

**U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE IMMIGRATION JUDGE
CHICAGO, ILLINOIS**

In the Matter of:)	
)	Honorable Judge G. Katsivalis
Respondent)	
A 00-000-000)	
)	
In Removal Proceedings)	

AFFIDAVIT OF ASHA A. SAMAD, PH.D

I, Dr. Asha A. Samad, citizen of the United States of America, declare, under penalty of perjury under the laws of the United States of America, that the following is true and correct:

I. PREPARER'S BACKGROUND

1. I hold a Ph.D. in Social Anthropology an East African Societies from the University of Dar es Salaam and am Professor of Anthropology, African and Women's Studies at the City University of New York. I also serve as Director of the Human Rights Center at the City University of New York and conduct seminars on that subject.
2. I have twice been elected as Executive Administrator of Programs of the Somali Association for Relief and Development (SAFRAD), a not-for-profit organization, which resettles displaced Somalis in the United States and Canada. On behalf of SAFRAD, I travel to Somalia or surrounding areas twice a year to spend about sixteen weeks participating in human rights work. My last visit to the Horn of Africa region was in July and August of 2004. Due to security concerns, I was unable to travel inside Somalia.
3. While in the United States, I am continually updated on the situation in Somalia and the plight of Somali refugees through reading newswire reports (Agence France-Presse, BBC, Reuters) and interviewing international relief workers, humanitarian workers, and Somali professional and grassroots leaders. My office also regularly accesses United Nations and Internet reports on these subjects.

II. THE CURRENT SITUATION IN SOMALIA

4. Somalia today is a disintegrated, failed state, lacking any government, president or prime minister, and any organized governmental and/or social institutions. One area of the country, the Isaaq clan-controlled, north-central region, has been loosely organized as "Somaliland." However, Somaliland has no international recognition as a nation-state. The great majority of Somalia lacks governance, elected leaders, security, and social institutions. Factions comprised of majority clan members assert power through the use of their militia forces and dominate each region. Dissent is absolutely not permitted and those not complying blindly with factional leaders' directions are in grave danger. The Majerteen-Darood clan controls the northeastern Somali regional state of Puntland. Other areas of the country have neither regional nor national governments.

5. Appointed in 2000, the Provisional National Government (PNG) was charged with developing national unity and institutions, but it never controlled more than half of the former Somali capital, Mogadishu. It established neither security nor any other societal institutions. Chaos, instability and great insecurity still prevail in Somalia, particularly for minority and non-ethnic Somali clans, such as Respondent's ethnic group, the Madhibaan-Midgaan clan.
6. In the fall of 2002 a peace conference was held in Eldoret, Kenya. It did not allow the swearing of the President of the Provisional National Government appointed in 2000 at the Arta, Djibouti conference. Once gain, neither were major conflicts resolved, nor minority groups fairly represented.
7. In October 2004 new Somali 'government' leaders (president, prime minister, vice president and parliament members) were elected in a soccer stadium in Nairobi, Kenya. Their residence and places remain today, in April 2005, in Nairobi, Kenya. This is due to the ongoing complex conflict and civil war situation in Somalia. That reality makes it unsafe for the new officials to return and set up a government in Somalia even with their official security protection guards. Neither governmental civil, nor security institutions have been established in Somalia. Indeed, the government exists only on paper and with its elected leadership in neighboring Kenya.
8. Even the meetings held at the Kenyatta Conference Center in Nairobi, Kenya have been the scene of bitter, brutal, physical fights, including a massive throwing of chairs and the knocking down of many MPs (members of parliament). This was shown on CNN and the BBC last month. These recent fights have been over whether foreign peacekeeping troops, which the African Union has promised to send to Somalia to restore order and disarm the many heavily armed militia groups should be from the neighboring states of Ethiopia and Kenya or from other more distance African states which do not have border disputes with Somalia. Thus, to date Somalia lacks an actual government, civil or judicial or security institutions.
9. All Somalis depend exclusively upon their clans for economic, social and physical support. Each clan represents and protects its members against other clans or outsiders. Powerful clans demand total loyalty. Persons not belonging to the clan and subclan of regional militias and who do not, unreservedly and blindly, follow powerful clan directives cannot live in their clan regions. Dissenters of any type, minority clan members, and persons of mixed clan descent are in especially serious jeopardy. They face constant threats, insecurity, physical injury and even death. Such persons often try to hide their dissenting views or non (local) majority clan membership. Sometimes friends and relatives are vulnerable to severe and swift discipline if they are detected offering shelter. Thus, the protection offered to dissenters or minority clan members is temporary and often ineffective.
10. It is nearly impossible to hide oneself in the small, tropical society of Somalia for more than a very brief time. It is also very difficult to move to other regions within Somalia because outsiders are regarded with hostility and risk severe retaliation. Therefore, dissenters and minority clan members must flee the country to safeguard their lives. Some minority clan members also face jeopardy due to their close relationship (by blood, marriage, or association) with political dissenters/opposition leaders.

