



UT Neutral citation number: [2022] UKUT 00222 (IAC)

ASA (Bajuni: correct approach; Sprakab reports) Somalia CG

**Upper Tribunal
(Immigration and Asylum Chamber)**

Heard at Field House

THE IMMIGRATION ACTS

**Heard on 8 and 9 July 2021
And 24 March 2022
Promulgated on 25 July 2022**

Before

**THE HON. MR JUSTICE LANE, PRESIDENT
UPPER TRIBUNAL JUDGE RINTOUL
UPPER TRIBUNAL JUDGE PLIMMER**

Between

**ASA
(ANONYMITY DIRECTION MADE)**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Selway, Counsel instructed by Immigration Advice
Centre Middlesbrough

For the Respondent: Miss Russell, Counsel instructed by the Government Legal
Department

The guidance given in AJH (Somalia) CG [2003] UKIAT 94 (also reported as SA & Others (Minority group, Swahili speakers) [2003] UKIAT 94) is no longer to be followed. The following guidance is substituted.

- (1) *In assessing P's claim to be a Somali national of Bajuni origin, the decision-maker must take a holistic approach, taking into account the extent of P's knowledge of:
 - (a) matters to do with life in Somalia, particularly as relevant to Bajuni (geography, customs, occupations etc);
 - (b) Somali, the importance of which will vary dependent upon P's personal history;
 - (c) Bajuni, the importance of which will vary dependent upon P's personal characteristics and history (including age, family history, residence etc).*
- (2) *Where P seeks to adduce expert evidence of knowledge of Bajuni, this should include a linguistic analysis of the individual's speech, identifying clearly by reference to morphology, syntax, phonology and vocabulary those features which indicate that he or she is of Bajuni origin; or, that such features are not present. Such reports should also, where possible, indicate how P's speech compares with known Bajunis of the same age range, bearing in mind that the speech of younger Bajuni is now considerably less different from other dialects or standard Swahili.*

DECISION AND REASONS

1. The appellant's case is that he is a citizen of Somalia, from Chula Island and of Bajuni ethnic origin and that as a result, he is at risk of persecution on return to Somalia.
2. For the reasons set out in her decision of 6 November 2019, the Secretary of State does not accept that the appellant is a Somali nor from Chula Island nor does she accept that he is of Bajuni origin. Her case is that he is a Swahili speaker from Tanzania on the basis of a report prepared by Sprakab.
3. The appellant challenges the Sprakab report relying primarily on the expert evidence of Prof. Nurse, who is an expert in Swahili and linguistics. A key issue is whether or not the appellant spoke Swahili with Bajuni features consistent with his claim to be from Chula.
4. The appellant's appeal against the decision made on 6 November 2019 was dismissed by the First-tier Tribunal for the reasons set out in a decision promulgated on 27 January 2020. That decision was, for the reasons set out in the decision of Upper Tribunal Judge Plimmer dated 15 December 2020, set aside. A copy of that decision is annexed to this decision.

5. A Presidential panel has been convened in this case to give further guidance to the approach to Sprakab Reports in the light of what was said in MN and KY [2014] UKSC 30; [2014] Imm AR 981 at [51]. This was, in turn, an invitation to revisit the headnote in RB (Linguistic evidence - Sprakab) Somalia [2010] UKUT 329 (IAC).
6. Owing to problems associated with lockdown and COVID it was not possible to draft a decision in this appeal as quickly as had been anticipated and issues arose on which the panel required further submissions and evidence from the appellant. Accordingly, the hearing was reconvened on 24 March 2022 to hear further evidence from the appellant and submissions from both parties. Directions to that effect were issued on 18 January 2022.
7. In analysing the material before us we have, for the reasons set out below, revisited the Country Guidance on the Bajuni as it is part of the context for considering reports on the Bajuni language which the earlier cases refer to in several places as “Kibajuni”. We have used the phrase “Bajuni language” in preference to “Kibajuni” where relevant to be consistent with the expert evidence.

The Hearing

8. The initial hearing took place over two days in Field House, London with Prof. Nurse giving evidence via video link. In addition to evidence from Prof. Nurse, we heard evidence from the appellant, who gave evidence through an interpreter as he did at the reconvened hearing on 24 March 2022. On both occasions we also heard submissions from representatives which were in addition to their skeleton arguments and supplementary skeleton arguments.
9. Prof. Nurse’s evidence falls into three parts:
 - (i) The history of the Bajuni and their movements around coastal East Africa;
 - (ii) a linguistic analysis of the Bajuni language how it has changed, and the Sprakab Report and its methodology;
 - (iii) an assessment of the appellant.

