



U.S. Department of Justice

Executive Office for Immigration Review

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Name: D [REDACTED] H [REDACTED], [REDACTED]

A [REDACTED] 337

Date of this notice: 10/5/2017

Enclosed is a copy of the Board's decision and order in the above-referenced case.

Sincerely,

Donna Carr

Donna Carr
Chief Clerk

Enclosure

Panel Members:
Guendelsberger, John
Kendall Clark, Molly
Neal, David L

Luisegs
User team: Docket

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Falls Church, Virginia 22041

File: [REDACTED] 337 – Lumpkin, GA

Date: **OCT - 5 2017**

In re: K [REDACTED] D [REDACTED] H [REDACTED]

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Martin M. Rosenbluth, Esquire

ON BEHALF OF DHS: Angelia Solomon
Assistant Chief Counsel

APPLICATION: Asylum; withholding of removal; Convention Against Torture

The respondent, a citizen of Somalia, has appealed from the Immigration Judge's April 13, 2017, denying his applications for asylum, withholding of removal, and protection under the United Nations Convention Against Torture. The Department of Homeland Security opposes the appeal. The appeal will be sustained, and the record will be remanded for the conduct of the requisite background and security checks.

We review the findings of fact, including the determination of credibility, made by the Immigration Judge under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i). We review all other issues, including issues of law, discretion, or judgment, under a de novo standard. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

The Immigration Judge found the respondent credible, but determined that he had not satisfied his burden of proof for any of the relief sought (IJ at 5-7). On appeal, the respondent first disputes the Immigration Judge's conclusion that the harm he suffered does not rise to the level that constitutes persecution (IJ at 6; Respondent's Brief at 7-9).

The respondent, who is a member of the minority Madhiban clan, claims that as a teenager he attended English and mathematics classes in his village, which were provided by a group of missionaries affiliated with the Jehovah's Witnesses, with the backing of the African Union Mission in Somalia (AMISOM) (IJ at 3; Tr. at 58, 60, 75; Exh. 4 (Form I-589, and attached statement)). His teachers also advised against joining or supporting the activities of al-Shabaab (Tr. at 60-61). Al-Shabaab threatened those participating in the "evil" classes with "severe punishment," given its belief that such classes were against Islam and those attending such classes were infidels (Tr. at 61, 62, 68, 76-77; Form I-589, attached statement at 9). In early November 2015, al-Shabaab attacked the respondent's school, which resulted in the injuries to several people, including his teacher (IJ at 3; Tr. at 61, 63). The school was forced to close (IJ at 3; Tr. at 61, 3).

Al-Shabaab continued to hunt down the students who attended the "evil" classes, including the respondent (IJ at 5; Tr. at 61, 63; Form I-589, attached statement at 10-11). Within days of the school attack, and while tending to his grandfather's cattle in the field, the respondent was tracked down and kidnapped by masked members of al-Shabaab (IJ at 3-4; Tr. at 63-64; Form I-589,

attached statement at 11). The respondent was interrogated, tied up, and repeatedly beaten with the rifle butts (IJ at 4; Tr. at 64; 81, 82). His mouth was taped shut, his hands were tied, and he was taken to an al-Shabaab commander who interrogated him about his knowledge of and devotion to Islam (IJ at 4; Tr. at 64; Form I-589, attached statement at 11). The respondent's responses and past behavior did not comport with al-Shabaab's construct of Islam, and the commander accused him of being an infidel and "spying for the enemies of God" (Tr. at 64; Form I-589, attached statement at 11).

The respondent was put in a hole in an underground cell, where he was kept for several days (IJ at 4; Tr. at 65; Form I-589, attached statement at 11). During his detention, the respondent was threatened, and severely beaten multiple times (Tr. at 65-66). He was taken to a commander who told him he had been "convicted" of working with the infidels (Tr. at 66). The commander indicated that al-Shabaab was going to reform him, "reteach [him] the right way," so that he could "become someone who will successfully fight in jihad for us" (Tr. at 66, 77; Form I-589, attached statement at 11-12).

