

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO. 71509/99**

**AT AUCKLAND**

**Before:** C Parker (Chairperson)  
M Robins (Member)

**Representative of the Appellant:** D Manning

**Date of Hearing:** 28 October 1999

**Date of Decision:** 20 January 2000

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**DECISION**

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This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (now the Refugee Status Office, RSO), declining the grant of refugee status to the appellant, a national of Somalia.

**INTRODUCTION**

The appellant, having left Somalia as a child, did not speak Somali and gave his evidence, through an interpreter, in Arabic.

At the close of the hearing, counsel was granted two weeks leave in order to make written submissions and provide further country information. Under cover of a letter, dated 29 November 1999, counsel submitted a copy of a decision of the Canadian Immigration and Refugee Board (Refugee Decision); CR DD A9800703, Showler, January 25, 1999. This has been taken into account by the Authority prior to reaching its decision.

**THE APPELLANT'S CASE**

The appellant is a married 31 year old, Muslim male from the Midgan caste.

According to the appellant, this is a low caste, akin to the Dalits or “untouchables” in India and Midgan are often kept as slaves by other clans. The Midgan are not a clan and do not have a geographic homeland. They usually marry within their own clan and have traditionally performed menial labour or tasks considered distasteful by Somalis, e.g. leather working and barbering. The appellant’s mother told the appellant that the reason Midgan were so despised was because in ancient times a Midgan and a Somali had been working together and the Somali saw the Midgan eating directly from the dead body of a sheep and, from that time on Midgan were seen dirty and inferior. The appellant said that most Somalis did not regard Midgan as “proper Muslims”. During the hearing, counsel submitted that, following the collapse of Siyad Barre’s regime, Somalia (which had been undergoing a process of modernisation) reverted to traditional clan-based society and the position of the Midgan deteriorated considerably.

The appellant’s father is deceased, having been killed in Somalia in about 1984, and his mother resides in Yemen. The appellant’s wife left Libya approximately six months after the appellant’s arrival in New Zealand (on 21 January 1998) and went to Malaysia in the hope that they could be reunited in New Zealand. She waited there until mid-October 1999, when she decided to return to Africa. The appellant believes that she may have gone to either Sudan or Syria, where she had relatives but, as he had not heard from her since she left Malaysia, he was unsure of her precise whereabouts.

The appellant’s father’s relatives are all deceased and the appellant’s mother has some distant relatives who live in Libya. She also has a sister who is based in Kuwait but visits Libya from time to time. The appellant’s own sisters are married and living in remote areas of Sudan and the appellant last spoke to them approximately five to six months after his arrival in New Zealand. He last saw them in 1984. They are living in very poor conditions. They have been recognised as refugees and hold United Nations, rather than Sudanese, identity cards.

The appellant was born in H in Northern Somalia, in an area now known as Somaliland. The appellant’s father lived in Djibouti most of his life and he took the appellant there at the age of six (in 1974) leaving his mother and sisters back in Somalia. The appellant attended what was described at earlier stages in his claim as a “boarding school” in Djibouti but, upon closer examination by the Authority, this “school” transpired to be a Children’s Home run by the Catholic Church. There were approximately 80 to 100 needy children at the home and all were

Somali. The appellant attended the school for approximately two years from the age of seven to nine, and his father visited him at the school approximately every three to four months. The appellant learned some Italian at the school but did not learn to read or write. He was taught basic hygiene and domestic tasks such as how to make his own bed and wash his own clothes. The appellant stated that children did not go to this Home in order to receive an education but because their parents were unable to look after them. In about 1977, the appellant stopped living permanently at the Home and was looked after by his father who was a ship's engineer. The appellant would sometimes go to sea with his father and learn to mend fishing nets, but on other occasions he would be placed back in the Home until his father returned from sea. The appellant's father did not speak to the appellant in Somali nor did he discuss Somali tribal structure with him.