The task set by MN

10. The starting point for this Tribunal is the observations of Lord Carnwath in MN & KY at [51]:
 51. More generally, there is a case for updating the guidance, which is now more than four years old. As I have explained, the Upper Tribunal in 2010 had limited direct evidence from those critical of the methodology. The conclusion of the present appeals provides an opportunity to review the guidance, in the light of this judgment and of experience in the cases, and any other relevant evidence both for and against Sprakab’s methodology. It will be for the

President of UTIAC to determine what form that review should take. While it is not for this court to take over that role, some pointers may be helpful:

- i) On the basis of the material we have seen, I see no reason in principle why Sprakab should not be able to report on both (a) language as evidence of place of origin and (b) familiarity with claimed place of origin provided, in both cases, their expertise is properly demonstrated and their reasoning adequately explained. (As will be seen below, the problem in relation to (b) was not the nature of the evidence, but the lack of demonstrated expertise.)
- ii) As to (a), language:
 - a) The findings (on evidence) in RB are to my mind sufficient to demonstrate acceptable expertise and method, which can properly be accepted unless the evidence in a particular case shows otherwise;
 - b) The Upper Tribunal ought to give further consideration to how the basis for the geographical attribution of particular dialects or usages can be better explained and not (as it often currently seems to be) left implicit. The tribunal needs to be able to satisfy itself as to the data by reference to which analysts make judgements on the geographical range of a particular dialect or usage.
 - c) The RB safeguard requiring the Secretary of State to make the recording available to any expert instructed for the claimant is not only sensible, but essential.
- iii) As to (b), familiarity:
 - a) The report needs to explain the source and nature of the knowledge of the analyst on which the comments are based, and identify the error or lack of expected knowledge found in the interview material;
 - b) Sprakab reporters should limit themselves to identifying such lack of knowledge, rather than offering opinions on the general question of whether the claimant speaks convincingly. (It is not the function of an expert in language use to offer an opinion on general credibility.)
- iv) On the issue of “anonymity”, since the approach in RB was a departure from the norm, it would be appropriate for the tribunal to satisfy itself both that the departure remains justified in the interests of security of Sprakab personnel or otherwise, and, if it does, as to the safeguards necessary to ensure that the evidence is reliable and that no prejudice arises in individual cases. Consideration for example could be given to requiring assurances that the identifying numbers remain with an individual throughout his work with Sprakab, and requiring disclosure of other work done in any related field by the individual (eg advice to Governments, interpretation, translation), and of any occasion on which his conclusions have been rejected by courts or tribunals.

11. Before commencing on the review commended to us by the Supreme Court, we observe that the material provided to us has significant limitations.

12. Neither party has provided any new material direct from Sprakab about its methodology other than what is contained in the report on this appellant. We have thus had to rely to a great extent on what was said in RB bearing in mind the evidence it heard as to methodology is nearly 12 years old.
13. We were told that the respondent now uses Sprakab only in connection with those whose claim to identify as Bajuni and to be from Somalia is in dispute, and not in assisting in the determination of others whose identity or nationality is in dispute.
14. While we are aware that there are other entities which undertake linguistic analysis to determine an individual's place of origin, we have no evidence before us relevant to the methodology that they use.
15. More specifically, as regards issue i) (b), familiarity with the claimed place of origin, we have no material from Sprakab on whether they are able to comment on place of origin; or, have the necessary expertise to do so. Nor in their description of their method in the report on this appellant do they refer to doing so; the analysis is described in linguistic terms. As regards ii) b), we have no information from Sprakab (or indeed any other similar entity) on this issue.
16. Our ability to consider point iii) is hampered by the fact that Sprakab has not, in this case, commented on familiarity with the claimed place of origin, although Prof. Nurse has done so.

The approach to expert evidence

17. Having identified the task set for us in MN, and the limitations on our ability to carry out the review due to the lack of material provided, we pause to remind ourselves that we are concerned with expert evidence. That was addressed in some detail in Kennedy v Cordia [2016] UKSC 6 where the Supreme Court observed at [48] and [49]:

48. An expert must explain the basis of his or her evidence when it is not personal observation or sensation; mere assertion or “bare *ipse dixit*” carries little weight, as the Lord President (Cooper) famously stated in *Davie v Magistrates of Edinburgh* 1953 SC 34, 40. If anything, the suggestion that an unsubstantiated *ipse dixit* carries little weight is understated; in our view such evidence is worthless. Wessels JA stated the matter well in the Supreme Court of South Africa (Appellate Division) in *Coopers (South Africa) (Pty) Ltd v Deutsche Gesellschaft für Schädlingsbekämpfung mbH* 1976 (3) SA 352, 371:

“[A]n expert’s opinion represents his reasoned conclusion based on certain facts or data, which are either common cause, or established by his own evidence or that of some other competent witness. Except possibly where it is not controverted, an expert’s bald statement of his opinion is not of any real assistance. Proper evaluation of the opinion can only be undertaken if the process of reasoning which led to the conclusion, including the premises from which the reasoning proceeds, are disclosed by the expert.”