11. My professional observations and research, as well as research by other experts, experienced Somalis, and other sources indicate that:
- a. Roving militia bands continue to terrorize most of southern Somalia. Their actions include taking over property, burning homes, expropriating crops, animals, homes and shops, sexually threatening, raping, beating and other torture, forcing people to labor under inhuman conditions in prison work camps; summary amputations and executions;
 - b. There is still neither a central government, nor state institutions (civilian or security) throughout Somalia;
 - c. Only the northern breakaway state of Somaliland has the beginning of functioning institutions. Somaliland is controlled by the Isaaq clan. It does not permit the entry of clans not native to that region.
 - d. Clan hostility and aggression continue. Most people cannot live in safety outside of the areas controlled by their own clan. Members of small minority and caste groups are in extreme jeopardy throughout Somalia.

III. GENERAL CONDITIONS FACED IN AREAS OF FIRST REFUGE (DJIBOUTI, ETHIOPIA, KENYA, AND YEMEN)

12. Following the outbreak of the complex civil war, refugees fled to the surrounding countries of Kenya, Ethiopia, and Yemen. However, these countries are poor and have been swamped with refugees from Somalia and other countries. Their leaders have made public statements that they cannot accept additional Somali refugees and that they cannot afford to maintain even the current refugee populations. Vast numbers of Somali refugees have been rounded up and deported following such statements. That action is in apparent disregard of the documented dangers faced by minority and outcaste refugees in Somalia.
13. Most refugees are terrified of being returned to Somalia. This is because many have faced past persecution and they have real fear of personal harm if they were to return to Somalia. Those who have attempted to return to their former homes have been threatened, tortured, and even murdered. Those who have survived have reported that they were threatened with bodily harm and death and were told to leave within one day and to tell others that they “better not return” and that “this place no longer belongs to you.” The northern Somaliland region is safe only for those people belonging to that area’s majority Isaaq clan. There is absolutely no possibility of refugees receiving asylum in Djibouti, Yemen, Kenya, or Ethiopia.
14. Within the refugee camps and areas, Somalis from small or outcaste clans are constantly harassed, beaten, and sometimes injured by members of larger clans backed up by gangs. They cannot protect their meager belongings because they lack the protection of other clan members or militia. The United Nations and the Italian, Scandinavian, Canadian, Dutch, and United States governments have all recognized the ongoing, real physical jeopardy faced by such groups. Currently, at the request of Kenya and Ethiopia, the United Nations is encouraging the return home of Somali refugee seekers. For members of large, powerful clans, this is possible in some areas, such as Somaliland and Puntland.

However, for minority and outcaste clan members this would amount to illegal *refoulement* – return to life-threatening persecution.

15. Prison conditions in Kenya are notoriously inhumane. Recent reports of Amnesty International, Human Rights Watch, The Nation, and East Africa newspapers all attest to the fact that persons are detained without charges and held indefinitely in extremely poor and unhealthy conditions. Moreover, bribes are solicited for release and police beatings and torture are common. Ethnic Somalis and other non-Bantu/Nilotic Kenyans are particularly vulnerable to arrest and detention without cause or charge. Often when families cannot provide bribes, the detained are summarily deported to Somalia.
16. Less recognized but equally vulnerable, are persons who have refused to fight or materially support the militias or political programs and campaigns or their own majority clan families. Anyone who opposes the looting, plundering, torture or murder of others is deemed a traitor and is outcaste. They face severe retaliation, hatred, and murder from their own clan once declared a “traitor.” Their own immediate family is often forced to disown and denounce them or face the same label (of clan traitor) and treatment. Such persons are truly in constant, grave danger both in Somalia and in the adjacent areas.

