



Australian Government
Immigration Assessment Authority

Decision and Reasons

Referred application

SOMALIA

IAA reference: IAA18/05199

Date and time of decision: 15 August 2018 16:15:00

B Mericourt, Reviewer

Decision

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

Any references appearing in square brackets indicate that information has been omitted from this decision pursuant to section 473EC(2) of the Migration Act 1958 and replaced with generic information which does not allow the identification of an referred applicant, or their relative or other dependant.

Background to the review

Visa application

1. The referred applicant (the applicant) claims to be a Somalian national. On 27 March 2017 he lodged an application for a Safe Haven Enterprise Visa (SHEV). In a decision dated 12 June 2018 the delegate of the Minister of Immigration and Border Protection (the delegate) refused to grant the visa.
2. The delegate was not satisfied the applicant or his family lived in Mogadishu, Somalia. Based on a significant number of financial remittances the applicant sent to [Town 1] and Hargeisa in Somaliland, the delegate considered that the applicant's family lived in Somaliland and therefore assessed the applicant's claims related to Somaliland. The delegate was not satisfied the applicant was targeted by the Al-Shabaab in Mogadishu or was from a minority clan in Mogadishu. He assessed there was no real chance or real risk the applicant would suffer serious or significant harm if he returned to Somaliland now or in the reasonably foreseeable future.

Information before the IAA

3. I have had regard to the material given by the Secretary under s.473CB of the *Migration Act 1958* (the Act).
4. No new information was provided to the Immigration Assessment Authority (IAA).
5. I have obtained recent country information that was not before the delegate and is new information about the school the applicant claims to have attended in Mogadishu and the [Refugee camp 1] in [Country 1] in which the applicant claims his remaining family were located.¹ As the assessment of the applicant's claims have turned largely on whether he comes from Mogadishu or Somaliland and whether his account of his childhood is credible, I consider there are exceptional circumstances to justify considering this new information.

Applicant's claims for protection

6. The applicant's claims can be summarised as follows:
 - The applicant claims to have been born and lived in Mogadishu. His father was killed in 1994 and his mother married his father's brother (as is the custom). His mother died in 2005 and he moved to the mosque at that time where he was supported by the principal of his school while he finished his high school education;
 - He fears harm for reasons of his race. He claims to be a member of the Sheikhal² minority clan and to have suffered discrimination in respect of access to education and freedom to inter-marry with other clan members;
 - He claims he will be targeted by the majority clans and al-Shabaab if he returns to Somalia as he has no parents or siblings and is an unsupported member of a minority clan;

¹ [Source deleted]

¹ Ibid

¹ [Source deleted]

² Various spelled Sheikhal, Sheikhaal, Sheekhal, Shiqaal, Sheikhash. I have adopted the spelling used by ACCORD.

- He fears harm because he has resided in a Western country and will be imputed with a political opinion of supporting the West;
- The delegate considered the applicant's fear of harm for reasons of returning as a failed asylum seeker who sought protection in a Western country;
- The delegate also considered claims that may arise as a result of the applicant being a subject of the Department data breach in February 2014.

Factual findings

7. The applicant's claims as to his identity and nationality have been consistent since his arrival in Australia. He conducted interviews in Somali and has submitted a document he claimed to be his original Somali driver's licence and a birth certificate issued by the Somali consulate in [an Australian city]. Having regard to the fact that the applicant has provided consistent evidence about his identity and his country of nationality and the fact that the delegate checked relevant systems which revealed no information that raises concerns that the applicant has provided a false identity, I accept the applicant's nationality is as claimed and find Somalia to be the receiving country for the purpose of the application. There is no evidence before me to suggest that the applicant has a right to enter and reside in any country other than Somalia and I am satisfied he does not: s.36(3).

Refugee assessment

8. Section 5H(1) of the Act provides that a person is a refugee if, in a case where the person has a nationality, he or she is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Well-founded fear of persecution

9. Under s.5J of the Act 'well-founded fear of persecution' involves a number of components which include that:
 - the person fears persecution and there is a real chance that the person would be persecuted
 - the real chance of persecution relates to all areas of the receiving country
 - the persecution involves serious harm and systematic and discriminatory conduct
 - the essential and significant reason (or reasons) for the persecution is race, religion, nationality, membership of a particular social group or political opinion
 - the person does not have a well-founded fear of persecution if effective protection measures are available to the person, and
 - the person does not have a well-founded fear of persecution if they could take reasonable steps to modify their behaviour, other than certain types of modification.

10. Real chance is a substantial chance as distinct from a remote or far-fetched possibility.³
11. One of the critical issues in the applicant's application for protection is whether he and his family resided in Mogadishu or Somaliland at the time of his departure and if his family continues to reside in Somaliland, Somalia. At his entry and identity interviews in June 2013 and August 2013 the applicant stated that he was born 'under a tree' outside Mogadishu in [year]. His father was an [occupation] who was killed when the applicant was only [age] or [age] years old. His mother married his father's brother and had [more] children - the applicant's half-[siblings]. They lived in a village on the edge of Mogadishu. His stepfather was also an [occupation].
12. At his entry interview and in his statutory declaration dated 18 April 2017(sic) the applicant claimed that at the age of [age] his mother sent him to Mogadishu to attend a school in the mosque. He lived in [a] subdistrict of Mogadishu and attended [School 1] from [date] to [date] when he completed his high school education. He had no money to go to university and he had lost contact with his remaining family members. He then unsuccessfully looked for work until he departed Somalia in May 2013.
13. I have confirmed [School 1] existed in [District 1], [a] subdistrict of Mogadishu and that it was common for orphans and children with only one parent to live on the school site.⁴
14. The delegate concluded that the applicant had had some education as he spoke functional English at the time of his arrival in Australia. The applicant had said at his protection interview that he learned English, Arabic, mathematics, physics, history and other subjects at high school. This is consistent with information in the Ministry of Education, Culture and Higher Education School Report.⁵
15. The applicant has consistently claimed that his mother died in 2005 after failing to have any treatment for [a medical condition]. His mother's sister (the applicant's maternal aunt) had moved into the household earlier to help care for the younger children. At some point after his mother's death the applicant's aunt and younger siblings moved to [Refugee camp 1] in [Country 1] a few kilometres from the border of Somaliland.
16. I have confirmed UNHCR administers [Refugee camp 1] which was established in June 2008 to accommodate Somali refugees seeking international protection. It is approximately [distance] km from the town of [Town 1] in Somaliland.⁶
17. The Department Officer who conducted the applicant's identity interview in August 2013, had concerns about the applicant's "evasive and inconsistent" story regarding significant aspects of his life, particularly in the period before he was sent to live at the school. He also had concerns about how the applicant was able to raise money and depart Somalia with a people smuggler who then flew back to Somalia from [another country] when he claimed to have no funds or family to support him. The officer concluded the applicant was older, more educated, more connected and more wealthy than he was presenting to the Department. The officer hypothesised that the applicant "may have spent his life in [other countries] where conditions are slightly more favourable than Somalia itself".

