

**B e t w e e n:**

**HAWEYA ABDINUR HASHI,**

Applicant,

- and -

**THE MINISTER OF CITIZENSHIP AND IMMIGRATION,**

Respondent.

**REASONS FOR ORDER**

**Muldoon, J.:**

This is an application for judicial review of a decision (T95-02336) of the Immigration and Refugee Board, Convention Refugee Determination division (CRDD) rendered on June 26, 1996 and communicated to the applicant on July 16, 1996. The CRDD determined the applicant not to be a Convention refugee. The applicant seeks an order setting aside the decision of the CRDD and referring the matter back to the CRDD for redetermination, by a differently constituted panel.

The applicant is a 23 year old citizen of Somalia. The applicant based her claim to Convention refugee status on her membership in the Marehan subclan of the Darod clan. She also based her claim on her status as a young Marehan woman with no immediate family members residing in Somalia.

The former president of Somalia (Barre) was a member of the same clan as the applicant. Barre's government was overthrown in 1991 by a group of militias. The applicant stated that she feared persecution by the United Somali Congress (U.S.c.), a

group which targeted members of the Marehan clan.

The applicant and her family fled Mogadishu at the outbreak of the civil war in January 1991. They travelled to southern Somalia and settled in the town of Luuq in the Gedo region, where they stayed with distant relatives, also members of the Marehan clan. In April 1992, the region was attacked by the U.S.C. so she and her family fled to Ethiopia. In March 1995, the applicant arrived in Canada and sought Convention refugee status.

The CRDD accepted that the applicant could not return to Mogadishu without risk of persecution, since other militias from other clans dominate the city. However, the CRDD held that the applicant had an internal flight alternative (IFA) in the Gedo region. In reaching its decision, the CRDD set out the appropriate factors to be considered when determining whether an IFA exists, specifically, the particular conditions of the country and the particular circumstances of the individual.

With respect to the country conditions, the CRDD accepted the documentary evidence presented which confirmed that the Marehan presently control the Gedo region and the area of Luuq. The CRDD noted that since 1993, Somalis have begun returning to Gedo, with and without the assistance of the UNHCR. Although the CRDD noted that voluntary repatriation does not automatically amount to an absence of risk of persecution, absent evidence to the contrary, it is reasonable to infer that there is a relative degree of security. After reviewing the documentary evidence, the CRDD concluded at page 20 of the applicant's record (AR):

...that the Gedo Region, including the area and town of Luuq, is under the control of the Darod Marehan and its political organization and militia, the Somali National Front (SNF). We are also able to conclude on a balance of probabilities that this is not a "contested" region and while the Marehan control the area, other tribes or clans are also able to be present, including members of the Rahanweyne and Ogadeni clans.

The CRDD then considered the particular circumstances of the applicant: a young woman without any immediate family members residing in Somalia at pp. 20 to 21:

As previously mentioned, the introduction and enforcement of shari'a law is of particular relevance to this claimant and her particular circumstances. Female Somalis have been particularly marginalized and victimised during the civil war, and the introduction of shari'a law in Gedo and other Regions, along with the ability of the woman's clan to control their own territory offer protection and assistance, has provided protection for females against abuse from militia

members of other clans and roving bandits, which previously was not available...

After extensively reviewing all of the evidence before us, the panel is satisfied that the town and area of Luuq in the Gedo Region of Somalia represent a viable internal flight alternative for the claimant which is reasonable in the particular circumstance of the claimant.

In our opinion, the claimant has not established, on a balance of probabilities, that there is a serious possibility she would be persecuted by any of the grounds set out in the definition of a Convention refugee were she to return to the Marehan controlled area of Luuq in the Gedo region of Somalia. In our opinion, as previously stated, the Marehan, the claimant's clan, exert effective control over this area, provide a functioning authority and system of law, and through an extended clan in this traditional Marehan homeland, members are able to access the protection and assistance of their clan.

The internal flight alternative for this claimant and her particular situation is a real, not theoretical, option which should be exercised by the claimant before seeking "surrogate" protection as a Convention refugee. The identified IFA is readily accessible through Ethiopia or Kenya and the claimant would not be required to cross battle lines or otherwise put herself at risk to reach the IFA.

The applicant argues that the CRDD misconstrued the evidence when it concluded that the applicant should seek the protection of the Marehan in the Gedo region. The applicant asserts that the Marehan can control Gedo only by violating the human rights of *non-Marehans*. In support of this argument, the applicant cites a report by Africa Watch dated April 1995 where a relief worker states, at p. 53 of the applicant's record, that since 1993 despite the Rahanweyne and Ogadeni population, the Marehan clan has controlled everything through "a committee of twelve. Control was such that there was a real fear of speaking out independently there. It's a Marehan mafia". The applicant also refers to a quote in the same report (AR, p. 52):

The Marehan killed, looted, raped and kidnapped women...As far as I know, about sixty women were taken. I know them personally. They even took one of my daughters...She is nineteen years old. [She] is now in Kenya..She was forcibly married to a Marehan, a gunman.