In about 1984, the appellant's father left the appellant at the Children's Home, returned to Somalia to visit the appellant's mother and siblings and did not return. The appellant's mother came to the Children's Home some months later and the appellant described that day as "the happiest day of his life". For the following five years, the appellant's mother told the appellant that his father was away working but eventually told him that his father had been killed by the G tribe. The appellant's paternal aunt, uncle and cousin had also been killed, as had many other Midgan, at the hands of the G tribe. The appellant stated that his mother had been working for the G tribe, performing domestic duties and he described his mother as having been kept as a "slave". She was given a small piece of land upon which she could cultivate her food, in exchange for her work, but was not paid any wages and could not go and work for any other family. When the appellant's father visited her in Somalia in 1984 she stayed away from work for five days without asking permission. The G tribe came to look for her one evening, found the appellant's father there and killed him. The appellant believes that his father had been killed partly because his mother had failed to ask permission to take leave, but mainly because his father was well-known as a person who helped Midgan to find work and accommodation in Djibouti. He was known as "Midgan" rather than by any proper name, and by assisting other Midgan to remain outside Somalia he diminished the numbers of Midgan who could be exploited by the G tribe as slaves.

The appellant's mother and sisters stayed with the appellant at the Children's Home in 1984 for a short time but his mother then left his sisters there and went, with the appellant, to Yemen. At that time many Somalis from Northern Somalia

were arriving in Djibouti. The appellant and his mother stayed briefly in Yemen but were unable to remain there and went to Sudan, where they remained for two or three months. However, there were problems in Sudan too and the appellant and his mother then went to Libya. They arrived there in approximately January 1985 and the appellant remained until 1997.

When the appellant and his mother first arrived in Libya life was very hard. However, they were helped by other Midgan, who took them to the office of the United Nations High Commissioner for Refugees (UNHCR) where they were issued with United Nations identity cards. The appellant and his mother received an allowance from the UNHCR but there was a great deal of local corruption and the allowance, which was expressed in US dollars but paid in local currency, was often not paid in full. For example, the allowance for approximately a five to six month period should have been approximately 300 Libyan dinars but the appellant and his mother were sometimes given only 30 Libyan dinars and told that this was equivalent to the relevant US dollar amount. Although this was untrue there was nothing that could be done about this by the appellant or any other Somali.

The appellant and his mother survived at a subsistence level. The appellant found casual work mending nets on fishing boats and would receive approximately 10 Libyan dinars (about NZ \$20) per day. In summer, the appellant and his mother stayed in B and his mother operated a makeshift tea stall. In 1994, the appellant travelled to Sudan and married his wife who was also a Midgan. She resided in Sudan but about two months after their marriage the appellant returned, with his wife, to live in Libya.

The appellant had little contact with other Somalis in Libya, and his mother strongly discouraged him from doing so, apart from having contact with Midgan. The appellant's mother had contact only with other Midgan and the appellant explained that Midgan had their own parties and weddings and did not mix with Somalis socially. The appellant led a relatively trouble-free, although impoverished, existence in Libya, apart from one occasion on which he was detained by the security forces when travelling from T to B with two women. The stated reason for the detention was because one of the party did not have a Libyan identity card but, according to the appellant, the security forces wanted to rape the women and the appellant was detained separately while this occurred. Whilst in detention the appellant was beaten and his stomach was slashed with a knife. He was then detained for three weeks while the injury healed. The

appellant showed his scar to the Authority members and explained that he still felt some ill-effects from this injury when the weather was cold.

In 1997, Colonel Gaddafi ordered all Somalis to return home. The appellant stated that after this time Somalis, males in particular, were stopped and required to produce identity papers. The appellant held a Libyan identity card but this indicated that he was Somali and if he had been stopped at that time he would have been required to leave the country immediately. The appellant further stated that some Somalis were being detained and the appellant left Libya in order to avoid being detained or forced back to Somalia.

The appellant's mother made arrangements for the appellant to leave the country. She paid for his fare, by cargo boat, and according to the appellant, his airfare from Malta to Bangkok was very cheap as the reservation had been made, for him, by a Midgan who had been granted Libyan citizenship and was able to obtain special fares. Once in Bangkok the appellant, fortunately, met two Midgan who had taken up residence in an Arab country and had become successful businessmen. They knew the appellant's mother's family in Somalia and, being fellow Midgan, felt great compassion for the appellant. The appellant told these men that he had very limited funds and they telephoned his mother in Libya after which they paid for the appellant's false travel document and his fare to New Zealand. The appellant's mother had given the appellant her savings of approximately US\$300 and by the time he got to Bangkok he had just US\$250 left. The appellant was unsure how much the travel arrangements from Bangkok to New Zealand had cost but he offered US\$200 of the money he had left to the Midgan who helped him. They told him to keep his money but he insisted that they took it.

The appellant claimed refugee status upon arrival in New Zealand on 21 January 1998. The appellant was interviewed by the RSB on 4 August 1998 and his claim for refugee status was declined on 13 May 1999. It is from this decision that he now appeals.