To save his life, the respondent he agreed to "reform" to himself (IJ at 4; Tr. at 66). He was temporarily released so that he could inform his family of his situation, on the condition that he would return within 3 days (IJ at 4; Tr. at 66). The respondent intended to escape, did not return as promised, and al-Shabaab promptly came to his home locale searching for him (IJ at 4; Tr. at 66; 77). Al-Shabaab encountered the respondent's grandfather and a friend, and killed both of them after questioning them about the respondent's whereabouts (IJ at 4; Tr. at 67-68; 81-82; Form I-589, attached statement at 13). The respondent, who was hiding, witnessed this questioning of his grandfather and friend, and their ensuing murders (IJ at 4; Tr. at 67). Fearing for his own life, the respondent immediately fled, and ultimately went to his uncle's home in another locale, where he hid for 3 months before making his way to the United States (Tr. at 67, 69-71). The respondent has since learned that this uncle was killed by al-Shabaab because his uncle hid him from them (IJ at 4; Tr. at 69, 71-72, 82).

As noted above, the Immigration Judge determined that the respondent was credible (IJ at 5). Based on this credible testimony and other evidence of record, a sufficient showing has been made that the respondent was persecuted in the past, particularly given the cumulative impact of the incidents of harm suffered, and taking into account his young age at the time these incidents occurred. *See De Santamaria v. U.S. Att'y Gen.*, 525 F.3d 999, 1008 (11th Cir. 2008). In addition, the evidence presented establishes that at least one central reason for the persecution experienced was the respondent's religion, and/or his political opinion, actual or imputed. *See* sections 101(a)(42), 208(b)(1)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1101(a)(42), 1158(b)(1)(B)(i) (2006).

Given that the respondent has demonstrated past persecution on account of a protected ground, he is entitled to a presumption of a well-founded fear of future persecution in Somalia based on these same claims. *See* 8 C.F.R. § 1208.13(b)(1). On this record, this presumption has not been rebutted. *See* 8 C.F.R. §§ 1208.13(b). Moreover, based on the credible testimony and evidence of record, the respondent has independently demonstrated a well-founded fear of persecution by al-Shabaab in Somalia on account of his religion and/or his political opinion, actual or imputed.

The respondent has demonstrated statutory eligibility for asylum. The record also supports a finding that he merits such relief in discretion.¹ Therefore, the record will be remanded for the conduct of the requisite background and security checks.

Accordingly, the following orders will be entered.

ORDER: The appeal is sustained.

FURTHER ORDER: Pursuant to 8 C.F.R. § 1003.1(d)(6), the record is remanded to the Immigration Judge for the purpose of allowing the Department of Homeland Security the opportunity to complete or update identity, law enforcement, or security investigations or examinations, and further proceedings, if necessary, and for the entry of an order as provided by 8 C.F.R. § 1003.47(h).


FOR THE BOARD

¹ In light of this disposition, we need not address the respondent's remaining appellate contentions.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LUMPKIN, GEORGIA

File: [REDACTED] 337

April 13, 2017

In the Matter of

K [REDACTED] D [REDACTED] H [REDACTED]
RESPONDENT

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IN REMOVAL PROCEEDINGS

CHARGES: INA Section 212(a)(7)(A)(iii) not in possession of documents.

| APPLICATIONS: Asylum, withholding of removal, and protection relief under the provisions of the Convention Against Torture.

| ON BEHALF OF RESPONDENT: MARTIN ROSENBLUTH, ESQ.

ON BEHALF OF DHS: ANGIE SOLOMON

ORAL DECISION OF THE IMMIGRATION JUDGE

EXHIBITS

| Exhibit 1, Notice to Appear, dated July 21, 2016.

| Exhibit 2, Form I-589, filed August 9, 2016.

| Exhibit 3, DHS submission.

| Exhibit 4, Form I-589, filed October 31, 2016.

| Exhibit 5, Statement supporting respondent's application.

| Exhibit 6, 2015 International Religious Freedom Report on Somalia.

Exhibit 7, Mmap of Somalia.

Exhibit 8, F frivolous application warning.

Exhibit 9, Two reports on Somalia.

Exhibit 10, Respondent's submission, filed March 27, 2017.

Exhibit 11, New York Times article on Somalia.

Exhibit 12, Article on Somalia.

HISTORY OF THE CASE

When respondent was initially interviewed on June 30, 2016, by a U.S. Border patrol agent, he stated that he was a member of the Madhiban Clan and that he left Somalia because he feared for his life because he refused to join Al-Shabaab and that group had threatened to kill him. Exhibit 3, tab A.

