

Heard at Field House

On 11 May 2004

**KS (Minority Clans - Bajuni –
ability to speak Kibajuni)
Somalia CG [2004] UKIAT 00271**

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

24 September 2004

Before:

**Dr H H Storey – Vice President
Mr H J E Latter – Vice President
Mrs R Faux JP**

Between

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

Representation:

For the Appellant: Mr W Fran-Bell of Counsel
For the Respondent: Mr Sheikh, Home Office Presenting Officer

DETERMINATION AND REASONS

Introduction

1. The appellant, who claims to be a national of Somalia and an ethnic Bajuni, appeals against the determination of an Adjudicator, Mr D S Corke, who dismissed his appeal on both asylum and human rights grounds against the decision made on 19 July 2002 giving directions for his removal.
2. The appellant claims to have entered the United Kingdom using a passport provided by an agent on 30 April 2002. He applied for asylum the same day but this was refused for the reasons set out in the letter dated 15 July 2002. The Secretary of State was not satisfied that he was a Somali or that he was from the Chanda, a sub-clan of the Bajuni clan.

The Secretary of State's decision

3. It was the Secretary of State's view that the Bajuni were not divided into sub-groups. When interviewed the appellant had been unable to give any detailed answers about his clan or its history. He stated that he had worked as a fisherman and sold his fish on Koyama. He had never visited Kismayo, the nearest large town. In the Report on Minority Groups the Bajuni elders described how communities on the islands maintained close links with each other and with Bajuni communities along the coast and in Kismayo. Bajuni from the islands would usually spend a large part of the year in Kismayo. The appellant had claimed that his brother was killed during fighting on the island in 1992. In view of the position of the Bajuni at that time it would have been reasonable to expect the appellant to have left for Kenya along with other Bajuni people. There was no reasonable explanation why he had not left after the death of his brother. The appellant said that there had been attacks on him and his family during 2001 and 2002.
4. He had experienced no real difficulties between 1992 after the death of his brother until February 2001 when he claimed that his father was killed. He had left Somalia after his house was burned down in February or March 2002 when he and his elder son were out looking for food. His uncle had made arrangements for his journey and paid the agent a sum which the appellant had inherited from his father after his death although he had not been aware of the amount. The Secretary of State did not accept that his father would have been able to leave any money in view of the appellant's claims that the island was occupied by majority clans who raided and looted their property. He would not have been ignorant about how much money would have been received. Although he claimed that he had never been to school and was ignorant of how much money it was, he had been a fisherman who on his own account had sold fish on Koyama. He claimed to have been taken by his uncle to an unknown place by boat where he remained for a month. The Secretary of State did not accept that he would be somewhere for a month without knowing where it was. In summary he did not believe the account given by the appellant and the application was refused.

The Adjudicator's findings

5. The Adjudicator heard the appeal against this decision on 25 November 2002. The Appellant gave evidence through a Kibajuni interpreter. His evidence can briefly be summarised as follows. The appellant came from the Wachanda tribe, part of the Bajuni clan and had lived on Koyama a small island, part of Somalia. His tribe was regularly attacked by other tribes. His father was killed in an attack in February 2001, a brother having been killed in about 1992. At that stage he had been too young to leave and had no money. He was not educated. There were four further attacks on the village in 2001. His mother died and his brother and sister moved away. In March 2002 he left the village with his elder son to find food and when he returned he found that the village had been attacked. His home and several others had been burned. His wife and younger son were missing. He left with his uncle and travelled to Mombasa. He acknowledged he had said at interview that he did not know where he had gone. He had given an agent 58,000 Kenyan shillings converted by his uncle from

Somali shillings. This was all he had from selling fish and from his late father's savings. He travelled by air to the United Kingdom.

6. At the hearing the Adjudicator was told by the interpreter that the questions had been put in Kibajuni but the replies were all in Swahili. The appeal had previously been adjourned to get a Kibajuni interpreter but in fact the appellant had spoken in Swahili. In paragraph 15 of his determination, the Adjudicator commented that the key to the question of whether this particular applicant was Bajuni was language. Swahili was spoken in much of eastern Africa from north to south. One of the dialects spoken in Somalia was Kibajuni. The fact that Kibajuni was a dialect of Swahili did not stop it from being a different language. In the Report on Minority Groups the Bajuni elders said that their language Kibajuni was related to Swahili but was very different from the Swahili dialect spoken in the areas of Kenya immediately below the border although there were some common words. In the light of the fact that the appellant answered questions in Swahili, the Adjudicator was not satisfied that his claim to speak a mixture of both Swahili and Kibajuni was demonstrated. He commented that he expected someone claiming to be a Bajuni to be able to speak Kibajuni and in these circumstances he simply did not believe that the appellant was a Bajuni. The appeal was dismissed on both asylum and human rights grounds.