The appellant was afraid to return to Somalia because he feared that he would be detained and questioned by the authorities if he were to return to H, as this would have been his first time back in Somalia after many years of absence. The appellant also feared the G tribe who had killed his father and were slave masters of the Midgan. The appellant saw no future for him in Somalia apart from working

as a slave and stated that he would rather die than suffer that fate. He had no family or relatives there and did not speak the language. Further, he felt no connection with the country as he had left when he was just six years old. He stated that because he was Midgan and therefore of the lowest possible status, if he were killed nobody would ask any questions and his life was thereby in jeopardy.

### **THE ISSUES**

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is yes, is there a Convention reason for that persecution?
3. Can the refugee claimant genuinely access domestic protection which is meaningful?

In particular:

- (a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?

- (c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

### **ASSESSMENT OF THE APPELLANT'S CASE**

Before turning to consider the issues, the Authority must first make an assessment of the appellant's credibility. The appellant gave a consistent account at every stage of his refugee claim and the Authority accepts the appellant's account as credible. Some concern was expressed by the RSB at the appellant's limited knowledge of Somali society, and, in particular, the tribal structure of the country. The Authority was not troubled by this, given that the appellant had left the country at the age of six and was brought up by his father in a children's home and subsequently moved to live in Libya with his mother. It would appear that both the appellant's parents discouraged him from learning about Somali culture and mixing with other Somalis, apart from Midgan. In the circumstances, his lack of knowledge concerning Somali society is credible.

The Authority initially found the appellant's claim that his air fare from Bangkok was paid by two altruistic Midgan somewhat implausible. However, having heard the appellant's evidence on this point, and bearing in mind that the Midgan concerned appeared to be wealthy businessmen from an Arabic country who were well aware of the plight of the Midgan, and furthermore, knew the appellant's mother personally, we give the benefit of doubt to the appellant with regard to this matter and accept that his air fare was paid in this manner.

Turning now to the issues, the Authority must consider whether the appellant has a well-founded fear of persecution in Somalia. Before addressing the appellant's position there, the Authority notes that although the appellant has resided in Djibouti, Libya and (briefly) in the Sudan, he has no right to return or to reside in any of these countries. In reaching this conclusion the Authority notes that the appellant obtained a Somali passport in Sudan which stated that he was domiciled in Khartoum. However, we accept the appellant's evidence that, to the best of his knowledge, Somali passports issued in Sudan generally indicated Khartoum as the domicile of the holder as the passports were issued there and we likewise accept that he never spent more than a few months in that country and has no right of return.

Counsel submitted copious country information regarding the position of Midgan, some of which is set out below. Documentation, Information and Research Branch, Immigration & Refugee Board, Ottawa (DIRB) Information request SOM 23679.E (26 April 1996) states that

“... a historian at the University of Pennsylvania in Philadelphia stated that the Midgan are a small minority group, found scattered throughout Somali society. They have no particular geographic ‘homeland’, nor are they necessarily associated with any one clan family (ibid). They usually marry within their own clan, and have traditionally performed menial labour or tasks considered distasteful by Somalis (e.g. leather working and barbering) (ibid).

The historian also stated that these people would be vulnerable in the current Somali environment because they have no means of self-defence. They cannot rely upon the threat of retribution, as a means of dissuading opponents, given their small numbers and marginal status in Somali society (ibid). Midgan people do not pose a threat to any clan. However, their client status with the so-called ‘noble’ clan families does mean that they might become the targets of one clan because they are associated or dependent upon a rival of that clan. For example, a Midgan associated with a Marehan clan might be blamed by a Hawiye clan member for whatever actions the Marehan clans perpetrated against the Hawiye (ibid).

In a telephone interview on 25 April 1996 a political scientist at Davidson College in Davidson, North Carolina corroborated the previous source of information on the low caste and dependent status of the Midgan as well as their vulnerability and their association with other clans.

Both sources agreed that the current situation in Somalia makes it virtually impossible to ascertain the current conditions for the Midgan.”

According to Cassanelli, Lee Victims and Vulnerable Groups in Southern Somalia (DIRB) May 1995:

“There is one category of minority clans about whose fortunes in the civil war it is difficult to generalise. These clans, collectively known in the ethnographic literature as “sab”, include the Tomal, Midgan and Yibir. Outside observers have sometimes considered them “outcastes” because traditionally they could only marry among themselves and other Somali clans considered them ritually polluted. Living primarily among the nomadic populations of Somalia but in their own distinct settlements, they performed specialised occupational services such as metal working, tanning and midwifery for the dominant clans in the area (Cassanelli 1969).