IV. SOMALI TIME, CALENDAR SYSTEM, AND OTHER CULTURAL ISSUES

17. Somali society generally does not record time or dates in the same manner as Western American society. For example, birth dates are not important in traditional Somali society or most other Islamic and African societies. Events are remembered relative to important climatic periods (floods or droughts), political upheavals or family events (the birth or death of a family member).
18. Additionally, the Somali traditional calendar is the Islamic calendar. It has completely different method of marking the beginning and end of each day, week, month and year. For example, each month is lunar with 28 days. The week begins on Friday, the Islamic weekly holy day and each day begins with sunrise. Thus, Somali refugees often have difficulty identifying precise dates with accuracy. Both times of the day and dates are prone to confusion.

V. PARTICULAR JEOPARDY FACED BY MADHIBAN-MIDGAN CLAN MEMBERS

19. The Madhiban/Madeban minority is one of several Somali outcaste clans collectively designated as Midgan/Mitgaan. As in all Somali clans, membership comes from one's father's clan in this strictly patrilineal system. In traditional and current Somali culture members of 'noble' dominant clans are forbidden to associate closely much less to marry members of minority or low/outcaste clans, such as the Madhiban-Midgan clan. Those who break this ancient taboo are outcasted themselves and thrown out of their “noble” dominant clan.

20. "Midgan" is the common general term used for Somali outcaste groups. It is an impolite, derogatory word. Madhiban, the name of one of the larger outcaste groups, is not as derogatory a term as the word "Midgan."
21. Somali society is divided into patrilineal kinship-based clans and subclans. All Somalis can trace their ancestry to a clan or subclan. The three main large clans (Darood, Hawiye and Isaaq) control large areas of lands, resources, and exercise great political powers. Certain smaller clans have respectable status but fewer resources and less political leverage due to their smaller populations. Often they must affiliate with and relate to nearby clans as clients and for protection in case of conflict.
22. Minority clans and the Madhiban-Midgan clan, to which Mr. Abdifatah Nur Mahamud belongs, traditionally face discrimination in Somalia as outcaste groups. Traditionally, no other Somali clan is permitted to marry, eat with, or closely associate with Madhiban-Midgans and other small outcaste groups. These outcaste groups control no land and have no political clout or power. They are small, powerless and always at the mercy of the larger, more powerful clans. They are considered ritually polluted in the eyes of other Somalis. They are extremely and constantly subject to abuse, threats, and beatings.
23. In 1991, Hawiye forces loyal to General Mohamed Farah Aideed ousted Mohammed Siad Barre in a coup, which led to wide-scale civil war. At first the war was characterized as fighting between clans, but in later years subclans within the same clan began to fight one another. After the Hawiye toppled Barre, they attacked his government, which was mostly Darood. They also retaliated against Barre supporters, or anyone they believed to be a Barre supporter. They Hawiye targeted the Madhiban-Midgan, because they believed that the Madhiban-Midgan clanspeople were supporters of Barre, and because of the longstanding hatred of that despised group. Darood clan family militia also attacked many minority clans and outcaste clans.
24. None of the powerful clans came to the protection of the Madhiban-Midgan, so large numbers of them perished. The Madhiban-Midgan were routinely raped, expelled from their homes, kidnapped, tortured and killed. Large numbers of the Madhiban-Midgan disappeared and there is evidence of mass graves, suggesting they were killed extrajudicially. The Madhiban-Midgan were not the only group persecuted in retaliation against Barre, but they stand out for their powerlessness and inability to fight back.
25. A person belonging to the Madhiban-Midgan clan can be in serious physical danger if found in any part of Somalia where his subclan is not a client of the local large clan family. Geographically, the country has become extremely segregated by clan and subclan. The Madhiban-Midgan do not control any territory and are therefore vulnerable in any area of Somalia. In addition, they have no recourse against violence because they are politically, socially and militarily powerless.
26. The last Somali government under Siad Barre had appointed several Madhiban-Midgan clan members to visible defense positions. Thus when General Barre's government fell in 1991, the Hawiye clan brought about General Barre's defeat and targeted all Madhiban-Midgan clan members for retaliation. This led to even greater and more murderous attacks on women raped, men tortured and often killed. They have to flee and live in hiding to survive this brutality. No other clan will protect Madhiban-Midgan either for fear of being targeted and attacked themselves or because they too feel that the Madhiban-Midgan merit no protection as an outcaste or 'polluted' group. As other clans

avoid marrying the Madhiban-Midgan, they have no kinship ties with other groups to offer them shelter or protection.