The grounds of appeal

7. In the grounds of appeal the Appellant challenges the Adjudicator's finding that he could not speak Kibajuni. It is argued that his representative was given no opportunity to question the interpreter as to his credentials or qualifications. Permission was subsequently granted for both the appellant and an expert witness, Mr Brian Allen to give oral evidence.

The appellant's oral evidence

8. At the hearing before the Tribunal the appellant gave evidence. The Tribunal confirmed from the interpreter that she spoke and understood both Swahili and Kibajuni. Mr Fran-Bell indicated that the appellant would give his evidence in Kibajuni. In the light of the matters raised in the grounds of appeal, the Tribunal asked the interpreter to indicate at any stage if the Appellant spoke in Swahili so that the issue could be addressed if appropriate by the representatives.
9. The appellant confirmed that he had lived in Koyama which was an island off the coast of Somalia. He did not know how far it was away from the mainland. He spoke Kibajuni and Kiswahili. It would depend upon each family which language was spoken. On his island people did not use Somali although a few people did come to the island who did not speak Kibajuni. He had been a fisherman until he left. At this point the interpreter interrupted to say that the appellant had used the word "fisherman" firstly in Swahili and then in Kibajuni. They were different words.
10. In cross-examination the Appellant said that he did not know in depth about his clan history. He thought they were originally slaves who had been brought to the area. People referred to them as the Bajuni people and this is how he knew that he was Bajuni. His only knowledge came from his father. He had not been told about the origins of the Bajuni save that they had come from Africa and were descended from slaves. The appellant was asked whether Kiemboni was

the nearest island to Koyama. He replied that this was what he had heard. He was asked about his answers when interviewed by Mr Allen. He had referred to three other islands as Chula, Chovai and Mdoa. He said that the question had been to name islands close to Koyama and he gave the islands he knew. He had not been asked about the nearest islands. He had heard of the town of Ras Kiomboni but he had been referring to the island.

11. He was a fisherman. He had not been to Kismayo. He did not have any needs there. He sold his fish in Koyama. The language he spoke when doing this depended on who he was selling to. The Appellant was asked about the language test carried out by Mr Allen. He had not been able to identify a number of words in Kibajuni including the word for money. The appellant said that the word was “fetha”. He did not know the word “senchi”.

The expert evidence of Mr Brian Allen

12. Mr Brian Allen then gave evidence. His evidence is set out in a report dated 7 December 2003. There is a separate sheet showing the language test. Mr Allen’s CV and a statement on the Report on Minority Groups report appears at pages 6-8 of Schedule 3 of the appellant’s documents.
13. In his report Mr Allen confirms that the Appellant claims to be from Koyama an island off the coast of Southern Somalia. The appellant described his island as being quite small with a population of around 400 to 500 people. He named three other islands, Chula, Chovai and Mdoa and named the small town of Ras Kiomboni near the Kenyan border. He described two areas on the island and its trees and livestock. He named some of the fish he caught and the type of boats that were used. It was Mr Allen’s view that to the best of his knowledge the appellant’s descriptions of the island were accurate but equally importantly the manner in which those descriptions were given indicated that he had seen and experienced what he was describing.
14. The appellant’s physical features strongly suggested that he was from the Mchanda clan. He had questioned the appellant about Bajuni customs including marriage, the use of a special drink used on festive occasions and the use of protective charms. The appellant had been able to describe in detail the garments worn. It was Mr Allen’s view that these descriptions were very much in keeping with normal Bajuni custom. He had tested the appellant’s knowledge of the Bajuni dialect known locally as Kibajuni. The Bajuni people vary greatly in their knowledge of this dialect from very little to fluency. Kibajuni is dying out. The older generation are more familiar with it. The younger generation prefer coastal Swahili which is an international language. Swahili is the language used in most Bajuni homes. If there are older people in the home, they would at times use Kibajuni exposing the younger generation to the dialect which they would understand to a certain degree although may not need to speak it. He had asked the appellant the meaning of fourteen randomly chosen Bajuni words and he had known nine of them. The words were not included in the context of a Kibajuni sentence as that would have made them easier to recognise.
15. It was Mr Allen’s conclusion that the appellant displayed a good knowledge of the local geography, currency, Bajuni customs and language of his home area as claimed. His answers could not possibly have been prepared in advance. He

found that there was no reason for saying he could come from elsewhere or that he belonged to another tribe.

