of past difficulties she had suffered he was fully justified in concluding she had no current well-founded fear of persecution or treatment contrary to her human rights.

8. The grounds further contend that the adjudicator was wrong to conclude that the appellant did not also come within the threshold of Art 3 by virtue of the lack of medical facilities in Mogadishu. Mr Miah pointed to additional evidence in the form of a letter from a Specialist Orthopaedic Registrar dated 30 January 2003 stating that she had been put on a list to have surgery to her leg:

> "…she has a bone which has not joined in her left thigh which not surprisingly causes her pain and restriction of movement. We are planning to straighten the bone with an operation by placing a nail down the entire length of her thigh. She will need an operation for this and there will be a period of recovery with rehabilitation for a number of

months, possibly six to eight as a guess until she is able to be independent".

9. Mr Miah submitted that similar treatment would not be available in Mogadishu or elsewhere in Somalia. Her age (d.o.b. 1960) and the fact that she had no relatives to return to were also, he added, relevant factors In submissions He cited in support the European Court of Human Rights judgment in *Bensaid v UK.*

10. We cannot agree that the appellant`s personal and medical circumstances demonstrate that to return her would violate her Art 3 or Art 8 rights. Although the letter produced at the hearing does refer to the need for some recovery period, it does not detail any particular course of rehabilitative treatment nor does it say that rehabilitation has to take place in the UK. Although the CIPU report considers that medical care in Somalia is rudimentary in general, there is mention of a well-run hospital in Mogadishu.

11. Even if we were wrong about the feasibility of appropriate medical treatment for this appellant upon return to Somalia, there was no evidence that she currently faced any real risk of losing her left leg or of a drastic loss of mobility as a result. The recent letter refers to "pain and restriction of movement", nothing more. We have sympathy with the appellant`s disability, but our task, like that of the adjudicator, is to assess whether the result of return to Somalia, even if it entailed missing out on the operation to her leg, would expose the appellant to a real risk of serious harm or significant detriment to her physical and moral integrity. The medical evidence falls well short of establishing this.

12. The grounds also take issue with the adjudicator's finding that the appellant would be able to avail herself of a viable internal relocation alternative in Somaliland or Puntiland. Given that the appellant still viewed herself as from Mogadishu and in relation to that city she had not established a real risk of serious harm or treatment contrary to her human rights, there was no necessity for the adjudicator to go on to consider relocation to these two areas. However, for completeness, we would add that we do not see, had we ruled out return to Mogadishu, that it would be unduly harsh for her to relocate to Puntiland or Somaliland, notwithstanding her disability and the fact that she would return as a woman on her own. The objective country materials do not establish that she would experience undue hardship in either of those areas.

13. For the above reasons this appeal is dismissed.

DR H H STOREY
VICE-PRESIDENT