

KH

APPEAL NO HX12488-2002  
IJ (Risk-Midgan) Somalia CG  
[2002] UKIAT 06314

**IMMIGRATION APPEAL TRIBUNAL**

Heard at Field House  
On 20 November 2002  
Dictated 20 November 2002

Determination notified:Date

.....29.01.2003..

**Before:**

**Mr H J E Latter (Chairman)**  
**Mr A A LLoyd**  
**Rt. Hon The Countess of Mar**

**Between**

**Ibrahim Abdi Jama**

**APPELLANT**

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

**RESPONDENT**

**Appearances:**

For the appellant Mr A Deve of the Refugee Legal Centre.  
For the respondent Mr D Ekagha, Home Office Presenting Officer.

**DETERMINATION AND REASONS**

1. This is an appeal by Ibrahim Abdi Jama, a citizen of Somalia, against the determination of an Adjudicator (Mr Malcolm Rothwell) who dismissed his appeal against the respondent's decision made on 28 January 2002 refusing to grant him asylum.
2. The appellant arrived in the United Kingdom on 12 August 2001. He claimed asylum on arrival but his claim was refused for the reasons set out by the Secretary of State in his reasons for refusal letter dated 25 January 2002. The appellant was granted limited leave to enter

until 25 January 2003. He appeals against the refusal of asylum under the provisions of Section 69(3) of the 1999 Act.

3. The basis of the claim has been summarised by the Adjudicator in paragraph 3.4 of his determination. The appellant claims to be a member of the minority Midgan clan who lived in Mogadishu until 1991. He left the city after experiencing physical and verbal harassment and abuse from the Hawiye clan. He travelled to various places in southern Somalia before returning to Mogadishu in 1994. In 1998 he was kidnapped by members of the Hawiye clan who detained him for twelve days. In 1999 he was again kidnapped by Hawiye clansman and held for approximately 50 days. He persuaded one of his captors to get him released. At the end of December 2000 he claims he saw another group of Hawiye who he felt were looking for him so he took his savings and left the city. He went to central and northern Somalia. He then stayed there for approximately six months. He went to Ethiopia where he found an agent who helped him travel to Austria, then Holland and then finally to the United Kingdom.
4. The Adjudicator accepted that the appellant was a citizen of Somalia and was from the Midgan clan. However, he did not accept that the appellant had left Mogadishu because he was in fear of a further kidnap. He did not believe the account of the second period of detention. He also noted that the appellant did not claim asylum in Ethiopia, Austria or Holland. The appellant has also given evidence about his marriage to Faduma Hussain. He says that the purpose of coming to the United Kingdom was to join his wife but the Adjudicator was not satisfied that a marriage ever occurred.
5. In the light of his findings the Adjudicator was not satisfied that the appellant had a well-founded fear of persecution nor that he would be at risk of a breach of his rights under Article 3. The Adjudicator went on to consider what the position would be even if his story was true. On this basis the appellant had experienced random acts of kidnapping for money. He would not be fleeing persecution but the uncertainties of a country that had been in a state of perpetual civil war. He would not be able to show a risk of adverse treatment over and above the risk associated with civil war or civil disorder. The Adjudicator was satisfied that the appellant would be able to live in safety in Somalia as did other members of his clan.
6. Leave to appeal was granted on two grounds. It is argued firstly that the Adjudicator failed to consider human rights in the light of his findings and secondly that he failed to consider the issue of sufficiency of protection. In support of his appeal Mr Deve produced a copy of the Tribunal determination in Maghdeed [2002] UKIAT03631 and a bundle of documents (A) indexed and paginated 1-107. Mr Ekagha produced the Somalia Country Assessment, April 2002.