As Lord Prosser pithily stated in *Dingley v Chief Constable, Strathclyde Police* 1998 SC 548, 604: “As with judicial or other opinions, what carries weight is the reasoning, not the conclusion.”

49. In *Davie* the Lord President at p 40 observed that expert witnesses cannot usurp the functions of the jury or judge sitting as a jury. Recently, in *Pora v The Queen* [2015] UKPC 9; [2016] 1 Cr App R 3, para 24, the Judicial Committee of the Privy Council in an appeal from New Zealand, stated:

“It is the duty of an expert witness to provide material on which a court can form its own conclusions on relevant issues. On occasions that may involve the witness expressing an opinion about whether, for instance, an individual suffered from a particular condition or vulnerability. The expert witness should be careful to recognise, however, the need to avoid supplanting the court’s role as the ultimate decision-maker on matters that are central to the outcome of the case.”

Thus, while on occasion in order to avoid elusive language the skilled [expert] witness may have to express his or her views in a way that addresses the ultimate issue before the court, expert assistance does not extend to supplanting the court as the decision-maker. The fact-finding judge cannot delegate the decision-making role to the expert.

18. As a preliminary point we must consider the entitlement of Prof. Nurse and/or Sprakab to be treated as experts; and whether their reasoning is sufficient such that weight can be attached to their conclusions. That, we consider, requires an analysis of their methodology. In the light of the observations made about Prof. Nurse in RB, we must evaluate the extent to which criticisms of his approach continue to be of concern.
19. We are satisfied that as a linguist (albeit he is not a native speaker) Prof. Nurse is entitled to be treated as an expert in Swahili linguistics and in the Bajuni language. He is able to opine on the morphology (word formation), syntax (word order in phrases and sentences), phonology (how words are spoken/pronunciation) and lexica (vocabulary) of both. It is not a requirement for a linguist to be a native speaker to have that level of expertise in a language to be able to analyse a paradigm against which a person’s speech can be compared.
20. The basis of the expertise used to generate the Sprakab report in this case is less easy to quantify. It is not doubted that the person with whom the appellant spoke to obtain the report is a native speaker of Swahili, and speaks Bajuni to mother tongue level. It does not necessarily follow that, without the assistance of a trained linguist, such a person is able to analyse in linguistic terms a person’s speech in the same way that Prof Nurse who is a trained linguist is able to do. We note that there is input from a linguist in Sprakab before a conclusion is reached and we must therefore consider Sprakab the entity as the expert. We find no proper basis to differ from the conclusions reached by the Supreme Court and other constitutions of this Tribunal that for the purposes of this case, Sprakab is entitled to be treated as an expert. As highlighted above the Secretary of State only continues to rely upon Sprakab in connection with those whose identity as Bajuni, claiming to be from Somalia is in dispute,

and not in assisting in the determination of others whose identity or nationality is in dispute. There is therefore now very limited utility in reviewing or giving any further general guidance on the expertise offered by Sprakab as an entity.

21. We turn, then, to the methodological approach taken by both Prof. Nurse and Sprakab in this case.
22. The starting point is what was said in RB:

88. Linguistic analysis at Sprakab is a two-stage process. It starts with an analyst listening to a specimen of speech, which is recorded. Typically, the analyst converses with the person whose speech is to be analysed. Using his developed skills as a listener, the analyst notes features of the subject's speech which appear to be of interest. Those features may be phonological, that is to say related to the precise sounds used in speaking, and to the intonation and stresses of both words and sentences, morphological, that is to say related to inflection, grammar and syntax, or lexical, that is to say related to the speaker's choice of words.