In more recent times many “Sab” families have migrated to the cities, where they have been employed by politicians in more powerful clans as drivers, body guards and spies. For example, Siyad Barre elevated several Midgan to important positions in the ministries of defence and education. With no independent clan base or status of their own, such appointees could be trusted to carry out orders. Other clans also employed Tomal, Midgan and Yibir families.

While as a group these “sab” minorities did not pose a significant threat to any other Somali group, particular individuals and families who had visibly supported the old regime were vulnerable to retaliation... Because they have no natural clan allies in the wider society, and no collective voice in political circles, they can be attacked with impunity”.



According to DIRB Information Request SOM 20438.E (19 April 1995):

“A professor and specialist in Somali affairs at the University of Minnesota, Minneapolis stated in a telephone interview that the Midgan are to be found throughout Somalia, interspersed among other Somali clans...this group of people would not have any protection and would be vulnerable to any group in Somalia even under “normal conditions”.... A professor and Somali specialist at the University of Syracuse in New York stated .... as a group the Midgan were not politically influential and were not in any danger, although individuals might be threatened”.

The appellant’s representative also adduced the statement, dated 5 October 1999, of AH, a Somali resident in New Zealand, who left the country in 1982. He stated, inter alia:

“...Midgan people live in Somalia and are treated as an inferior race. They do not have the right of education and they do not own any land. They are spread all over Somalia and they live under the protection of other tribes.

Usually when Somalis meet they attempt to know each others’ tribes. Midgan people try to hide their identity so when asked what their tribe is they identify themselves as the tribe they settled with for fear of being known and harmed. Wherever they settle they are known and people point to each other and know that they are midgan. For that reason they always remain segregated from the rest of the people in Somalia.

Midgan cannot marry people from other tribes and no one wants to marry them. They cannot eat with people and they cannot visit anyone’s home. No one uses utensils (sic) by midgan people. For example, if Midgan drinks from a cup it would have to be thrown away as nobody would consider it to ever be clean enough for them to drink from. It is believed to be shameful to sit or to associate with midgan people. They are very much like the untouchables in India....

During the Siad Barre era the government outlawed discrimination against midgan people but it was a written law in a book only and practically no one had tried to strengthen it. The suffering of the Midgan people went on and on.

Midgan people therefore have no status in Somali society. They can sometimes be owned by other more “noble” people or clans. Due to the way Somali culture works midgan have to choose to become slaves so they can live with a little bit more safety in Somalia. Once a midgan obtains the protection of a clan they are told what to do and they lose their freedom. There are no rules as to how midgans are treated, in general they have no rights and are considered inferior in Somali society.”

The Authority notes country information indicating that the position of Midgan has improved, such as the DIRB Information Request SOM 9824 (2 December 1991) which refers to a publication by Lewis, I.M. entitled “A Modern History of Somalia: Nation State in the Horn of Africa” (1988) and states:

“Today, the enfranchisement of the Midgan, Tomal and Yibir is far advanced and most of their traditional disabilities are disappearing.”

However, this was published during Siyad Barre’s regime, and it would appear that any improvement was temporary. Siyad Barre’s regime encouraged moves away from traditional tribal structures and some traditional practices and used Midgan to support his regime, as they were not members of any clan and therefore could be relied upon to provide unconditional support. However, the situation of Midgan appears to have deteriorated again with the civil war and the deposing of Siyad Barre.

As far as the appellant himself is concerned, it is difficult to predict with any degree of certainty what treatment he would receive if he were now to return to Somalia because he was so young when he left. However, the Authority finds that the appellant’s fear of enslavement is realistic. The Authority accepts that it would be very difficult for the appellant to find any employment in Somalia, due partly to the economic situation in the country, his inability to speak the Somali language, his lack of family members and contacts in Somalia and his very low level of education. However, his membership of the Midgan caste is likely to be a most formidable barrier to the appellant finding employment and the reason that he would find himself in slavery in the likely event of him being unable to find any gainful employment. The Authority accepts the submission of counsel that, unlike the situation of the “untouchables” or Dalits in India, the Midgan and other low caste groups receive no government protection or positive discrimination measures to assist them to counter entrenched traditional discrimination.