16. In his evidence in chief Mr Allen confirmed that he had worked with a number of different tribes in the Lama area of Kenya. He spoke Swahili but not Kibajuni. He had collected a list of words. The extent of his understanding of Kibajuni depended on how strong the dialect was. He understood that the Bajuni were a mixture of Arab and Yemeni stock who had traded and settled on the islands intermarrying with local Bantu people. It was possible there might be some link with former slaves. The Bajuni were not regarded by Somali tribes as proper Somalis. He could not say how many Bajunis there were in Kenya save to confirm that there had been an influx of Somali Bajunis from Kismayo and the islands. Some Bajunis did not speak Kibajuni. If, for example, in the family the father was Bajuni and the mother Barawa, it was likely that Kiswahili would be spoken. Most Bajuni did have some Kibajuni. The main language in Kismayo was Kiswahili. Kibajuni was dying out. It was spoken by the older generation but was now looked on as the language of the uneducated. The younger generation preferred to speak Swahili.
17. Mr Allen was asked whether the appellant could have been coached in his answers about the customs and geography of Kismayo. He replied that he did not look so much for the information as the way in which the information was conveyed. He was satisfied that the appellant had been describing things that he had experienced and that it was obvious he had lived on an island. He could recognise the appellant as being from the Mchanda tribe. They tended to be fairly short having dark skin and round facial features. These three elements were easy to spot. He would not regard that as determinative but it confirmed his other findings.
18. The Appellant had been able to describe Bajuni marriage ceremonies. There were differences in dress between Somali and Kenyan Bajunis. On the language issue he confirmed that the older generation spoke Kibajuni. Swahili was the main inter tribal language. Most homes would mix Swahili and Kibajuni. A knowledge of Somali was very low amongst most Bajuni. There would not be the need or opportunity to speak Somali. There was an increasing isolation of Swahili speakers from Somali speakers. He would accept that on the Appellant's island he would have used the word "senti" rather "senchi". It would be easy to recognise a Kenyan accent as opposed to a Somali accent. There was a lot of confusion about Ras Kiemboni. Although this was on the coast, depending on the tide part of the town was surrounded by water and might be regarded as an island. Koyama was an island well to the south of Kismayo and only a small number of traders would make the journey to Kismayo.
19. In cross-examination Mr Allen accepted he had never been to Somalia. He held a Diploma in Anthropology which had been a subsidiary subject when studying for a Diploma of Theology. He would regard Kibajuni as a dialect of Kiswahili although it was quite different. He did not speak Kibajuni. He was asked why his views on language should be preferred to that expressed by the elders as recorded in the Report on Minority Groups. He replied that his information came from a greater cross section of society. The Appellant's features indicated that he was a Bajuni but they confirmed rather than led to his conclusions. There were many small islands which were uninhabited and local people had

their own names for them. He could not be sure whether the appellant when referring to Kiimboni meant an island or the town.

20. The Bantu people were descendants of slaves. Most Bajuni had little knowledge of their backgrounds. It was possible that the appellant would have heard that there was some slavery element in his origins. The Somali language had not been imposed. There were several groups who did not speak that language. He did not think the appellant was from a Kenyan island. This was because the account he gave of his customs and also his own physical features. He displayed none of the things that he would have looked for in a Bajuni from Kenya. Each island would have some people who travelled. The hearing before the Adjudicator had been in December 2002. His report was prepared in December 2003. He doubted whether the Appellant would have been able to learn up Bajuni in that period.