VI. PARTICULAR JEOPARDY ALREADY FACED BY RESPONDENT IN HIS NATIVE SOMALIA

27. The Respondent, indicates in his sworn affidavit that he and his family faced the following severe abuses of their human rights in their homeland, Somalia:
- a. At the beginning of the war in January 1991, local armed USC (United Somali Congress) Hawiye clan members came into his family's Mogadishu home. They targeted his father and his family because his father worked as a civil servant with the government of ousted President Barre and because the family was known to be from the Madhiban clan. That clan had been protected by President Barre and was presumed to have supported him. He was the hated enemy of the Hawiye clan that had taken over Mogadishu. The Hawiye militia members beat this applicant with a bayonet on his left arm and shoulder, leaving what became permanent scars. After Respondent's family fled south to Kismayo and his father went on to Nairobi, Kenya.
 - b. Later in 1991, the war and Hawiye troops reached Kismayo. Respondent's family had to flee that city for safety. Several times they had to flee both Darood and Hawiye armed troops for their lives.
 - c. In 1999 the Darood clan attacked the family in Kismayo. They beat him, but he managed to flee. They also hit his mother and raped his sister Ayan. This incident exemplified why Respondent and his family could not live in safety anywhere in Somalia.
 - d. In June of 2004 Respondent's family attempted to return to their Mogadishu home after his father sent them a message from Nairobi to his family in Kismayo to meet him there. Part of their home in Mogadishu had been destroyed by the fighting. About two weeks after they had reclaimed their home, Abgaal-Hawiye militiamen attacked them there at night. They entered the house shooting bullets. The Abgaal-Hawiye attackers shouted slurs against Respondent's outcaste clan, saying things such as "you people are bastards," calling them the derogatory "midgan" term for outcaste Somalia clans, "you people came from bad stock. You people cannot live here, you have to leave or we will kill you."
 - e. The Abgaal-Hawiye attackers shot and killed his father and sister and forced the remaining family members to again flee their Mogadishu house for their lives.
28. A neighbor of Respondent's family arranged to send his brothers and sister to a refugee camp in Kenya. Respondent himself remained with his mother in hiding in the neighbor's home until October 2004. There, with money his mother had collected, he was sent to Nairobi where a cousin arranged to help him escape to the United States.
29. Respondent's affidavit indicates that he and his family suffered extreme targeting, armed attacks, and violations of their homes and safety placing their lives in extreme danger in Somalia. They were abused and attacked because of their status and membership in the

low outcaste Madhiban clan and because they were purported to be allies and supporters of the former President Barre and his government, the hated and deposed rival and enemy of the dominant Hawiye clan.