The appellant’s family were “clients” of the G tribe, and the appellant described his mother as a “slave”. The appellant’s father, as well as many of his relatives, were killed by the G tribe. It would appear that the appellant’s father was killed, in part, because he was known to have helped other Midgan leave Somalia and the clutches of the G tribe. He was therefore viewed as being an opponent to the G tribe who he was expected to serve. The Authority notes that the killing occurred in 1984 and some time has lapsed since that event, however, family and tribal relationships in Somalia are of central importance and the appellant is likely to be recognised as his father’s son if he now returns to H. Further, given the power dynamic in the relationship between Midgan and the G tribe the Authority accepts that there is a chance that the appellant would still now encounter problems with the G tribe. Further, given the very marginal position of Midgan in Somali society generally it is unlikely that the appellant would receive state protection if this were

to occur. The appellant himself fears that he would be killed. It is difficult to ascertain the level of risk to the appellant but, according to him the benefit of the doubt in this regard, the Authority finds there to be a real chance of him facing treatment amounting to persecution at the hands of the G tribe if he were to return to H. We reach this conclusion not just because the appellant is a Midgan but because of his particular circumstances. Having left the country at a very young age he has no family members or contacts in Somalia and does not speak the language. This means that he is unlikely to find employment and may well be forced to work as a slave. Furthermore, his immediate family members have a history of persecution at the hands of the G tribe and, most notably, his own father was killed by them as a perceived opponent.

Having found that the appellant has a well-founded fear of persecution in his home area in Somalia, the Authority must now proceed to consider whether the appellant could access internal protection elsewhere in Somalia. The Authority adopts the approach with regard to the issue of internal protection alternatives set out in Refugee Appeal 71684/99 (29 October 1999). That decision summarises the issues to be considered in the following terms:

- “(a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

As each of these three requirements is cumulative, an internal protection alternative will only exist if the answer to each question is Yes.”

The Authority has recently considered the issue of internal protection alternatives in respect of Somalia in Refugee Appeal No. 71346/99 (28 October 1999) and Refugee Appeal No. 71314/99 (10 June 1999). In Refugee Appeal No. 71346/99 (28 October 1999) the Authority held (with regard to an appellant who came from the south of Somalia):

“In the appellant's situation the Authority finds it agrees with the submissions of counsel that in Somalia there are no other parts of the former Somalia in which the appellant can access “meaningful” protection. There simply is no effective state in operation in Somalia, hence no effective mechanism where this appellant could access any form of state protection. The relatively “safe” areas noted of “Puntland” and “Somaliland” are not viable alternatives. It is highly dubious that the appellant,

as a person who comes from southern Somalia, would have any rights whatsoever in the newly established regimes in these areas, which are not “successors” of the former state of Somalia.”

In Refugee Appeal No. 71314/99 (10 June 1999) the Authority, after considering various country information concluded that :

“...although the whole of the northern part of Somalia can to date be considered safe and also the north west, conditions in the southern part of Somalia are different. “Transition zones” include both the Hiiraan and Gedo regions which, in UNHCR’s view continue to be affected by:

“...violations of peace agreements, lack of law and order, lack of governance, poverty and unemployment and uncontrollable militias.”

The potential site of internal protection for this appellant would be the south of Somalia. The appellant comes from Somaliland and the Authority has already found that he has a real chance of persecution there. As far as Puntland is concerned, there is no evidence that the appellant would be able to reside there because, as noted in Refugee Appeal No. 71346/99 (28 October 1999), Puntland is not a successor state of Somalia and the appellant does not originate from there.

In addressing the first issue, the Authority finds the appellant could avoid the level of harm he fears in H by living in Southern Somalia where he might avoid the G tribe. However, there is no country information indicating that there are areas in Somalia in which Midgan are not subjected to serious discrimination. In any event, as far as the second issue set out in Refugee Appeal 71684/99 (29 October 1999) is concerned, the Authority finds that there are other serious forms of harm present in other parts of Somalia (namely continuing clan warfare and lack of government) which might arguably lead to the appellant returning to H. Accordingly, given that the second question in the internal protection assessment has been answered in the negative the Authority finds that there is no internal protection alternative for this appellant in Somalia.

The Authority finds that there is a real chance, for all the above reasons, that the appellant would face persecution if he returned to Somalia, and further finds that the Convention reason for such persecution is that of membership of a particular social group, namely the Midgan caste. There is no internal protection alternative for this appellant.

**CONCLUSION**

For these reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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Chairperson