

Federal Court



Cour fédérale

Date: 20110705

Docket: IMM-5920-10

Citation: 2011 FC 817

Ottawa, Ontario, July 5, 2011

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

MOHAMED SUGULE TAHLIL

Applicant

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] The sole issue in this judicial review application, although it was framed by the applicant in various guises, is whether the decision of the Refugee Protection Division of the Immigration and Refugee Board that the applicant had an Internal Flight Alternative (IFA) in Puntland, in the northeast of Somalia, and more specifically in Bosaso, its capital city, was unreasonable.

[2] Mr. Tahlil was born and raised in Mogadishu, Somalia. He is a member of the Majerteen sub-clan of the Darod clan.

[3] The Board accepted the applicant's claim that he had been targeted in Mogadishu by the Al-Shabaab, an Islamic Terrorist group, and determined that he was at risk there. The Board found the applicant's story to be credible, noting that he testified in a straightforward manner without contradictions, inconsistencies, or omissions. It also found that: (1) "Somalia is a failed state," (2) "There is no state protection in rump Somalia, there is only clan protection," and (3) in the south of Somalia, where the applicant lived, "there was no state protection or clan protection available to the claimant."

[4] The Board found that the existence of an IFA was the determinative issue in the applicant's case, noting that the test for an IFA involves asking (1) whether there would be more than a minimal possibility of persecution or risk to life or of cruel or unusual punishment for the claimant in the IFA, and (2) whether it would be objectively unreasonable for the claimant to move to the IFA in the circumstances.

[5] Based on the objective evidence in the country condition package before the Board, and given that the applicant is a member of the Majerteen clan, the Board concluded that he would not face a serious possibility of persecution or risk to life or of harm in Bosaso, Puntland. That finding is not challenged. The applicant's challenge is to the Board's determination that it would not be objectively unreasonable for the applicant to move to the IFA in the circumstances.

[6] The applicant said he could not live in Bosaso because he knew nothing about the area and because his family was from Juba, in the south, now under the control of Al-Shabaab. He also explained that his mother is a Midgan (a historically oppressed clan) and cannot live there, and that she has two other sons, one who is mentally disabled and the other who is paralyzed, and therefore could not relocate.

[7] There is no merit to the applicant's submission that the finding that he had an IFA was contrary to his evidence, which was found to be credible. The Board accepted all of the applicant's evidence; it merely disagreed as to whether the reasons he offered for why he could not live in the proposed IFA were valid ones. The Board's decision on the applicant's IFA was not unreasonable on this basis.

[8] In my view, the reasons offered by the applicant as to why he could not live in the IFA are very much like those rejected by the Court of Appeal in *Thirunavukkarasu v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 1172 (CA). At para. 13, the Court explained that:

It is not a question of whether in normal times the refugee claimant would, on balance, choose to move to a different, safer part of the country after balancing the pros and cons of such a move to see if it is reasonable. Nor is it a matter of whether the other, safer part of the country is more or less appealing to the claimant than a new country. Rather, the question is whether, given the persecution in the claimant's part of the country, it is objectively reasonable to expect him or her to seek safety in a different part of that country before seeking a haven in Canada or elsewhere. Stated another way for clarity, the question to be answered is, would it be unduly harsh to expect this person, who is being persecuted in one part of his country, to move to another less hostile part of the country before seeking refugee status abroad?

[9] Jurisprudence from the Federal Court has indicated that in assessing whether it would be objectively unreasonable for the claimant to move to the IFA a variety of factors may be considered.

Factors pointing to the IFA being objectively unreasonable include:

- a. Being unable to prove clan membership when it is required to live in the IFA, never having lived there or having family there, not speaking the language, and having no prospects for residence or employment: *Abubakar v Canada (Minister of Employment and Immigration)*, [1993] FCJ No 887 (TD);
- b. The negative impact on any children of the claimant: *Sooriyakumaran v Canada (Minister of Employment and Immigration)*, [1998] FCJ No 1402 (TD);
- c. The young age of the claimant: *Elmi v Canada (Minister of Employment and Immigration)*, [1999] FCJ No 336 (TD);
- d. The unlikelihood of the claimant reaching the IFA without undue risk to his or her life: *Hashmat v Canada (Minister of Citizenship and Immigration)*, [1997] FCJ No 598 (TD); and
- e. The inability of the claimant to legally remain in the area: *Kandiah v Canada (Minister of Citizenship and Immigration)*, [1998] FCJ No 1269 (TD).

[10] The Board observed that the applicant is a young, single, and healthy male, all characteristics welcomed by his clansmen in Puntland. Further, I would note that the circumstances of his mother and her other sons would be no different if the applicant resided in Puntland rather than Canada. In neither circumstance would they be close by. I would also note that the

circumstances of the applicant would only be marginally different if he resided in Canada rather than Puntland given that he had only one relative in Canada, knew no more about Canada than he did Puntland, and presumably spoke the language of his fellow clan mates in Puntland, but neither of Canada's official languages. In short, he is no more hard done by in Puntland than he is in Canada; however, Puntland is a part of the country of his birth and nationality.