89. The analyst then discusses the features that have been identified with a linguist. Together, the analyst and the linguist decide whether the features are indeed diagnostic in the sense of assisting to decide the speaker's origin. A report is produced, giving a judgement, usually in one of the four following forms:

“The person speaks a variety of [language or dialect] found- with certainty in (or certainty not in):

- most likely in:

- likely in:

-possibly in:”

90. Sprakab's account of the measure of these phrases is as follows: “If the analyst is certain that the analysed language is found in a specific region, he/she uses the degree of certainty “with certainty in”. The degree of certainty decreases if the speaker mixes in elements not normally found in use in the region he/she maintains his/her linguistic background in. Rationale for a determined degree of certainty is ordinarily explained in the report.”

91. The person conducting the interview with the claimant, which is saved onto CD, may also be the analyst, in which case a preliminary result can be given at the end of the interview. Analysts are given extensive training by the linguists, so that they will be on the lookout for certain distinctive features of the language or dialect spoken by the claimant. Indeed, before analysts are taken on by Sprakab, they must undergo an evaluation process, in which they must listen to a dozen or so sample recordings from Sprakab's collection and get the language or dialect right. Then they are asked to analyse for themselves another twenty or so recordings which have already been analysed by an experienced analyst, and only if they show themselves competent are they appointed to work for Sprakab.

92. The contribution of the linguists is different. They may well not speak the language of the claimant, but will check that the analyst has identified

linguistically significant features of the claimant's speech which enable a conclusion to be drawn with the requisite degree of certainty.

...

159. Sprakab does not claim to be infallible. It offers four categories of opinion (see paragraphs 89-90) and this opinion evidence must be evaluated with the other evidence in the appeal. The kind of linguistic analysis offered by Sprakab is a serious step towards independent and verifiable opinion but it does not claim to have the reliability of, for example, fingerprint evidence. It may be that linguistic analysis of the kind used by Sprakab is a developing discipline and Sprakab will become subject to more peer review. It would certainly be in accordance with our understanding of Sprakab that it will constantly seek to refine and improve its methods. The evidence before us shows that Sprakab provides an honest, serious and useful guide to establishing the location where a person learned to speak.

160. The biggest weakness we see in the Sprakab system is that it depends at its core on an alleged expert in the language saying, for example "I do not think people who come from there talk like that". However that opinion has to be explained. Reasons for holding it are given. Patterns of speech, for example, are recorded in ways that trained linguists can understand, reproduce and check. Sprakab is sensitive to the changes in language use and notes them and keeps in contact with those of a like minded interest. Further no final conclusion is reached just on one person's opinion.

...

165. Prof. Nurse criticises Sprakab's methods in relation to the cases he has examined, but for two reasons it does not appear to us that these criticisms are sufficient to cause doubt about Sprakab's process or its expertise as a whole. In the first place although Prof. Nurse found that the interviews were sometimes brief, sometimes over unsatisfactory telephone lines, and sometimes used questions of a form or in a language he did not approve, there is no proper basis for saying that in those cases, or because of those alleged defects, the opinion given by Sprakab was in fact wrong. Some cases will be clearer than others and will require less investigation before an opinion is reached.

166. Secondly, Professor Nurse's criticisms do not purport to be an impartial survey of Sprakab reports and conclusions as a whole. He says that the 50 reports forming the basis of his 'Overview of Sprakab linguistic analyses of Bajuni refugee claims 2004-2010' all included a conclusion that the applicant 'comes not from their alleged place but from some other place'. His 'Overview' therefore relates to negative reports only. We do not know in what proportion of claimed Bajuni cases Sprakab supports the applicant, but it seems to us that any valuable criticism of Sprakab's methods as a whole would need to take into account its positive as well as its negative reports. Of course, it might be the case that all Sprakab's positive reports were reliable and all its negative reports unreliable, but that would seem inherently unlikely.

167. It might be said (although it was not said in the present appeal) that Sprakab reports should be ignored or treated as of less weight because they do not comply with Practice Directions relating to expert evidence. We do not think that would be right. In the first place the reports do indicate, within the limits of the anonymity we have held to be justifiable, the identity and qualification of the writers. Secondly, unlike many "expert reports", they

come in essence from an organisation rather than an individual, and it is the characteristics and methods of the organisation that are of importance in this context. Thirdly, they are typically prepared for a decision-maker and not for an appeal, and so it is not appropriate to impose on them rules relating to evidence prepared specifically for use in litigation.

...

168. It seems to us that we have been given no substantive reasons for distrusting Sprakab's reports either in this case or in general. In our judgement, because of Sprakab's underlying library of data and the process by which it produces its reports, Sprakab evidence is of high quality and its opinions are entitled to very considerable weight.