Exhibit 1 was served on the respondent on July 21, 2016. On August 2, 2016, in accordance with respondent's pleas, the allegations in Exhibit 1 were sustained and the respondent was found by clear and convincing evidence to be removable as charged. Somalia was designated as the country of removal.

Respondent submitted his application for asylum on August 9, 2016, and executed part G on that date. Exhibit 2. A second asylum application was filed on October 31, 2016. Part G was executed by respondent on December 7, 2016. Exhibit 4. An individual merits hearing was conducted on April 13, 2017.

ASYLUM

In order to be eligible for asylum, the respondent must prove that he is a refugee, t—That being a person who is unable or unwilling to return or unwilling to avail himself of the protection of his native country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. In order to meet this burden, respondent must

establish either that he has suffered past persecution on account of one of these statutorily protected grounds, or has a well-founded fear of future persecution on account of a protected ground.

To prove that he has a well-founded fear of future persecution, respondent must show that there is a reasonable possibility of suffering persecution if he were to return to his native country. This fear must be both subjectively genuine and objectively reasonable. The subjective component is satisfied by respondent's credible testimony that he genuinely fears persecution and the objective component is satisfied by either showing past persecution or that he has good reason to fear future persecution.

TESTIMONY OF RESPONDENT

Respondent testified that he is 21 years old. He was born in Lower Jubba, Somalia, to a minority tribe also known as a clan. His father's current whereabouts are unknown. His father fled Somalia after he was threatened by the family of his employer.

The respondent's clan Madhiban is marginalized, discriminated against and not protected by the government which is based on tribal affiliations. The government cannot protect citizens from Al-Shabaab, a group operating mostly in the south of Somalia. The respondent testified that a friend solicited him to join a school operated by Amisom, that is the African Union Mission in Somalia. Al-Shabaab attacked the school and the school was forced to close. The respondent was then hunted by Al-Shabaab because he had been enrolled in the school that was perceived to teach against Al-Shabaab.

Respondent stated that Al-Shabaab harms all the clans in Somalia, but more so, the minority clans.

Respondent was confronted by Al-Shabaab in November 10, 2015, when

a group of masked men attacked and kidnapped him. The respondent was placed before a masked man who he thought was their leader. This man read the Koran to test whether respondent knew the text. The respondent was accused of being a spy for the “infidels” and was put into a hole where he was beaten and kicked. After a couple of days, respondent was taken to another man, he thought was a commander, who attempted to recruit respondent to fight in the jihad. The respondent agreed to their “reform” in order to save himself from harm by Al-Shabaab, and he asked permission to go back home to tell his mother and then return. The respondent was allowed to leave, but he never returned.

On November 21, 2015, respondent witnessed his grandfather and a friend being killed by Al-Shabaab. Respondent fled to Kismayo then to Mogadishu to seek protection from the government. However, in Mogadishu, the officer said that even large tribes could not get protection, must less minority tribes. The officer said he knew about the terrorists, but said that the whole world shared the problem. He suggested that the respondent go to an international organization for help.

Respondent’s friend’s aunt gave the respondent money to travel to Kenya. At the Kenyan border, he was hidden by an uncle for three months. A note was later put on the uncle’s door that read that the uncle was keeping a spy and threatened the uncle if respondent was not handed over.

There was no office open in Kenya to welcome Somalians so respondent contacted a friend, a former teacher who had started helping people escape Somalia. That man said the only safe place was the United States. The respondent’s uncle paid for smuggling respondent out of Africa.

After respondent arrived in the United States, he learned that his uncle had been killed by Al-Shabaab for hiding respondent.

The respondent testified that he was never detained, arrested or harmed by the government or the police in Somalia.

The respondent testified that in Somalia people live by tribal affiliation, so there is no other location in Somalia where he could relocate.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In arriving at my findings of fact and conclusions of law, I have considered all documentary and testimonial evidence in this case. My failure to comment on a specific exhibit or particular testimony does not mean that I failed to consider it.