[11] Of the various factors examined by the Board in this case when determining whether it would be objectively unreasonable for Mr. Tahlil to move to the IFA, the only one that appeared to have been of some concern was whether Mr. Tahlil could reach the IFA without undue risk to his life. However, the Board found that "the claimant would be able to fly to Puntland safely." This finding was based on the evidence which the Board summarized at para. 13 of its decision, as follows:

According to a UK assessment "Somaliland and Puntland are in general relatively safe but the authorities in these regions will only admit those who originate from that territory or those who have close affiliations to the territory through clan membership. In the case of the majority clan affiliates, this means those associated with the Majerteen in Puntland and the Isaaq in Somaliland. In Somaliland taxis and 4x4 vehicles can easily travel from Hargeisa, Burao, Lasanod and Garowe. The main transportation between Somaliland and South Central is by lorry. People travel by air between Mogadishu and Hargeisa. As well, a Dubai based airline also flies international flights into Bosaso. The UK assessment goes on to say that "given the generally lower levels of fighting and the relative ease of travel within many areas of Somalia, the risks of travel are likely to be less problematic than those considered by the AIT. It will be feasible for many to return to their home areas from Mogadishu airport as most areas are more accessible than previously. Mogadishu airport continues to function normally. ... There are scheduled air services to a number of destinations in Somalia – Mogadishu, Bosaso, Hargeisa, Berbera, Burao and Galcaiyo.

[12] I find the Board's use of this evidence to support its finding that the applicant could fly safely to Puntland problematic. First, most of the passage relates to travel into and from Somaliland, which is in the northwest of Somalia. The Board notes that Somaliland will admit only those who originate from there or have a clan affiliation with the Isaaq: Mr. Tahlil meets neither condition. He was born and lived in the south of Somalia and is not a member of the Isaaq clan. Accordingly, none of the evidence of being able to travel to Puntland from Somaliland was or is relevant to Mr. Tahlil.

[13] Second, the majority of the remainder of the evidence relates to travel that involves Mogadishu and air travel to Puntland from Mogadishu's airport. The Board had already found that the applicant was at risk in Mogadishu and there was no finding that he would be safe if he were to access its airport. Mogadishu is particularly unlikely to be a safe location for the applicant given the Board's findings that Somalia is a failed state and that the applicant has neither state nor clan protection in Mogadishu.

[14] This leaves the statement of the Board that "a Dubai based airline also flies international flights into Bosaso" as the only basis for the finding that "the claimant would be able to fly to Puntland safely." This appears, from the exchange between counsel for the applicant and the Member at page 23 of the transcript of the hearing (page 266 of the Certified Tribunal Record), to be a statement based on the Member's personal knowledge and not the documentary evidence.

[15] What this indicates is that while Mr. Tahlil, when he left Somalia, could not have traveled safely to the IFA, now that he is in Canada he can reach the IFA safely because he can fly directly to Bosaso, Puntland and does not need to travel into or through the south of the country.

[16] The Court of Appeal in *Thirunavukkarasu*, above, held that the existence of an IFA is not a separate test but is a part of the definition of a Convention refugee. At para. 2, the Court stated that:

The idea of an internal flight alternative is "inherent" in the definition of a Convention refugee; it is not something separate at all. That definition requires that claimants have a well-founded fear of persecution which renders them unable or unwilling to return to their home country. If claimants are able to seek safe refuge within their own country, there is no basis for finding that they are unable or unwilling to avail themselves of the protection of that country.
[references omitted]

[17] The Federal Court has often emphasized that the definition of a Convention refugee is forward-looking and that the fear of persecution must be assessed at the time of the examination of the claim for refugee status. That being so, the assessment of whether there is an IFA available to the claimant must also be examined prospectively and it matters not whether the proposed safe haven could have been accessed by the claimant directly at the time he left his home country – it matters only whether he can access it now. Accordingly, the Board's determination that the applicant has an IFA in Puntland is reasonable provided he is returned directly to Bosaso, Puntland and does not need to travel into or through other areas of Somalia. Given the importance of this specific finding and the risk to the applicant's life otherwise, it is appropriate, in my view, in these circumstances to direct, as the Board found, that if the applicant is removed from Canada to Somalia, he is to be returned directly to Bosaso, Puntland and is not to travel into or through other areas of Somalia.

[18] No question was proposed for certification.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. This application is dismissed;
2. If the applicant is removed from Canada to Somalia, he is to be returned directly to Bosaso, Puntland and is not to travel into or through other areas of Somalia; and
3. No question is certified.

“Russel W. Zinn”

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: IMM-5920-10

STYLE OF CAUSE: MOHAMED SUGULE TAHLIL v.
THE MINISTER OF CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: Ottawa, Ontario

DATE OF HEARING: May 30, 2011

**REASONS FOR JUDGMENT
AND JUDGMENT:** ZINN J.

DATED: July 5, 2011

APPEARANCES:

Rezaur Rahman FOR THE APPLICANT

Holly LeValliant FOR THE RESPONDENT

SOLICITORS OF RECORD:

REZAUR RAHMAN FOR THE APPLICANT
Barrister & Solicitor
Ottawa, Ontario

MYLES J. KIRVAN FOR THE RESPONDENT
Deputy Attorney General of Canada
Ottawa, Ontario