7. Mr Deve submitted that the Adjudicator had failed to consider the human rights claim adequately. The appellant was from a minority clan. He would be at risk for this reason and also because of the previous history of kidnapping. He referred to the report at A15-68 and in particular to the risks faced by minority groups (para 93) and in particular the Midgan (para 296). He also referred to the reports on the situation in Mogadishu in paras 179-200.
8. He submitted that the Adjudicator had failed to consider the risks to the appellant on return. He would not be able to exercise the option of internal flight. The Adjudicator did not consider the issue of sufficiency of protection. He referred the Tribunal to Maghdeed and submitted that the situation in Somalia was analogous to that in the KAA. As a question of fact the appellant could not look to majority tribes for protection nor in law would that amount to protection as envisaged in either the Refugee or Human Rights Conventions.
9. Mr Ekagha submitted that the Adjudicator had rejected the account given by the appellant. He now sought to rely on a generalised risk of harm but he failed to show that the risk crossed the necessary threshold for a claim to succeed under Article 3.
10. The appellant was not given leave to challenge the Adjudicator's findings on credibility and indeed it is difficult to see how there could be a successful challenge. The Adjudicator made clear findings of fact having reviewed the evidence with care. He was satisfied that the appellant was from the Midgan clan but for the reasons he gave he was not satisfied he had a well-founded fear of persecution on return. Mr Deve submitted to the Tribunal that the Adjudicator had failed properly to consider the claim under the Human Rights Convention. In paragraph 5.3 of his determination the Adjudicator found that there were no substantial grounds for believing that there was areal risk of ill-treatment in the light of the appellant's evidence and the evidence as a whole. Mr Deve submits that there is a serious risk of harm in the light of the situation in Somalia and the fact that the appellant has been the victim of previous kidnap attempts. The Adjudicator was certainly not satisfied that there was an attempt to kidnap the appellant in December 2000 and he rejected the evidence of the 1999 kidnap. Even assuming that the first incident might have taken place, the Adjudicator was entitled to conclude that the appellant was at risk from random acts of criminal behaviour. In our view the Adjudicator's comment that the appellant was fleeing not persecution but the uncertainty of a country where there had been civil war and where law and order had broken down was properly open to him.
11. The background evidence to which we were referred does not support the contention that there is any risk of persecution to the Midgan. Paragraph 296 of the report on minority groups says that this clan had been placed at the lower end of Somali society but their position improved at times of stability and recovery. In some areas their

position can even be slightly better than the "noble" Somali clans. Midgan can trade freely although they are usually unable to own property and livestock. At A29 there is a report that people returning to their home areas should not face any difficulties in Somalia but minority groups living in areas controlled by others may still face some difficulties. The Tribunal are not satisfied that the generalised risk arising from living in Somalia in the country's current conditions is such that it can properly be argued that there is a real risk of ill-treatment contrary to Article 3. In our view there is nothing in the appellant's own particular circumstances which put him at real risk. The fact that he is a Midgan does not do so nor is there anything about his personal background to put him at risk. The fact that he may have been the victim of a kidnap in the past does not indicate to the Tribunal that there is a real risk of that being repeated in the future.

12. It was also submitted that the Adjudicator failed properly to consider the issue of sufficiency of protection. Mr Deve submits that as a matter of fact there would be no protection in Somalia and as a matter of law he cannot be required to look to majority clans to provide him with protection.
13. In the view of the Tribunal this appeal initially fails on the facts. The Adjudicator found that the appellant was not at risk of persecution nor was he at a real risk of treatment contrary to Article 3. In our view these findings were properly based on the evidence and are not susceptible to a successful challenge. In these circumstances the issue of sufficiency of protection does not arise. In Maghdeed, the Tribunal was not satisfied that the KAA was a state-like entity capable of providing protection meeting the "protection test" of Article 1A(2) of the Refugee Convention. It was accepted that the claimant in that appeal would be at risk of persecution in areas of Iraq controlled by the Saddam Hussain government and it was proposed that he could relocate in safety within the KAA. In the present appeal there is no issue of relocation or of the appellant needing to look to any particular authority or organisation for protection. In the circumstances of this appeal, the Tribunal do not need to deal with the legal issues considered by the Tribunal in Maghdeed.
14. In summary, on the basis of the Adjudicator's findings, the Tribunal are satisfied that his conclusions were properly open to him. Having reviewed the evidence for ourselves we agree with both his findings and conclusions.
15. Accordingly, this appeal is dismissed.

**H J E Latter**  
**Vice President**