³ *Chan v MIEA*, (1989) 169 CLR 379 at 389.

⁴ [Source deleted]

⁵ *Ibid*

⁶ [Source deleted] Accessed 14 August 2018

18. At his protection interview on 3 May 2018 the delegate put to the applicant that there was information before the Department that he had made extensive money transfers to a number of individuals in Somaliland including his own half[siblings]. The applicant stated that there was no way for his family members to access funds in the refugee camp and he transferred money to them to [Town 1] on the border where they were able to travel and collect it. I am satisfied this explanation is plausible under the circumstances.
19. The delegate put to the applicant that he had transferred more funds to one particular individual in [Town 1] than to his entire family. The applicant stated that this person is a religious teacher and he learns the Quran and Arabic from him through his online school. He provided a website address for the school and stated he hoped to obtain a qualification that would enable him to teach the Quran and become an Arabic interpreter in Australia. I also have concerns about the applicant's evidence about these financial transfers as it is clear that an online school in Somalia will not provide the applicant with qualifications to become an interpreter in Australia, and the total sum of money remitted is significant with no evidence about the applicant's participation in a course of this nature. However, there is no other information before me regarding the nature of the transfers or the recipient.
20. Based on the conclusion of the Department's Identity Report dated 17 August 2013, and the number of transfers the applicant had made to individuals in Somaliland, the delegate concluded that the applicant originated from Somaliland and his family were and are located there.
21. Whilst I share some of the concerns expressed by the Department officer in the Identity Report, I place more weight on the applicant's consistent evidence about his school education at [School 1] in Mogadishu and the fact that this is consistent with information from the Somali Ministry of Education, Culture and Higher Education. I am satisfied that it is plausible that the applicant's family originated in the Mogadishu area of Somalia, and that at some period after his mother's death in 2005 remaining family members moved to the UNHCR administered [Refugee camp 1] in [Country 1] close to the border of Somaliland and [Town 1], where the applicant sent remittances to his family members.
22. The applicant stated at his protection interview on 3 May 2018 that his aunt had died in March 2018 and his half-sister[and] half-brother [had] moved from the refugee camp to [Town 1] in Somaliland. He does not know the whereabouts of his other [half siblings]. I am satisfied that the applicant's remaining family members with whom he has contact are based in Somaliland.

Claims of fear of harm based on the applicant's race, that is, his identification as a member of a minority clan, the Sheikhal clan.

23. The applicant has consistently stated that his family is from the minority Sheikhal clan. He claims to fear harm from majority clan members and from al-Shabaab. He also states that he suffers discrimination as a minority clan member as he cannot find employment unless he has connections to people in government or majority clan members.
24. DFAT states that whilst Somalia is largely viewed as ethnically and linguistically homogenous there is significant adversity created by the clan system, which has far greater influence over communal relations than ethnicity.⁷

⁷ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Somalia", 13 June 2017, p.10, CISED50AD4497

25. Dominant clans in Somalia, the Digil, Darod, Hawiye, Dir and Rahanweyn, provide protection to clan members based on a complex system of customary law and use of armed force. Those from minority groups and minority clans fall outside this system of protection. Inter-marriage with minority clans is not permitted, and many other forms of interaction are frowned upon. Because of this long-standing differentiation in social status, minorities are significantly more vulnerable to human rights violations in Somalia and have few options for redress. Access to basic services such as education, health care and shelter, as well as access to justice for violations of human rights, are significant challenges for minorities. During Somalia's conflicts many individuals belonging to minorities were displaced internally or became refugees in neighbouring countries.⁸
26. Ashraf and Sheikhal (religious-minority clans) traditionally played important conflict-resolution roles, and were respected and protected by clans with whom they lived. However, some were badly affected by the civil conflicts of the 1990s and lost this customary protection, becoming targets for human rights abuses by clan militias and warlords. ... Both Ashraf and Sheikhal have achieved political influence and success in education and commerce with Arab countries, yet they can still face discrimination and human rights abuses on account of their non-clan origins and lack of an armed militia. In 2006, for example, OCHA highlighted the case of several hundred displaced Sheikhal families in Ethiopia in need of humanitarian assistance.⁹
27. ACCORD's 2009 report on Clans in Somalia¹⁰ states that south-central Somalia is caught up in a complex conflict as the clan-based political factional rivalry and warlordism is compounded by fragmented Islamic-based factionalism.
28. ACCORD reports that identifying clan groups constitutes a complex task, and it is almost impossible to draw an entirely correct chart of all the clan families, because they form a living organism, and it is difficult to keep track of the constant developments.¹¹

The Sheikhal clan (or Sheikhash) are the common name for lineages with an inherited religious status. According to Virginia Luling, "by one account they all trace descent in legendary terms from the same ancestor, Sheikh Faqi Omar, who travelled around Somalia and married wives in each location" (Luling, 15 December 2009). Because of their religious status they usually have privileged access to all parts of Somalia. For a more detailed elaboration of the various groups referred to as Sheikhal in Southern Somalia see Luling, Virginia: Report on the Shiikhaal, 15 December 2009 (Luling, 15 December 2009).