The submissions

21. Mr Fran-Bell submitted that the appellant was a Bajuni from Somalia. He did have a good knowledge of Kibajuni. During the oral evidence it had only been on one occasion that the interpreter had indicated that the appellant had used a Swahili word. Although there had been some confusion about the word for money the fact remained that it was clear that the appellant was comfortable speaking Kibajuni. Even if he had not spoken Kibajuni this would not necessarily indicate that he was not Bajuni. He referred to the Tribunal determination in *AJH (Somalia)* [2003] UKIAT 00094. The appellant had been able to answer questions about his life on Koyama and had dealt in detail with issues relating to marriage and dress. The determination in *Suleiman* [2002] UKIAT 00416 did not discount the possibility of a Bajuni not speaking Kibajuni. He also referred to the Tribunal determination in *Omar* [2002] UKIAT 06844. The fact that the appellant did not speak Somali did not affect the position.
22. Mr Sheikh accepted that if the appellant was a Bajuni from Somalia he would qualify for asylum assuming his account of past events to be true. The Adjudicator had followed the approach in *AJH*. There was no explanation why the appellant had not responded in Kibajuni at the hearing before the Adjudicator. Mr Allen had never been to Somalia. More weight should be placed on the evidence set out in the Report on Minority Groups. In the appellant's asylum interview he had showed a wholly inadequate understanding of his background. He said he was a fisherman but had never been to Kismayo. This did not square with the objective evidence. There was nothing to suggest that the Bajuni were descended from slaves. It was odd that the appellant had been involved in trading and bartering and had not known the Kibajuni word for money. Looking at the evidence as a whole, even though the Appellant appeared to have knowledge of Kibajuni, his knowledge of other matters which he could be expected to know about had been very minimal both when interviewed and at the hearing before the Adjudicator.

The background situation in Somalia

23. Before assessing the Appellant's own circumstances, the Tribunal will deal with the background situation in Somalia. The history of Somalia following its independence in 1960 is set out in paragraphs 4.1-106 of the CIPU Report October 2003. Somali society is characterised by membership of clan families

which are sub-divided into clans and sub-clans. In addition there are a number of minority groups also divided into sub-groups. Since the fall of the Siad Barre regime in 1991, Somalia has to all intents and purposes remained without a central functioning or internationally recognised government. Clan based factions and traditional leaders of the militia in different areas of the country have established various local administrations but no single group controls more than a fraction of the country's territory.

24. In some areas notably Puntland and Somaliland local administrations function effectively in lieu of a central government. There have been attempts to reunify the country and to set up a Transitional National Government (TNG) but those opposed to the TNG have set up the Somali Reconciliation and Restoration Council (SRRC). In March 2002 a new regional administration was set up called the South West State of Somalia by the RRA, a member of the SRRC. This gave rise to speculation that this would lead to the demise of the SRRC. However, the RRA governor of Biadoa announced that the RRA would attend the peace talks but under the SRRC umbrella. In July 2003 at the peace conference it was reported that delegates had signed a "historic" agreement to set up a federal government. There has been a rift between the TNG President and Prime Minister. The Prime Minister has said that the TNG's mandate would expire but the President that the TNG would continue until new institutions were formed through free and fair elections.
25. It is against this chaotic ethnic and political background that asylum and article 3 claims must be assessed. There are areas of the country where the situation is relatively stable. In 2002 there were reports that the security situation had improved in many areas but the situation particularly in southern Somalia was very fluid and liable to change. Mogadishu has enjoyed some periods of relative stability but it has a complex political landscape and could experience sudden changes in security conditions. Somali nationals have generally ensured their safety by residing in the home areas of their clan but some politically weak social groups were less able to secure such protection. Nonetheless, basic law and order is in fact the norm in most locations. The dominant clan in any particular area has generally excluded other clans and minorities from participation in power but there are exceptions. The Majerteen dominated Puntland authorities have been willing to allow thousands of people from other clans and minorities to live in the territory they administer and the Isaaq dominated Somaliland has been tolerant of non Isaaq clan members. The authorities in central Hiran and Galgudud regions have also proved tolerant of Somalis from other clans and regions travelling into their territories. In south and central Somalia rival Hawiye factions control much of the territory but rival members of other clans such as the Digil and Dir also live in these areas but are not directly involved in the conflict.
26. It is the minority groups who do not have their own armed militia to protect them who are amongst the most vulnerable and victimised following the fall of the Said Barre regime. When dealing with the general security position of minority groups, the CIPU Report confirms that they remain unarmed and have limited access to whatever social services are available. They are generally excluded from participation in the political system although some are represented in the TNA. Politically weak social groups are less able to secure protection from extortion, rape and human rights abuses by the armed militia of various factions and remain vulnerable wherever they reside. Some minority