The respondent claimed a fear of Al-Shabaab, an international radical Islamic terrorist organization. The respondent failed to show that the harm suffered by him and his family was inflicted by the government of Somalia or by persons or organizations the government is unwilling to control. The harm was inflicted by a terrorist organization, or in the case of his father, by another clan member as retribution for his father's damaging court testimony.

The United States Court of Appeals for the Eleventh Circuit, the jurisdiction in which this case arises, has held that private acts of violence and purely personal retribution do not qualify as persecution based on a statutorily protected ground.

Given that his testimony was credible, respondent has satisfied the subjective component of a well-founded fear. However, respondent's fear is not objectively reasonable. More specifically, the record does not support the conclusion that respondent would be harmed in Somalia on account of a protected ground.

Respondent has not established that the Somali government would acquiesce to the future harm he fears. The Somali government is not willfully blind to

Al-Shabaab's actions. Instead, the government actively opposes Al-Shabaab. Evidence in the record reflects that the government of Somalia recently declared war on Al-Shabaab. Exhibit 9.

The Eleventh Circuit has held that the government does not acquiesce to torture when it actively, although not entirely successfully, combats the activities of a non-state actor. Thus, while Al-Shabaab still operates in areas of Somalia, it cannot be said that the government acquiesces to the harms perpetrated by its members. And the fact that the Somali government has not successfully ended the threat posed by Al-Shabaab, is insufficient to establish that the harm would be with the consent or acquiescence of that government.

Even if the harm had been inflicted upon the respondent by an entity to which the government acquiesced, in this case, the harm does not rise to a level sufficient for the label of persecution in the Eleventh Circuit. That court has not found persecution in cases involving multiple incidents of abuse, more serious injury and detentions much longer than that experienced by respondent.

Respondent has not offered evidence that he was active politically in Somalia or that he was regarded as a leader of any political group. The extent of his political opinion was his opposition to a terrorist organization that has subjected his country to violence for many years.

While respondent's grandfather was killed in part, due to his religious beliefs, his demise was not a threat or harm to respondent. Rather, it was at least, in part, a punishment by a terrorist group for his grandfather's failure to cooperate with their investigation of respondent.

Although Al-Shabaab confronted respondent about his faithfulness to the teaching of the Koran, the central religious text of Islam, respondent never attempted to

practice any other religion. Indeed, he identified Islam as his religion on his two applications for relief. Even if respondent was threatened or harmed on account of his religious beliefs, the actor was not a government official or a group whose actions the government acquiesced to.

The fact that Al-Shabaab mistreated respondent and his family for respondent's refusal to join them is more indicative that the members were motivated by recruitment and a desire to maintain control in their area than by any animus towards respondent due to any protected ground. The Board of Immigration Appeals has held that persons who resist recruitment by criminals such as criminal gangs, do not constitute a particular social group for asylum purposes. As such, the Court finds that respondent has not satisfied the nexus requirement for asylum.

Therefore, I find that respondent fails to meet his burden because the greater weight of the evidence does not corroborate or support his allegation of past persecution or a well-founded fear of future persecution. I conclude that respondent has not met his burden establishing that he should be granted asylum.

Respondent has failed to satisfy the burden of proof required for asylum. Therefore, it follows that he has also failed to follow the more stringent standard of clear probability required for withholding of removal. Consequently, I conclude that respondent has not met his burden of proving that he should be granted withholding of removal under the provisions of the Immigration and Nationality Act.

Given that the factual basis of respondent's Convention Against Torture claim mirrors that of his asylum claims, he has not established that it is more likely than not that he would be tortured by or at the instigation of or with the consent or acquiescence of a public official if he were returned to Somalia. Though the Country Reports shows that Somalia is not without its issues, specific grounds must exist to

indicate that respondent would be personally at risk of torture and respondent has failed to demonstrate the exist of same. Consequently, I conclude that respondent has not met his burden showing that he should be granted protection under the Convention Against Torture.

ORDERS OF THE COURT

Respondent's Form I-589, application for asylum, withholding of removal and protection relief under the provisions of the Convention Against Torture, is denied.

Respondent will be removed from the United States to Somalia.

A written order reflecting the above decisions will be provided separately and made part of the record.

Please see the next page for electronic

signature

RANDALL W. DUNCAN
Immigration Judge

//s//

Immigration Judge RANDALL DUNCAN

DuncanR on June 12, 2017 at 11:28 AM GMT