Most of the Sheikhal are currently associated with the Hirab section of the Hawiye which is an interesting example of how a 'weak' clan politically may change its clan affiliation to achieve influence, protection, and strength. Hence, after the civil war (1990-92) the Sheikhal from Mogadishu and southwards to Kismayo/Lower Juba pursued two main strategies of gaining influence: One was through their emphasis on developing and dominating the educational sector in Mogadishu, mainly through the non-violent Islamic organization Al-Islah, and the establishment of the umbrella for private sector education

⁸ Ibid

⁹ Minority Rights Group International, Hill, M. "World Directory of Minorities and Indigenous Peoples – Somalia", May 2018, CXBB8A1DA27367

¹⁰ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Clans in Somalia", p.5, 1 December 2009, CIS18144

¹¹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Clans in Somalia", p.11, 1 December 2009, CIS18144

known as Formal Private Education Network in Somalia (FPENS). The other was to seek association with the Hawiye and General Aideed and the Hawiye political faction of the United Somali Congress (USC). The now late General Liqliqato, who was a Sheikhal, described in his book how the Sheikhal became associated with the Hawiye known as 'Martileh Hirab' (literally meaning guests of Hirab). Today the Sheikhal maintains 3 of the 61 Hawiye seats in Parliament.¹²

29. The above information regarding the Sheikhal clan suggests the applicant's claims to have been supported in his education by his clan members is consistent with being a member of the Sheikhal clan. However, it also indicates that whilst the Sheikhal are a minority clan they are closely associated with the dominant Hawiye clan and there is no information before me to suggest that they are specifically subjected to discrimination or persecution by majority clans in Somalia.
30. The US Department of State reported that although more than 85% of the population shared a common ethnic heritage, religion (Sunni Islam) and nomad-influenced culture, in most areas the predominant clan excluded members of other groups from effective participation in governing institutions and subjected them to discrimination in employment, judicial proceedings, and access to public services. Minority groups, often lacking armed militias, continued to be disproportionately subjected to killings, torture, rape, kidnapping for ransom, and looting of land and property with impunity by faction militias and majority clan members, often with the acquiescence of federal and local authorities. Many minority communities continued to live in deep poverty and to suffer from numerous forms of discrimination and exclusion. Somali returnees and IDPs from marginalized clans suffered discrimination, since they often lacked powerful clan connections and protection.¹³
31. I find the applicant's evidence plausible that he is a member of the Sheikhal clan in Somalia. I accept his education costs were met by members of this clan, given this is a particular focus of the clan's activities. The applicant has not claimed to have suffered harm as a result of his membership of the Sheikhal clan but that he suffered discrimination because he was unable to find employment or pay for a university education.
32. The Department of Foreign Affairs and Trade (DFAT) reports that formal unemployment in Somalia is high. According to the 2015 UNDP Human Development Report, the youth unemployment rate is 67%.¹⁴ The applicant provided no details about how the discrimination he said he experienced prevented him from finding employment. Given Somalia's current economic situation and the extremely high rate of youth unemployment and the applicant's lack of qualifications, I am not satisfied the applicant was unable to find work solely or even primarily for reasons of his identification as a member of a minority clan.
33. The applicant did not claim that he suffered any serious harm for reasons of his identification as a member of a minority clan, although he claimed on several occasions he had to hide from members of al-Shabaab who were looking to forcibly recruit people in Mogadishu from time to time. This is consistent with country reports that indicate al-Shabaab is most active in south-central Somalia and control significant amount of territory. DFAT reports that al-Shabaab is an al Qaida affiliated group which is fighting for the creation of an Islamic state in Somalia. Country information states that al-Shabaab attacks, imprisons - within its area of

¹² Ibid, p.19

¹³ US Department of State, "Country Report on Human Rights Practices 2017 – Somalia", 20 April 2018, p.36, OGD95BE927354

¹⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Somalia", 13 June 2017, p.6, CISED50AD4497

control - and kills individuals that do not conform to its interpretation of a model of Islamic Society and is known to forcibly recruit children.¹⁵

34. Al-Shabaab is very active in South-central Somalia and continues to undertake terrorist attacks against major security and civilian targets, including government facilities, often resulting in deaths.¹⁶ A March 2017 Danish Immigration Service Report stated that al-Shabaab can carry out hit-and-run attacks and assassinations everywhere, including inside Mogadishu. Al-Shabaab has reach inside Mogadishu and the city is by several sources considered as infiltrated by al-Shabaab, including Mogadishu International airport.¹⁷ According to the report improvements in the security situation are fragile:

“An NGO working in Somalia similarly underlined a change of tactics in the attacks observed, as Mogadishu has been more affected by IEDs last year compared to previous years and more complex attacks are taking place. A UN source mentioned that inside Mogadishu the number of attacks in the second half of 2016 has doubled compared to the first half of 2016.”¹⁸

35. DFAT cited recent examples of violence perpetuated by al-Shabaab including bombings and shootings in Mogadishu between June 2016 and January 2017.¹⁹
36. There is no information before me that al-Shabaab specifically targets members of the Sheikhal clan.
37. Based on the above country information, I am satisfied the applicant is a member of the Sheikhal minority clan which is located primarily in South-central Somalia including Mogadishu, and also in Somaliland. I am satisfied that as a member of a minority clan the applicant suffered some discrimination in Somalia, particularly in respect of obtaining employment and accessing higher education. I accept there is a real chance the applicant will suffer further discrimination if he returns to Somalia now or in the reasonably foreseeable future. However, I am not satisfied that this discrimination amounts to serious harm, having regard to the extensive examples of serious harm in s.5J(5) of the Act. I am not satisfied that the discrimination the applicant may experience in obtaining employment is a denial of the applicant’s capacity to earn a livelihood of any kind, where the denial threatens his capacity to subsist, for reasons related to his membership of a minority clan. Similarly, whilst I accept there is a possibility the applicant will suffer severe economic hardship on his return to Somalia, I am not satisfied any economic hardship he may suffer would be for reasons of his race, that is, his identification as a member of a minority clan.
38. I am not satisfied that the applicant was personally targeted by al-Shabaab in the past for reasons of his membership in a minority clan, or that there is a real chance the applicant will suffer serious harm from al-Shabaab for reasons of his membership in a minority clan if he returns to Somalia now or in the reasonably foreseeable future.
39. For these reasons, I am satisfied there is no real chance the applicant will suffer serious harm for reasons of his race, that is, his identification as a member of a minority clan in Somalia.