groups may risk harassment by clans in rural areas but they do not necessarily find themselves facing particular human rights or security problems in Mogadishu. Although minorities have usually been able to avoid involvement in clan disputes, they have sometimes come under pressure to participate in the fighting in areas of conflict. While many displaced minority groups would not necessarily face persecution on the basis of clan membership or ethnicity were they to return to their home areas, they may face difficulty in regaining their homes or land seized by clan militia when taking control of their territories. Persecution on the basis of clan membership or ethnicity is now said to be very unlikely in most areas of Somalia: CIPU Report paragraphs 6.89 – 91.

The UNHCR position paper January 2004

27. A summary of the political situation and human rights and humanitarian situation in Somalia is set out in the UNHCR position paper of January 2004 on the return of rejected asylum seekers to Somalia. This confirms that twelve years after the dissolution of the central government and more than a dozen failed peace initiatives later, the situation remains extremely complex. Hopes were high in 2003 that the efforts by Somali leaders to turn the former republic's fluid mix of political, economic and clan interest groups into a national state would bear fruit but despite some notable progress there continued to be uncertainty with the commitment of several key leaders to the agreement still in question and many intractable issues yet to be resolved.
28. The northern zones of Somalia have moved closer to political, economic and social reconstruction but the position in the south is more difficult to assess. Most of the central and southern regions continue to exhibit chronic symptoms of complex emergencies: little or no authoritative government, high levels of criminality, sporadic armed conflicts, lack of economic recovery, endemic humanitarian needs, minimal health care and education and population displacement. There are pockets of stability in the south but they remain susceptible to sudden set backs due to armed clashes and threats. The combination of factors has threatened the Somali traditional livelihood and this has forced thousands to migrate to urban areas as they can no longer meet the minimal requirements for life in their home communities.
29. Remittances from more than one million Somalis living abroad have been crucial in mitigating the effects of poverty. This income forms the backbone of the commercial and service sectors and of individual and household purchasing power. Ten years ago at the height of the crisis in Somalia it was estimated that close to two million people, just under one third of the Somali population were displaced either internally or in exile. Voluntary repatriation has reduced the number of internally displaced to 350,000 and of Somali refugees still in exile to 400,000. 450,000 Somali refugees have returned home with some form of international assistance.
30. Under the heading Somali Policy at paragraph 4, it is the UNHCR's view that given the complex insecurity and lawlessness that still dominate the situation in southern Somalia, asylum seekers originating from this area remain eligible for refugee status under Article 1(2) of the 1969 OAU Convention. In addition many asylum seekers may have a well-founded fear of persecution under Article 1 of the 1951 Convention. When considering the return of rejected asylum seekers the report says that although the levels of faction and larger scale inter

clan conflicts may have reduced in southern Somalia, insecurity continues to be a significant problem. Militia loyal to different strongmen succeed one another in a perpetual move to establish a sustainable control on certain areas. There is a constant fear of abrupt changes in clan balance shaking up fragile territorial power bases.

The current Home Office position

31. The latest Home Office position in Somali cases is set out by the Secretary of State in his letter dated 25 July 2003. This indicates that claims by Somali nationals should not be assessed solely by reference to their clan membership. In respect of Bajuni and Benadiri applications the author of the letter, Andrew Fleming, Somalia Country Officer said:

“As you will be aware Somali asylum applications – as with asylum applications from all other nationalities – are considered individually and on the merits of the particular case. This includes asylum applications from members of minority groups being considered on a case by case basis. Although we accept that based on the available country information bona fide members of the Bajuni and Benadiri minority groups are likely to be able to establish a need for international protection, it does not follow that all asylum applicants who base their claim in membership of the Bajuni or Benadiri will automatically be granted refugee status. A decision will be made on the individual circumstances of each case.”