With respect to this argument, two points need to be made. First, there is no recent evidence that the Marehan are committing human rights abuses against non-Marehans. The CRDD specifically addressed the "mafia" reference in stating (at page 20 AR):

The panel has reviewed all of the documentary evidence presented by the RCO and by the claimant. We note that at a time when reporting on Somalia by new organizations and human rights groups has been extensive, there is a dearth of specific references to recent events involving the Marehan clan, the Somali National Front (SNF) which is the Marehan political organization and militia, and also, to the Marehan traditional homelands including the Gedo region. In our opinion, given the level of coverage on events in Somalia *it is reasonable to expect that if the Marehan were engaged in substantive infighting as suggested by the 1994 Response to Information Requests, supra, or with hostilities involving clans in their traditional homelands, including the Gedo Region, that it would not go unnoticed and that in fact it would be reported.*

[Emphasis]

This conclusion is reasonable, based on the Appeal Division's pronouncement in *Adu v. Minister of Employment and Immigration*, (A-194-92), January 24, 1995, where Hugessen J.A. held that inferences are permitted where there is a lack of documentary evidence mentioning "what one would normally expect it to mention."

The second quote referring to the raping and kidnapping of women relates to incidents which occurred during the war in 1991 to 1992. The overwhelming evidence referred to in the CRDD's decision indicates that the situation has greatly changed in the Gedo region.

Therefore, based on the evidence before the CRDD, the conclusion reached by it, that protection is available to the applicant in the Gedo region, is reasonable. The argument that the Marehan are currently involved in human rights abuses is without evidentiary foundation.

The second point which needs to be made with respect to the applicant's argument concerns the appropriate internal flight alternative test. The applicant has misconstrued the test to require that the CRDD be satisfied that all individuals living in the designated region be free of the possibility of persecution. The test requires the CRDD to be satisfied that, on a balance of probabilities that there is no serious possibility of the *claimant* being persecuted in the designated region. The CRDD must take into account the particular circumstances of the applicant and the country conditions when assessing the internal flight alternative. In *Thirunavukkarasu v. Minister of Employment and Immigration*, [1994] 1 F.C. 589 (C/A.) Mr. Justice Linden set out the test in the following manner at p. 598:

...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.  
[Emphasis not in text]

Put another way (at p. 597):

Consequently, if there is a safe haven for claimants in their own country, *where they would be free of persecution*, they are expected to avail themselves of it unless they can show that it is *objectively unreasonable* for them to do so.  
[Emphasis not in text]

The test requires the CRDD to assess whether the claimant will face a serious

possibility of persecution. The applicant has not attacked, in any way, the conclusion that protection is available to her in the Gedo region, as a member of the Marehan clan.

The CRDD correctly concluded that protection is available to her by the Marehan in the Gedo region so that *she* will not face a serious possibility of persecution. Failing to attack the conclusion that protection is available to her, she faces the issue of reasonableness which must be addressed.

The applicant argues that it is not reasonable for her to seek the protection of the Marehan in the Gedo region based on her assertion that human rights abuses are being committed. She states that she is unwilling to seek the protection of the Marehan because of their human rights practices.

She cites *Zolfagharakhani v. Minister and Employment and Immigration*, [1993] 3 F.C. 540 where this Court's Appeal Division held that the CRDD erred in determining that the claimant did not face a serious possibility of persecution based on his conscientious objection to the use of chemical warfare in Iran. In that case, the applicant was a paramedic who served in the Iranian military. After being discharged from the military, he was asked to report for further duty as a paramedic in the war against the Kurdish movement. During the last week of his training, he learned that the government intended to engage in chemical warfare against the Kurds. The CRDD found that there were no grounds to substantiate the claimant's fear of persecution on the basis of political opinion, namely, his objection to serving as a paramedic in the military.

The case cited is easily distinguished from the case at bar. In *Zolfagharakhani*, the use of chemical weapons was found to be probable, not merely a possibility, such that *Zolfagharakhani's* conscientious objection to the use of chemical weapons, supported by the international community, would be treated as the expression of an unacceptable political opinion. MacGuigan J.A. stated at p. 558:

The probable use of chemical weapons, which the board accepts as a fact, is clearly judged by the international community to be contrary to basic rules of human conduct, and consequently the ordinary Iranian conscription law of general application, as applied to a conflict in which Iran intended to use chemical weapons amounts to persecution for political opinion.

In the case at bar, as stated above, there is no evidence to reach the applicant's

conclusion that human rights abuses are being committed against non-Marehans and there is no evidence that her objections to these alleged abuses would be treated by the Marehans as an expression of political opinion, for which there would be a serious possibility of persecution.

With respect to the applicant's assertion that she is unwilling to avail herself of the protection of the unsavoury Marehans, the Supreme Court of Canada stated in *Ward v. Canada*, [1993] 2 S.C.R. 689 that a claimant's unwillingness to seek state protection must stem from a fear of persecution on an enumerated ground. Here, the applicant has not provided any evidence that she will be persecuted. In fact, as stated above, the applicant has not attacked the conclusion that protection is available to her in the Gedo region. Only on this judicial review hearing did the applicant's counsel complain that protection would be of a poor quality provided by dark-ages thugs.

Based on these reasons, this Court finds that the application for judicial review should be dismissed, and hereby dismisses it.

"F.C. Muldoon"

Judge

Toronto, Ontario  
July 31, 1997

**FEDERAL COURT OF CANADA**

**Names of Counsel and Solicitors of Record**

COURT NO: IMM-2597-96

STYLE OF CAUSE: HAWEYA ABDINUR HASHI

- and -

THE MINISTER OF CITIZENSHIP  
AND IMMIGRATION

DATE OF HEARING: JULY 30, 1997

PLACE OF HEARING: TORONTO, ONTARIO

REASONS FOR ORDER BY: MULDOON, J.

DATED: JULY 31, 1997

**APPEARANCES:**

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For the Respondent

**FEDERAL COURT OF CANADA**

Court No.: IMM-2597-96

Between:

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