¹⁵ Ibid

¹⁶ Ibid, p.8

¹⁷ Danish Immigration Service, “South and Central Somalia: Security Situation, al-Shabaab Presence and Target Groups”, 1 March 2017, pp.10-11, CISED50AD5757

¹⁸ Ibid, pp.11-12

¹⁹ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Somalia”, 13 June 2017, p.8, CISED50AD4497

Claims related fear of harm for reasons relating to the applicant's membership of a particular social group, that is, failed asylum seekers who have sought protection in a Western country

40. There is little specific country information about the return of failed asylum seekers to Somaliland. In its 2017 country information report on Somalia, DFAT states that it “understands that it is not a crime in Somalia to seek asylum elsewhere and is not aware of credible reports of mistreatment of failed asylum seekers stemming specifically from their having sought asylum overseas.”²⁰ DFAT reports that the Federal Government of Somalia receives failed asylum seekers on a case-by-case basis where they met certain criteria such as returnees being Somali nationals originating from within the borders of the Federal Republic of Somalia and who have a fixed address in an accessible part of Somalia. Nevertheless, the government of Somalia has a limited capacity to accept voluntary returnees on a large scale due to security, political and economic instability.²¹
41. DFAT further states, “In practice Somalia has a large diaspora in the West and there are regular flows of Somalis returning to visit, work or invest in Somalia. DFAT understands that exit and entry procedures in Somalia are not technologically advanced. Failed asylum seeker would not necessarily be identifiable at a border crossing and there is no central database that monitors whether an individual had departed illegally. DFAT understands that when a returns process is arranged by another country or organisation, the returnee is cleared by Somalia’s Department of Immigration prior to their arrival at Mogadishu airport and the returnee is not questioned by authorities upon arrival”²².
42. Returnees have limited access to basic services and face a number of obstacles to resettlement including tensions with local populations, difficulties with land and property rights, limited employment opportunities and Somalia’s volatile security situation²³. Somali returnees and IDPs from marginalised clans suffered discrimination, since they often lacked powerful clan connections and protection.²⁴ Furthermore, DFAT reports that due to high rates of poverty and widespread impunity, crime, including violent robbery, kidnapping and personal violence is a serious issue, particularly in Mogadishu.²⁵ Somalis who have spent periods in Western countries for education, employment or migration reasons or who are employed by international organisations can be at risk of violence from al-Shabaab. DFAT assesses that people who have spent time in the West face a moderate risk of violence from al-Shabaab, particularly where they do not have adequate personal security measures in place.²⁶
43. The Danish Refugee Council indicates that whether returnees from abroad are targeted or not by al-Shabaab (as claimed by the applicant) will depend on how they behave and dress and who they are affiliated with. Several sources mentioned that persons returning will be under close monitoring, as al-Shabaab in general will be aware of newcomers, and a new face will be reason enough for background checks and questioning. An NGO working in Somalia concurred that an outsider risks being stopped and questioned at checkpoints, as a new face will raise suspicion of spying. The questioning will often be about the determination of the

²⁰ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Somalia”, 13 June 2017, p.23, CISED50AD4497

²¹ Ibid

²² Ibid, pp.23-24

²³ US Department of State, “Country Report on Human Rights Practices 2017 – Somalia”, 20 April 2018, p.25, GD95BE927354

²⁴ Ibid p.37

²⁵ Department of Foreign Affairs and Trade (DFAT), “DFAT Country Information Report Somalia”, 13 June 2017, p.8, CISED50AD4497

²⁶ Ibid

person's identity. According to the source it is rather easy for al-Shabaab to identify a Somali person by the person's name, his/ her mother's name, grandmother's name, and home village. According to an international organisation the fact that a person has been abroad, including in the West, is not in itself important when returning to an al-Shabaab area. What is important is his/her clan, and the returnee will need relatives who are not in bad standing with al-Shabaab and who can vouch for them. If returnees are related to clans or individuals that are well regarded in al-Shabaab, they are likely to be safe. If not, he/she might face at least some initial scrutiny.²⁷

44. I have found the applicant lived in Mogadishu before he departed Somalia and if he were to return to Somalia I accept it would be to Mogadishu. His clan membership was in Mogadishu.
45. For the reasons set out above, I accept the applicant's only immediate family – his half brother [and] half-sister [are] currently residing in [Town 1] in Somaliland, having moved there from [Refugee camp 1] just over the border in [Country 1] after their aunt passed away. His parents have died. While the applicant may have some distant relatives in Mogadishu who are part of his clan I accept that fundamentally he does not have the connections or support in Mogadishu, which would enable him to find employment or put in place adequate security measures for his personal safety if he returns as a failed asylum seeker who has spent a considerable period (five years) in the West.
46. Based on the above country information about the possible risks to returnees from the West, which are clearly exacerbated if, as in the applicant's case, they do not have clan connections to enable them to have adequate personal security measures in place, I accept there is a risk that the applicant may be targeted and harmed for reasons of his membership of a particular social group, that is, failed asylum seekers from the West if he returns to Mogadishu.

Does the harm apply to all areas of the receiving country?