The position of the Bajuni

32. The position of the Bajuni is considered in paragraph 6.92-4 of the CIPU report. There is a small population numbering some 3,000 to 4,000 and possibly as many as 11,000 who are mainly sailors and fisherman living in the small communities on the coastal south of Kismayo and on the islands between Kismayo and the border with Kenya. Their principal language is Kibajuni. It is reported relying on information from Bajuni elders that most Bajuni also speak Somali. Younger Bajuni who live mainly in exile might only have a limited knowledge of Somali but they should at least know some words, as family elders would have taught them. In the early 1990's the Bajuni were attacked by groups of Somali militia who wanted to force them off the islands. Many left for Kenya, the majority having fled during 1992. They went to the Jombo refugee camp in Mombasa but when that camp was closed in 1997 many Bajuni were returned by the UNHCR to the islands which at that time were considered safe. With the fall of Kismayo in 1999 to the allied forces of the Somali National Front and Aideed's Somali National Alliance and following attacks from the Bajuni islands, the UNHCR suspended returns.
33. There was a visit by UN officials to the Bajuni Islands in early 2002 which found 3,000 Bajuni families living on the islands compared to only 50 in 1994. They had been able to return to their home areas. They were still not able to own boats with engines, only traditional sailing boats. Recent Marehan settlers still had effective control over the islands. The Bajuni had worked for them as paid labourers. This was at least some improvement on the period when General Morgan's forces controlled Kismayo and the islands and the Bajuni were treated as little more than slave labour.

34. The Tribunal has in evidence a report entitled Human Rights and Security in Central and Southern Somalia made following a joint Danish, Finnish, Norwegian and British Fact-Finding Mission to Nairobi in March 2004. The information recorded comes from Bakari Abdalla Bakari a representative of the Bajuni refugee community in Nairobi. He said that 50% of the Bajuni could speak Somali but the vast majority of these were from the mainland rather than the islands. The island based population tended not to speak Somali due to their social isolation from the mainland. It was his view that around 6,000 Bajuni continued to reside on the Kismayo coastline and on the four main islands. Life for the Bajuni on the islands had not changed or improved in any way in the past few years. Clan militias routinely occupied parts of the islands and forced the Bajuni to work for them demanding 50% of the revenue

Discussion

35. In our judgment the background evidence now available does not support the argument which is often put in Somali appeals that all members of minority groups or clans are on that sole basis at risk of persecution on return. Equally the background evidence shows that members of certain clans or groups such as the Bajuni are likely to be able to demonstrate such a risk. In *J. (Somalia)* [2003] UKIAT 00147, which dealt with a claim by a member of the Tunni clan, the Tribunal said in paragraphs 14 and 15:

“from this complex background it is clear that the risks faced particular clans or sub-clans can only be broad generalisations. The Tribunal in Hanaf appears to have proceeded on the basis that the Tunni are a subgroup of the Brava clan without reference to their linkage with the Digil. In the light of the complex clan structure in Somalia and the intermixing of the groups leading to what the minorities report describes as process of federation, in our view it is impossible to say that membership alone of the Tunni clan is sufficient without more show a well founded fear of persecution on return.

Each appeal must be considered on its own merits. Clan membership will normally be an important consideration but must be taken into account with the appellant’s own history and profile.”

36. Plainly in *J. (Somalia)* the Tribunal did not accept that the clan under consideration, the Tunni, was one where it appeared from the background evidence that there was a general risk of persecution arising from clan membership and what was said in that case has to be considered in that context. This case exemplifies the need at present for a distinction to be maintained between:

- (i) membership of a clan where the background evidence does not support a conclusion that there is generally a risk of persecution arising from membership of that clan even though on the particular facts of the case an individual claimant may be able to establish a claim on the basis of his own particular background and profile, and
- (ii) membership of a minority clan where membership generally does give rise to real risk subject to the particular circumstances of the claimant. In such a case, while each claim must be individually considered, the claim

will normally depend on whether in fact the claimant is genuinely a member of that minority clan.

37. In the first category, clan membership will be a significant element in assessing whether there is a risk on return but will not be determinative. Although the point is not in issue in the present appeal, the reality of the situation in many cases from Somalia is that the risks now faced by those who have fled does not arise because of clan membership or any other Convention reason: hence the distinction made in the UNHCR paper between those eligible for relief under the OAU Convention and those who might be entitled to refugee status under the 1951 Convention. The OAU definition is a much broader than the 1951 Convention and provides in article 1 (2) as follows:

