

Abdulle v. Canada (Minister of Employment and Immigration)]

File No. A-1440-92

Federal Court Trial Division

September 16, 1993

KEYWORDS: IMMIGRATION Refugee status Requirements Immigration and Refugee Board held that applicant was not Convention refugee -- There was no doubt that applicant had reasonable chance of persecution on return to Somalia, but her membership in certain sub-clan did not place her in different position from all Somalians in Mogadishu -- Judicial review was dismissed.

COUNSEL: Lorne Farovitch; Chapnick Associates, Barristers Solicitors, Toronto, Ontario, For the Applicant

John Loncar; John C. Tait, Q.C., Deputy Attorney General of Canada, For the Respondent

JUDGES: Nadon J.

This is an application for judicial review pursuant to section 18.1 of the Federal Court Act seeking an order setting aside the decision of the Convention Refugee Determination Division of the Immigration and Refugee Board ("the Board") dated July 10, 1992. The Board held that the applicant was not a Convention refugee.

Facts

The applicant is an 18 year old citizen of Somalia who is a member of the Habar Gedir sub-clan of the Hawiye clan in Somalia. She resided in Mogadishu before she left Somalia in 1988 for Italy with the man chosen by her mother to be her husband. No marriage, however, ever took place.

The applicant arrived in Canada on October 29, 1991 and subsequently found out that her two sisters and one brother had been granted Convention refugee status. However the reasons for which the applicant's sisters and brother were "admitted" have not been filed into evidence. Thus I am unable to determine whether there are distinguishing factors.

Prior to 1991 Somalia was ruled "with an iron fist" by Siad Barre. In January of 1991 Barre was overthrown by the forces of the United Somali Congress ("USC") and on January 29, 1991 Ali Mahdi Mohamed of the USC was appointed interim President of Somalia.

Since then, the Abgal sub-clan of the Hawiye clan, of which Ali Mahdi Mohamed is a member, and the Habar Gedir sub-clan led by General Aideed, have fought for the control of Mogadishu.

Because of the atrocities committed by Barre and the subsequent battle for the control of Mogadishu, the United Nations has estimated that approximately 4.5 million people of the country's 6 million people are risking starvation.

The Board's Decision

In dismissing the applicant's claim the Board held that her fear of persecution based on membership in a particular social group - the Habar Gedir sub-clan, was not well founded.

In support of its conclusion the Board referred to paragraphs 164 and 165 of the United Nations High Commissioner for Refugees' Handbook on Procedures and Criteria for Determining Refugee Status which state, inter alia:

164. Persons compelled to leave, their country of origin as a result of international or national armed conflicts are not normally considered refugees under the 1951 Convention or 1967 Protocol...

165. In such cases refugee status will depend on whether the applicant is able to show that he has a "well founded fear of being persecuted" in the occupied territory and, in addition, upon whether or not he is able to avail himself of the protection of his government, or of a protecting power whose duty it is to safeguard the interests of his country during the armed conflicts, and whether such protection can be considered to be effective.

The Board found support for its reasoning in Rizkallah, Bader Fouad v. M.E.I, unreported, (F.C.A. No. A-606-90) and Salibian v. M.E.I. (1990) 3 F.C. 255, two decisions of the Federal Court of Appeal. In these two decisions, the Court of Appeal [*4] was of the view that in order to be admitted as a Convention refugee, victims of civil war had to differentiate their fear from that of all the victims of a civil war. In other words, an applicant must establish that he or she, or their social group will be "singled out" from all other victims.

Applicant's Position:

The applicant submits that the Board misinterpreted the cases of Rizkallah and Salibian, supra, by interpreting these cases as imposing on refugee claimants from countries affected by civil war the onus of establishing that they have been individually targeted for persecution instead of merely establishing that they stand a "reasonable chance of persecution" upon their return. The applicant further submits that given the fact that the applicant is a member of one of the two ethnic groups involved in the civil war in Mogadishu and given the ample documentary evidence of starvation and generalized persecution in Somalia it is both inconceivable and an error of law to find that the applicant's fear of persecution is not well founded.

Respondent's Position:

The Respondent recognizes that the Board "expressed itself incompletely" in emphasizing only personal targeting as capable of establishing a link between the applicant and the alleged persecution. In other words, the respondent does not dispute that targeting a social group collectively will also create a link.

The respondent however takes the position that all persons in Mogadishu are subjected to the same random violence which prevails.

Conclusion

I have come to the conclusion, with regret, that the Board's decision, based on the evidence, is not reviewable. There is no doubt that the applicant stands "a reasonable chance" of persecution upon her return to Somalia as do all Somalians who live in Mogadishu. However, the Board was not convinced nor am I that the applicant, by reason of her belonging to the Habar Gedir sub-clan, is in a position different from that of all Somalians in Mogadishu. The applicant's argument is really, in effect, that membership in one of the two groups involved in a two-sided conflict is determinative of the issue. Thus proof of membership in Habar Gedir and proof of possible persecution in Mogadishu is sufficient to establish Convention refugee status. This argument assumes that the applicant and her group will necessarily be "singled out" because the conflict involves two sub-clans.

The Board obviously disagreed with this assumption. I cannot say that, on the evidence, the Board's conclusion was unreasonable. In Hersi v. M.E.I. Joyal J. refused to allow judicial review of a Board decision which denied Convention refugee status to Somalians, members of the Migdan clan. The applicants' case was that, as members of the Migdan clan they feared persecution. Their claim failed because the Board was not convinced that their fear was different from that of all Somalians caught in the civil war.

Part of the evidence before the Board was that some members of the Migdan clan had received favourable treatment from the Barre regime which could lead to reprisals on the part of the forces which overthrew Barre. Joyal J. held that he could not intervene. As I have already said I do not think that the Board's conclusion in this case cannot be justified. I wish, however, to adopt the words of Joyal J. in *Hersi v. M.E.I.* , supra , where he says at page 2 of his reasons that:

"All this is not to suggest that the fate of Somalians in general and of the applicants in particular is not to provoke a sense of both outrage and despair. Conditions in Somalia cry for relief. However, there are considerations which our immigration laws leave to other authorities, and they are beyond the ken of the Board or of this Court."

For these reasons I am dismissing this application for judicial review.