47. According to the Bertelsmann Stiftung 2018 Country report:

Somalia has been a country without a functional state since 1991, when the state's weak monopoly on the use of force collapsed. The federal government of Somalia (FGS) has not been able to re-establish a monopoly on the use of force throughout any part of the country. It largely depends on the African Union Mission to Somalia (AMISOM), which in 2015 totaled 22,000 troops. AMISOM, in cooperation with the Somali National Army (SNA), and regional and local clan militias, was able to capture most towns and cities in southern Somalia from al-Shabaab between 2012 and 2014. However, the FGS and SNA have not been able to hold most newly recovered areas effectively, and al-Shabaab has retaken parts of southern Somalia over the past year. The FGS continues to rely mainly on AMISOM forces in the provision of security of key installations. It also found itself under continued attack from al-Shabaab, which still holds rural areas in south and central Somalia. Al-Shabaab launches daily small-scale attacks on AMISOM, the SNA and FGS targets, and executes major terrorist attacks every few weeks. Al-Shabaab continues to pose a significant threat to security and political stability in the country. Somalia has also seen a rise of violent conflicts linked to the creation of regional member states in its federalization process.²⁸

²⁷ Danish Immigration Service, "South and Central Somalia: Security Situation, al-Shabaab Presence and Target Groups", 1 March 2017, CISED50AD5757

²⁸ Bertelsmann Stiftung, "BTI 2018 - Somalia Country Report", 23 March 2018, p.7, CIS7B83941557

48. Somaliland has been characterised by relative stability and rudimentary but functioning governmental institutions and a hybrid democratic political system. It does not regard itself as a clan-based state and clan based organisation of political parties is constitutionally prohibited.²⁹ However, despite Somaliland being more homogeneous than South-Central Somalia, the clan still plays a central role in politics, business and everyday life and clan affiliation dominates politics and decision-making. The Isaaq clan dominates in Somaliland.³⁰ Members of the Sheikhal clan reside in Somaliland but they do not have specific links or enjoy particular protection by the Isaaq clan.³¹
49. According to the Bertelsmann Stiftung 2018 Country report, during the review period (2015-2017), both the Somali National Army (SNA) and allied local forces and al-Shabaab were regularly reported to be involved in human rights violations against members of minority groups. Somaliland in the northwest of Somalia has remained comparatively peaceful during the review period (2015-2017). In the centre of Somaliland, some basic rule of law has been established, and the police force, the judiciary and other government institutions are working reasonably well. However, in the more remote rural areas, local authorities, mostly elders, provide for legal order. In such contexts, the rights of women, children and local minority groups are frequently insufficiently guarded.³²
50. Based on the above country information I consider there is only a remote chance the persecution the applicant fears for reasons of his race (membership of a minority clan) together with his membership of a particular social group, that is, failed asylum seekers who have lived in the West for a significant period, applies to urban centres in Somaliland. Therefore I find the real chance of persecution does not apply to all areas of Somalia.

Refugee: conclusion

51. The applicant does not meet the requirements of the definition of refugee in s.5H(1).

Complementary protection assessment

52. A criterion for a protection visa is that the applicant is a non-citizen in Australia (other than a person who is a refugee) in respect of whom the Minister (or Reviewer) is satisfied Australia has protection obligations because there are substantial grounds for believing that, as a necessary and foreseeable consequence of the person being removed from Australia to a receiving country, there is a real risk that the person will suffer significant harm.

Real risk of significant harm

53. Under s.36(2A), a person will suffer 'significant harm' if:
- the person will be arbitrarily deprived of his or her life
 - the death penalty will be carried out on the person

²⁹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Clans in Somalia", p.5, 1 December 2009, CIS18144

³⁰ European Asylum Support Office (EASO), "EASO Country of Origin Information Report – Somalia – Security Situation", 21 December 2017, p.113, CISEDB50AD8017

³¹ Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), "Clans in Somalia", p.5, 1 December 2009, CIS18144

³² Bertelsmann Stiftung, "BTI 2018 - Somalia Country Report", 23 March 2018, pp.9 & 21, CIS7B83941557

- the person will be subjected to torture
- the person will be subjected to cruel or inhuman treatment or punishment, or
- the person will be subjected to degrading treatment or punishment.

54. As discussed above I consider there is a real risk the applicant will suffer significant harm, including a real risk he will be arbitrarily deprived of his life if he returns to Mogadishu now or in the reasonably foreseeable future.

Qualifications to the real risk threshold

55. Section 36(2B) provides that there is taken not to be a real risk that a person will suffer significant harm in a country if:
- it would be reasonable for the person to relocate to an area of the country where there would not be a real risk that the person will suffer significant harm
 - the person could obtain, from an authority of the country, protection such that there would not be a real risk that the person will suffer significant harm, or
 - the real risk is one faced by the population of the country generally and is not faced by the person personally.

Relocation

56. I have considered whether it would be reasonable for the applicant to relocate to an area of Somalia where there would not be a real risk that he will suffer significant harm, for example other urban centres in Somaliland where his remaining family members, that is, his half-brother and half-sister, are currently located.
57. Somaliland authorities are reported to have ‘cooperated with UNHCR and the International Organization for Migration to assist IDPs [Internally Displaced Persons], refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern’.³³
58. An October 2017 article in International Migration indicates that Somaliland has a large diaspora which, in contrast to many other conflict-generated diasporas, has the opportunity to come back in large numbers as both the security situation in the local government allow them to do so.³⁴ However, under the Somaliland Citizenship Law of 2002, patrilineal descent from clans or people living in Somaliland was reaffirmed as the basis of citizenship. The March 2018 Bertelsmann Stiftung country report on Somalia also indicates that ‘the new Somali constitution refers to *jus sanguinis* as a basis of citizenship. But given Somaliland’s claim for independence, the notion of a common Somali state identity is contested in the northwest (territory of Somaliland), especially in the central and western parts of Somaliland, Somali state identity has been gradually replaced by a Somaliland state identity’.³⁵
59. Although dated, the 2010 UNHCR eligibility guidelines regarding asylum-seekers from Somalia indicate that ‘neither Puntland nor Somaliland accept an entitlement to return to or reside in their territory except for persons able to establish that they originate from those territories. Such origin is primarily established through membership of a clan considered to originate