“The term shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

38. In the second category clan membership will normally be determinative but may not be in individual cases where there are features in the claimant’s background and circumstances which indicate that the claimant is not in fact at the same risk as that faced generally by other clan members. By way of example where a female member of such a clan marries into a majority clan, she may have protection from her husband’s clan. Therefore, subject to the qualifications we have set out, the Tribunal agree with the approach set out in the Secretary of State’s letter of 25 July 2003.
39. The present appeal falls within the second category. The issue is whether the appellant is genuinely a Bajuni. Mr Sheikh in his submissions has accepted has accepted that if the appellant is Bajuni and if his account of events in Somalia is correct, then he is entitled to asylum. When assessing a claim to be a member of the Bajuni clan, the issue of language is of considerable importance. The Adjudicator clearly regarded the language spoken by the appellant as a critical indicator of his credibility.
40. It is accepted on behalf of the Secretary of State that if the appellant is Bajuni and if his account of events in Somalia is correct, then he is entitled to asylum. The Adjudicator clearly regarded the language spoken by the appellant as a critical indicator of his credibility. The issue of the language spoken by Bajunis has been considered by the Tribunal in a number of determinations.
41. In *Suleiman* the Tribunal, after reviewing the issue of language in the context of the fact that the claimant in that case spoke only Swahili despite claiming to be Bajuni, commented that there may well be young Bajuni who have grown up in refugee camps in Kenya speaking Swahili but that was not the claimant’s history. The Tribunal expressed the view that Adjudicators should approach any case involving someone who claimed to be a Bajuni resident of Somalia who could not speak Kibajuni let alone Somali with great caution. The Tribunal did not say that if a claimant could not speak Kibajuni, it followed that he was not a Bajuni. The point the Tribunal was making was that in the light of the objective evidence that Kibajuni was the Bajuni’s principal language, an explanation was required if a claimant did not speak Kibajuni.

42. In *Omar*, an appeal by the Secretary of State against an Adjudicator's determination was dismissed on the basis that there was no error in the Adjudicator's findings on the facts of that particular appeal. In paragraphs 13 and 14 the Tribunal wrote:

"Mr Buckley refers us to the Tribunal determination in *Suleiman* [2002] UKIAT 00416 where this issue was considered comprehensively by that Tribunal. The relevant part of the determination for the purposes of this appeal can be found in paragraph 14 where, having considered this issue of whether a Bajuni would speak Kibajuni or Swahili, the Tribunal commented as follows: "While there may be young Bajuni who have grown up in refugee camps in Kenya speaking Swahili that is not this asylum seeker's history. We shall decide what view will be taken of her case when we have dealt with all the evidence; but we think Adjudicators should approach any (appeal) involving someone who claims to be a Bajuni resident of Somalia but who cannot speak Kibajuni let alone Somali with great caution."

The Tribunal were not saying that an appeal could not succeed if a claimant only spoke Swahili. It was sounding a note of warning that such cases should be considered with great caution. It is clear that the Adjudicator in this appeal was well aware of the language issue. It was for him to decide what weight to attach to the fact that the claimant could not speak Kibajuni but spoke Swahili. He heard an explanation and it appears from his determination that he accepted that explanation. He found as a fact that the claimant had only been eight or nine years old when he left Somalia and also that he had lived in a village near the border. It was for the Adjudicator to decide what weight to attach to that explanation as to why the claimant did not speak Kibajuni."

43. In *AJH* when dealing with an assessment of whether a Claimant is Bajuni, the Tribunal wrote in paragraph 33 as follows:

"What is needed therefore in cases in which claims to be Somali nationals and Bajuni clan identity are made is first of all:

(i) an assessment which examines at least three different factors:

- (a) knowledge of Kibajuni;
- (b) knowledge of Somali depending on the person's personal history;
- (c) knowledge of matters to do with life in Somali for Bajuni (geography, customs, occupations etc.).

But what is also needed is

(ii) an assessment which does not treat any one of these three factors as decisive: as the Tribunal noted in *Omar* ...It is even possible albeit unusual that a person who does not speak Kibajuni or Somali could be a Bajuni."