30. The low/outcaste Madhiban-Midgan clan has no way of protecting their members because they lack arms or a militia and have no land to which its members can flee when they are attacked in majority clan areas. They also have no supportive clan allies.
31. Therefore, the Madhiban-Midgan outcaste clan is completely vulnerable to attack from any powerful, noble, or dominant clan that dominates the various regions in Somalia. Even in refugee camps in surrounding nations, Madhiban members are often abused, raped, and otherwise attacked violently and viciously by dominant noble Somali clans because of their outcaste status.
32. These situations reported in Respondent's case are consistent with the documented persecution of minority Madhiban-Midgan clan members reported by international human rights organizations, governments, including the U.S. State Department, British Home Office, Canadian Foreign Affairs Office, United Nations agencies (such as the UN High Commission for Refugees and United Nations Children's Fund), the International Rescue Committee, international news agencies, and scholars. All unanimously agree that members of Somalia's low and outcaste Madhiban clan indeed face continuous threats, attacks, rape and other forms of torture, forced slave labor, and murder from militia of the aggressive, dominant, "noble" Somali majority Darood and Hawiye clans and other majority clans who control small, regional areas throughout Somalia.
33. The account of Respondent's flight from Somalia to Kenya to the United States with and the fact that he has no personal identification of his Somali nationality or clan membership is entirely consistent with the situation in Somalia and the plight of minority outcaste refugees who seek protection outside Somalia.
34. Confirmation of Respondent's membership in the Madhiban low/outcaste Somali clan was affirmed by SIMA – the Somali International Minorities of America Association based in Minneapolis, Minnesota. That non-profit association is registered with both the State of Minnesota and the federal government. Its confirmation or denial of persons claiming to be members of these beleaguered low/outcaste Somali clans is based upon serious genealogical, linguistic, and clan history analysis and research after an extensive interview process with Somali nationals. SIMA's statements have been accepted by numerous courts. Based on my expert experience and knowledge of SIMA's methods, I give full weight to their determination of clan membership after they conduct the clan membership test with asylum applicants. They conducted such a test with Mr. Abdifatah Nur Mahamud and concluded that he is a member of the Madhiban-Midgan clan.
35. As the son of a Madhiban father, Respondent is universally recognized in Somalia and among Somalis as a member of the Madhiban low/outcaste clan. The minority and low/outcaste clans of Somalia each have their own distinctive dialect. Each clan of Somalia teaches its children its secret genealogies and history. In Somali society, Somalis immediately check, investigate, and learn other Somalis' clan membership. They do so by asking each other to cite their genealogy. As such, there is no way that Respondent can hide that he is a member of the Madhiban-Midgan clan because he must recite his patrilineal genealogy through his Madhiban-Midgan father's line, and would then find himself in immediate danger from majority clans.

36. All Somalis base their social and business on the clan system. They first determine whether the other person is a member of their clan's friends or allies or whether they are enemy or neutral clan (usually a 'neutral' clan would be a dominant clan in another area), or finally if someone is from a despised low/outcaste or minority clan. Only then do Somalis know how to relate to the other person in various types of situations. In sum, through previous knowledge, inquiry, dialect/language, genealogy and histories particular to each clan is each person's clan membership from their patrilineal genealogy immediately discovered among Somalis.
37. Furthermore, Respondent's mother, as a former member of the Marehan clan, was considered to have been cast outside of her Marehan clan because of her marriage to a Madhiban-Midgan husband. As such, even though in the context of the war, Respondent's family was able to get some basic living assistance from Marehan people in the Kismayo region, there is no way that Respondent, his mother, or his brothers and sisters would be protected by the majority Darood clan militias or any other majority militias who control various regions. To the contrary, they would always be discovered to recite their Madhiban-Midgan patrilineal genealogy and would find themselves in immediate danger.

VII. THE DANGER RESPONDENT WOULD FACE IF FORCED TO RETURN TO SOMALIA

38. For all of the above reasons it is my professional opinion that Respondent more likely than not would face great danger should he be forced to return to Somalia. This is because: (i) he is a member of the Madhiban-Midgan low/outcaste clan and has neither family nor allies to protect him; (ii) there are no interior lands dominated by the Madhiban-Midgan where he could escape to for safety; and (iii) as a Madhiban-Midgan and the son of a Madhiban former civil servant of the Siad Barre regime he would be presumed to be a supporter of the late former President Barre whose Hawiye clan enemies now dominate southern Somalia.
39. Somalia is definitely a failed state. It is a country without a government; it lacks any civil institutions, judicial, and security system. Even Somalia's recent (October 2004) elected leaders have found it impossible to return to Somalia to set up governmental institutions due to continued militia violence there. The recently elected leaders have their own security people and yet they still find it unsafe to return to Somalia. Respondent, a minority Madhiban-Midgan clan member, would more likely than not be in danger on account of his minority clan membership should he be forced to return to Somalia.
40. Thus, it is my opinion that Respondent cannot live safely in Somalia, but rather that Respondent would more likely than not face constant abuse, attacks, physical violence, kidnapping, and forced slave labor, possible murder at the hands of the violent, heavily armed, majority clan groups in every region of Somalia on account of his Madhiban-Midgan clan membership.