³³ Ibid

³⁴ Rock, A.I.R., “Perceptions of Returnees in Somaliland Politics: The Grounds for Legitimacy” in International Migration, Vol.55, Issue 5, October 2017, pp.205-216 at p.206, CISED850AD8582

³⁵ Bertelsmann Stiftung, “BTI 2018 - Somalia Country Report”, 23 March 2018, p.11, CIS7B83941557

from Puntland or Somaliland'. In Somaliland, Somalis not considered to originate from that area were 'considered as "foreigners" under the Constitution of the self-declared independent State', Somaliland (and Puntland) reportedly do not accept an entitlement to return to all reside in their territory except for persons able to establish that they originate from those territories, which is primarily established through membership of a clan considered to originate from Somaliland.³⁶

60. A June 2017 UK Home Office country policy and information note on majority clans and minority groups in south and central Somalia also comments that '[i]nternal relocation to Somaliland and Puntland from other areas of Somalia would only be viable for former residents and/or those who are members of locally-based minority groups'.³⁷ Whilst there are members of the Sheikhal clan residing in Somaliland, the clan originates in south-central Somalia. As I am satisfied the applicant is not a former resident of Somaliland and his clan does not originate there I consider that relocation to Somaliland is not practically available to the applicant.
61. I have accepted that the applicant is a young male of Somali ethnicity and of a minority clan (the Sheikhal clan) who will return to Somalia as a failed asylum seeker from a Western country where he has been living for the past five years. I also accept the applicant came from Mogadishu and is not entitled to 'return' to Somaliland and therefore cannot reasonably relocate there.
62. DFAT reports that while there are no legal impediments to Somali citizens relocating in south-central Somalia, there are over 1.1 million people currently displaced within Somalia and an individual's internal relocation options can be severely limited by a lack of financial resources or the absence of clan connections. According to UNHCR's *Position on Returns to South and Central Somalia* the support of an individual's clan is vital for safety and access to basic necessities, such as food and accommodation. Whilst many IDPs relocate to urban centres for livelihood opportunities this does not always result in better opportunities given the large number of IDPs in urban centres, particularly Mogadishu itself.³⁸
63. Furthermore, DFAT reports the security conditions in south-central Somalia hinder freedom of movement and moving between areas often requires traversing al-Shabaab controlled areas and roads.³⁹ The US Department of State reported that checkpoints operated by government forces, allied groups, armed militias, clan factions, and al-Shabaab inhibited movement and exposed citizens to looting, extortion, harassment, and violence.⁴⁰
64. As discussed above, al-Shabaab conducts regular attacks on Mogadishu and other urban centres, retaining control over substantial tracts of territory in the south of the country and supply routes between towns and conducting its deadliest attack in October 2017 in Mogadishu, when bombs in two lorries killed an estimated 512 people, mostly civilians. After a relative lull at the end of 2017, since January 2018 there have been further major Al-Shabaab attacks in Mogadishu, including a car bomb which killed at least 14 people near a

³⁶ UN High Commissioner for Refugees, "UNHCR Eligibility Guidelines for Assessing International Protection Needs of Asylum-Seekers from Somalia", HCR/EG/SOM/10/1, 5 May 2010, p.9, CIS29798

³⁷ UK Home Office, "Country Policy and Information Note – Somalia: Majority clans and minority groups in south and central Somalia", 1 June 2017, OG6E7028825

³⁸ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Somalia", 13 June 2017, p.23, CISED50AD4497

³⁹ Ibid

⁴⁰ US Department of State, "Country Report on Human Rights Practices 2017 – Somalia", 20 April 2018, p.23, OGD95BE927354

hotel on 22 March 2018.⁴¹ Also as discussed above, I am satisfied the applicant is not entitled to relocate to Somaliland and therefore it is not reasonable for him to do so despite the presence of his half-sister and half-brother.

65. Somalia is currently experiencing a severe drought, with the UN reporting that about 5 million Somalis (about half the population) did not have enough to eat. The agricultural sector has virtually collapsed and food prices have risen markedly. Somalia continues to face a massive internal displacement crisis, with 2.1 million IDPs as of January 2018. The lack of clean water has triggered a cholera outbreak, killing at least 1,155 people in the first half of 2017. The humanitarian situation is exacerbated by ongoing insecurity and conflict, with targeted attacks by al-Shabaab restricting access to areas requiring humanitarian operations.⁴²
66. In light of the above information, I am satisfied that it is not reasonable for the applicant to relocate to an area of Somalia (Somaliland) where there would not be a real risk he will suffer significant harm.

State protection

67. DFAT reports that the security situation in Somalia is highly volatile and the Government's capacity to provide basic services or respond to humanitarian or conflict-related disasters is low.⁴³
68. DFAT assesses that, in practice, the formal justice and security institutions in Somalia do not have the ability to provide effective protection for the majority of the community and, in some cases, state actors such as the Somali National Army (SNA) and the police are the perpetrators of human rights abuses. Civilian authorities do not have sufficient control of the security forces and impunity and corruption is widespread in Somalia, with very limited access to avenues of redress.⁴⁴
69. The applicant is a member of a minority clan and has few remaining family members in Somalia. I accept he has no clan or family connections that would enable him to put adequate personal security measures in place in Mogadishu. He will also be identified as a failed asylum seeker who has sought protection from, and lived in, a Western country.
70. Given the relevant country information and the applicant's particular combination of personal circumstances, I find that he could not obtain from an authority of Somalia, protection in Mogadishu such that there would not be a real risk that the applicant will suffer significant harm.

Is the risk one faced by the population of the country generally?