44. We see no reason to amend or vary the analyses set out in these cases. They are a working out in Bajuni cases of the general principle that each case must be determined on its own specific facts whilst keeping in mind the need to give due weight to the objective evidence which may indicate that certain clans such as the Bajuni continue to be at a general risk of persecution. In every case

whether or not it appears to present as a case where a general risk of serious harm is shown to a particular group or class of people such as members of a clan or sub-clan, it remains important that the evidence as a whole is considered. This includes an assessment of the claimant's account of events set against the relevant background in the light of factors such as the circumstances of his departure, the route taken, the evidence about how his travel is financed, whether opportunities to claim asylum in intervening countries have been taken, any explanation for such failure and whether there has been any delay in claiming asylum in arrival. It is only such an approach which can ensure that credibility both as to past events and clan membership can properly be assessed. None of these factors are determinative of credibility but they are part of the overall picture to be taken into account in assessing whether in fact flight is motivated by a real risk of persecution or some other reason falling outside the Convention.

Conclusions

45. The Tribunal now turns to the facts of the present appeal. The Adjudicator did not believe that the appellant was Bajuni because he was not satisfied that he was able to speak Kibajuni: although questions were asked in that language the appellant replied in Swahili. Even on that basis the appellant must have been able to understand Kibajuni if he was able to answer in Swahili. At the hearing before the Tribunal the appellant gave his evidence in Kibajuni. The only time the interpreter identified the use of Swahili words was when the Appellant said that he was a fisherman.
46. In addition to the appellant's own evidence the Tribunal heard from Mr Allen. On the language issue the Appellant was able to identify to Mr Allen most of the Kibajuni words put to him where there was a clear difference from Swahili. This certainly indicates some knowledge of Kibajuni. We accept Mr Allen's evidence that the younger generation generally prefer speaking Swahili rather than Kibajuni. This may explain what happened before the Adjudicator: the Appellant was more comfortable speaking Swahili even though he understood the questions in Kibajuni. At the hearing before the Tribunal the appellant confirmed that he preferred to speak Swahili. He speaks little if any Somali. We draw no adverse influence from this. His lack of knowledge of Somali is consistent with the evidence in the 2004 Report that those living on the islands are less likely to speak Somali than those on the coastline.
47. The information the Appellant gave about his wedding and the particulars of the Bajuni customs associated with it provides further evidence of his knowledge of Bajuni customs. We attach less weight but still take into account the fact that the appellant was able to describe features of the island. We note the fact that Mr Allen does not appear to have relied on the accuracy of the answers but rather formed an assessment on the basis that the appellant was describing matters which he had seen and experienced. Mr Allen's conclusions were that the appellant displayed a good knowledge of the local geography, currency, Bajuni customs and language of the area he claimed to come from. Although Mr Allen has not been to Somalia, his expertise derives from living in East Africa for 21 years which led to his knowledge of the sub-groupings of many of the tribes. He has lived among the coastal tribes and has acquired the ability to recognise tribal groupings. He accepts that the main source of his information about the Bajunis

comes from the many Bajunis he has met and interviewed coming from Kismayo and the islands.

48. The first reason relied on by the Secretary of State for contesting the Appellant's clan membership is that the Bajuni are a united people who are not divided into sub-groups. The Tribunal accept that this is incorrect if this is taken to mean that there are no sub-clans. The Bajuni sub-clans such as the Khazaragia, Wafailia, Wachanda and Ausia are well-known. The Tribunal has dealt with the issue of whether the failure to speak Somali indicates that the Appellant is not a Bajuni. It was argued in the reasons for refusal letter that it was implausible that the appellant as a fisherman would not have travelled to Kismayo. On the maps produced to the Tribunal it is clear that Koyama is well south of Kismayo. The Tribunal accept that not all fishermen would necessarily travel to Kismayo on a regular basis or even at all. There is some force in the point that the Appellant's account of experiencing no real difficulties between 1992 and 2001 sits uneasily with the background evidence although it is not impossible that the appellant having avoided trouble for a number of years found himself the victim of an incursion on to the island by a clan militia. The delay in leaving and the financing of the trip do give rise to reasonable concerns about the credibility of the account. However, we remind ourselves that there will be very few asylum claims where there will not be areas of doubt and uncertainty. The standard of proof is low. The evidence must be evaluated as whole when assessing whether there is a real risk of persecution for a Convention reason on return.

Decision

49. Balancing the various considerations which we have outlined above, the evidence does show that there is a reasonable degree of likelihood firstly that he is a Bajuni from Somalia and secondly that his account of what has happened to him and his family in Somalia is true. It follows that he would be at a real risk of persecution and treatment contrary to article 3 on return.
50. On this basis, this appeal is allowed.

**H J E LATTER
VICE PRESIDENT**

Approved for electronic distribution