71. Arguably the risk of arbitrary loss of life applies to the population generally given the current security situation in Somalia and the fact that all violent actors in Somalia, including the SNA, AMISOM, federal and local militias and al-Shabaab were involved in serious human rights

⁴¹ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Somalia", 13 June 2017, p.8, CISED50AD4497

⁴² European Asylum Support Office (EASO), "EASO Country of Origin Information Report – Somalia – Security Situation", 21 December 2017, pp.52-54, CISED50AD8017

⁴³ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Somalia", 13 June 2017, p.8, CISED50AD4497

⁴⁴ Department of Foreign Affairs and Trade (DFAT), "DFAT Country Information Report Somalia", 13 June 2017, p.21, CISED50AD4497

violations and violations of international humanitarian law, including indiscriminate attacks on civilians⁴⁵.

72. Nevertheless, I consider that the applicant's particular personal profile as a person identified as a member of a minority clan, without any particular connections to secure his personal safety, very few family members located in Somalia and none in Mogadishu, and his identity as a person who has lived in a Western country for five years and who is a failed asylum seeker means that he personally faces a real risk of significant harm if he returns to Somalia now or in the reasonably foreseeable future.

Complementary protection: conclusion

73. There are substantial grounds for believing that, as a necessary and foreseeable consequence of being returned from Australia to a receiving country, there is a real risk that the applicant will suffer significant harm. The applicant therefore meets s.36(2)(aa).

Decision

The IAA remits the decision for reconsideration with the direction that:

- there are substantial grounds for believing that, as a necessary and foreseeable consequence of the referred applicant being removed from Australia to a receiving country, there is a real risk that the referred applicant will suffer significant harm.

⁴⁵ Bertelsmann Stiftung, "BTI 2018 - Somalia Country Report", 23 March 2018, p.4, CIS7B83941557

Applicable law

Migration Act 1958

5 (1) Interpretation

In this Act, unless the contrary intention appears:

...

bogus document, in relation to a person, means a document that the Minister reasonably suspects is a document that:

- (a) purports to have been, but was not, issued in respect of the person; or
- (b) is counterfeit or has been altered by a person who does not have authority to do so; or
- (c) was obtained because of a false or misleading statement, whether or not made knowingly

...

cruel or inhuman treatment or punishment means an act or omission by which:

- (a) severe pain or suffering, whether physical or mental, is intentionally inflicted on a person; or
- (b) pain or suffering, whether physical or mental, is intentionally inflicted on a person so long as, in all the circumstances, the act or omission could reasonably be regarded as cruel or inhuman in nature;

but does not include an act or omission:

- (c) that is not inconsistent with Article 7 of the Covenant; or
- (d) arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

degrading treatment or punishment means an act or omission that causes, and is intended to cause, extreme humiliation which is unreasonable, but does not include an act or omission:

- (a) that is not inconsistent with Article 7 of the Covenant; or
- (b) that causes, and is intended to cause, extreme humiliation arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

receiving country, in relation to a non-citizen, means:

- (a) a country of which the non-citizen is a national, to be determined solely by reference to the law of the relevant country; or
- (b) if the non-citizen has no country of nationality—a country of his or her former habitual residence, regardless of whether it would be possible to return the non-citizen to the country.

...

torture means an act or omission by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person:

- (a) for the purpose of obtaining from the person or from a third person information or a confession; or
- (b) for the purpose of punishing the person for an act which that person or a third person has committed or is suspected of having committed; or
- (c) for the purpose of intimidating or coercing the person or a third person; or
- (d) for a purpose related to a purpose mentioned in paragraph (a), (b) or (c); or
- (e) for any reason based on discrimination that is inconsistent with the Articles of the Covenant;

but does not include an act or omission arising only from, inherent in or incidental to, lawful sanctions that are not inconsistent with the Articles of the Covenant.

...

5H Meaning of refugee

(1) For the purposes of the application of this Act and the regulations to a particular person in Australia, the person is a refugee if the person:

- (a) in a case where the person has a nationality—is outside the country of his or her nationality and, owing to a well-founded fear of persecution, is unable or unwilling to avail himself or herself of the protection of that country; or
- (b) in a case where the person does not have a nationality—is outside the country of his or her former habitual residence and owing to a well-founded fear of persecution, is unable or unwilling to return to it.

Note: For the meaning of ***well-founded fear of persecution***, see section 5J.

...

5J Meaning of well-founded fear of persecution

- (1) For the purposes of the application of this Act and the regulations to a particular person, the person has a well-founded fear of persecution if:
 - (a) the person fears being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; and
 - (b) there is a real chance that, if the person returned to the receiving country, the person would be persecuted for one or more of the reasons mentioned in paragraph (a); and
 - (c) the real chance of persecution relates to all areas of a receiving country.

Note: For membership of a particular social group, see sections 5K and 5L.
- (2) A person does not have a well-founded fear of persecution if effective protection measures are available to the person in a receiving country.

Note: For effective protection measures, see section 5LA.
- (3) A person does not have a well-founded fear of persecution if the person could take reasonable steps to modify his or her behaviour so as to avoid a real chance of persecution in a receiving country, other than a modification that would:
 - (a) conflict with a characteristic that is fundamental to the person's identity or conscience; or
 - (b) conceal an innate or immutable characteristic of the person; or
 - (c) without limiting paragraph (a) or (b), require the person to do any of the following:
 - (i) alter his or her religious beliefs, including by renouncing a religious conversion, or conceal his or her true religious beliefs, or cease to be involved in the practice of his or her faith;
 - (ii) conceal his or her true race, ethnicity, nationality or country of origin;
 - (iii) alter his or her political beliefs or conceal his or her true political beliefs;
 - (iv) conceal a physical, psychological or intellectual disability;
 - (v) enter into or remain in a marriage to which that person is opposed, or accept the forced marriage of a child;
 - (vi) alter his or her sexual orientation or gender identity or conceal his or her true sexual orientation, gender identity or intersex status.
- (4) If a person fears persecution for one or more of the reasons mentioned in paragraph (1)(a):
 - (a) that reason must be the essential and significant reason, or those reasons must be the essential and significant reasons, for the persecution; and
 - (b) the persecution must involve serious harm to the person; and
 - (c) the persecution must involve systematic and discriminatory conduct.
- (5) Without limiting what is serious harm for the purposes of paragraph (4)(b), the following are instances of **serious harm** for the purposes of that paragraph:
 - (a) a threat to the person's life or liberty;
 - (b) significant physical harassment of the person;
 - (c) significant physical ill-treatment of the person;
 - (d) significant economic hardship that threatens the person's capacity to subsist;
 - (e) denial of access to basic services, where the denial threatens the person's capacity to subsist;
 - (f) denial of capacity to earn a livelihood of any kind, where the denial threatens the person's capacity to subsist.
- (6) In determining whether the person has a **well-founded fear of persecution** for one or more of the reasons mentioned in paragraph (1)(a), any conduct engaged in by the person in Australia is to be disregarded unless the person satisfies the Minister that the person engaged in the conduct otherwise than for the purpose of strengthening the person's claim to be a refugee.

5K Membership of a particular social group consisting of family

For the purposes of the application of this Act and the regulations to a particular person (the **first person**), in determining whether the first person has a well-founded fear of persecution for the reason of membership of a particular social group that consists of the first person's family:

- (a) disregard any fear of persecution, or any persecution, that any other member or former member (whether alive or dead) of the family has ever experienced, where the reason for the fear or persecution is not a reason mentioned in paragraph 5J(1)(a); and
- (b) disregard any fear of persecution, or any persecution, that:
 - (i) the first person has ever experienced; or

- (ii) any other member or former member (whether alive or dead) of the family has ever experienced;

where it is reasonable to conclude that the fear or persecution would not exist if it were assumed that the fear or persecution mentioned in paragraph (a) had never existed.

Note: Section 5G may be relevant for determining family relationships for the purposes of this section.

5L Membership of a particular social group other than family

For the purposes of the application of this Act and the regulations to a particular person, the person is to be treated as a member of a particular social group (other than the person's family) if:

- (a) a characteristic is shared by each member of the group; and
- (b) the person shares, or is perceived as sharing, the characteristic; and
- (c) any of the following apply:
 - (i) the characteristic is an innate or immutable characteristic;
 - (ii) the characteristic is so fundamental to a member's identity or conscience, the member should not be forced to renounce it;
 - (iii) the characteristic distinguishes the group from society; and
- (d) the characteristic is not a fear of persecution.

5LA Effective protection measures

- (1) For the purposes of the application of this Act and the regulations to a particular person, effective protection measures are available to the person in a receiving country if:
 - (a) protection against persecution could be provided to the person by:
 - (i) the relevant State; or
 - (ii) a party or organisation, including an international organisation, that controls the relevant State or a substantial part of the territory of the relevant State; and
 - (b) the relevant State, party or organisation mentioned in paragraph (a) is willing and able to offer such protection.
- (2) A relevant State, party or organisation mentioned in paragraph (1)(a) is taken to be able to offer protection against persecution to a person if:
 - (a) the person can access the protection; and
 - (b) the protection is durable; and
 - (c) in the case of protection provided by the relevant State—the protection consists of an appropriate criminal law, a reasonably effective police force and an impartial judicial system.

...

36 Protection visas – criteria provided for by this Act

...

- (2) A criterion for a protection visa is that the applicant for the visa is:
 - (a) a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the person is a refugee; or
 - (aa) a non-citizen in Australia (other than a non-citizen mentioned in paragraph (a)) in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen being removed from Australia to a receiving country, there is a real risk that the non-citizen will suffer significant harm; or
 - (b) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (a); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant; or
 - (c) a non-citizen in Australia who is a member of the same family unit as a non-citizen who:
 - (i) is mentioned in paragraph (aa); and
 - (ii) holds a protection visa of the same class as that applied for by the applicant.
- (2A) A non-citizen will suffer **significant harm** if:
 - (a) the non-citizen will be arbitrarily deprived of his or her life; or
 - (b) the death penalty will be carried out on the non-citizen; or
 - (c) the non-citizen will be subjected to torture; or
 - (d) the non-citizen will be subjected to cruel or inhuman treatment or punishment; or
 - (e) the non-citizen will be subjected to degrading treatment or punishment.

- (2B) However, there is taken not to be a real risk that a non-citizen will suffer significant harm in a country if the Minister is satisfied that:
- (a) it would be reasonable for the non-citizen to relocate to an area of the country where there would not be a real risk that the non-citizen will suffer significant harm; or
 - (b) the non-citizen could obtain, from an authority of the country, protection such that there would not be a real risk that the non-citizen will suffer significant harm; or
 - (c) the real risk is one faced by the population of the country generally and is not faced by the non-citizen personally.

...

Protection obligations

- (3) Australia is taken not to have protection obligations in respect of a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.
- (4) However, subsection (3) does not apply in relation to a country in respect of which:
- (a) the non-citizen has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the country.
- (5) Subsection (3) does not apply in relation to a country if the non-citizen has a well-founded fear that:
- (a) the country will return the non-citizen to another country; and
 - (b) the non-citizen will be persecuted in that other country for reasons of race, religion, nationality, membership of a particular social group or political opinion.
- (5A) Also, subsection (3) does not apply in relation to a country if:
- (a) the non-citizen has a well-founded fear that the country will return the non-citizen to another country; and
 - (b) the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the non-citizen availing himself or herself of a right mentioned in subsection (3), there would be a real risk that the non-citizen will suffer significant harm in relation to the other country.

Determining nationality

- (6) For the purposes of subsection (3), the question of whether a non-citizen is a national of a particular country must be determined solely by reference to the law of that country.
- (7) Subsection (6) does not, by implication, affect the interpretation of any other provision of this Act.