23. It is also relevant to consider what Sprakab says are the limits of its expertise. In its report on the appellant it states:

1.1 Language analysis

Language analysis concerns the assessment of a speaker's use of language. This assessment is based on the presence of linguistic characteristics in a specific audio recording. The results of a language analysis are an assessment of a speaker's language and if possible, which dialect and sub dialect is being spoken. The results can be expressed as an assessment of the geographic area(s) in which the speaker's language use is represented. If the assessment reveals possible limitations in the analysis, this will be reported.

1.2 Assessment

The language analysis is purely an assessment of language usage. A language analysis cannot reach conclusions concerning the actual domicile or citizenship of a speaker, Language use, citizenship and national borders do not necessarily have to coincide. This is the case, for example, in border areas where the same language and ethnic groups are found on both sides of the border. Another example is speakers born and/or raised in a language community in a certain country, but with origins from another country.

The assessed language usage of the speaker can be evaluated in relation to the language use expected based on the speaker's stated background. This is normally expressed on a five- point scale where the speaker's assessed language use is represented in a stated geographic area

1.3 Method

A language analysis is done in cooperation between one or several linguists and one or several analysts. One managing linguist and at least one reviewing linguist are always involved. The managing linguist has ultimate responsibility for each individual analysis report. The role of the analyst is to provide an assessment of a speaker's language use based on a specific audio recording, The role of the linguist is to compile a language analysis report. The analysts' assessment is the tool used by the linguist to finalise the analysis results and it is not uncommon for a linguist to request additional assessments from one or several analysts before a final assessment is made of an audio recording.

1.4 Quality Assurance

All language analysis are quality assured both internally and externally. Sprakab performs regular internal audits of the knowledge and performance

of its analysts. These audits are performed frequently randomly, without the analyst's knowledge. All language analysts are also audited internally by at least one linguist. Sprakab language analysts are audited externally via the language analysis department of the Dutch Immigration and Naturalisation Service (Immigratie-en Naturalisatiedienst).

1.5 Analysis data

The audio recording on which the language analysis is based, is supplied either by the client directly or via an interviewer at Sprakab performing a language analysis interview with a speaker by phone. Although the latter is called direct analysis, analysis as such is not performed during the course of the interview itself. However, prior to a direct analysis interview, the interviewer and speaker are matched based on the information on the speaker the client has supplied.

As far as possible, Sprakab interviewers adapt the direct analysis interview in line with the expected language use in the domicile claimed. A direct analysis interview aims to obtain analysis data on the speaker that are as representative as possible for language analysis. Speakers are encouraged to speak their own dialogue during the interview. The analyst who performs the language analysis will not necessarily be the analyst who performs the language analysis interview on which the analysis data are based.

24. This is a generic statement, and it is important to note the caveats in section 1.2 as to a report's utility in identifying domicile and the difficulties that arise when someone is brought up in a linguistic community originating elsewhere. We observe that nothing is said about the effect of someone moving during their formative years.
25. We remind ourselves that we are here considering the Bajuni dialect or language, which is one of many dialects of Swahili. Swahili is spoken widely in East Africa both as a first language and as second language.
26. The assumption underlying the Sprakab report and Prof. Nurse's evidence is that a speaker of Bajuni can be identified as such and differentiated from users/speakers of other Swahili dialects. It is also assumed that this can be done by interviewing those who claim to be Bajuni, in effect "sampling" their speech and either comparing that with a paradigm that has been constructed from data in the case of Prof. Nurse; or in the case of Sprakab, by a native (or near native speaker) comparing his or her knowledge of Bajuni with the sample of the interviewee's language obtained through an interview.
27. The methodologies employed by both Prof Nurse and Sprakab includes obtaining a sample of an individual's speech from a short interview with them. That sample is not random; the conversation is directed towards subjects and vocabulary which are thought likely to draw out forms of speech which are distinctive of the possible origin, be that vocabulary (or lexis), syntax, phonology, or morphology.
28. There are difficulties inherent in that process: first, in obtaining a sample likely to demonstrate features which are characteristic of Bajuni and,

second, in identifying a suitable paradigm/knowledge base in the case of Sprakab. That is because, as Prof. Nurse observed, a person's speech may vary according to context, and with whom the person is speaking. There is nothing unusual in that; someone born and brought up in the North of Scotland but who trains and practises as a lawyer in London may well speak very differently in court from how they speak with family at home in Thurso. There may be differences in vocabulary, word formation, word order and pronunciation, that is in linguistic terminology, lexis, morphology, syntax and phonology.

29. Certain features of some or all of these features may indicate from her speech that a person comes from a specific part of Scotland, but a sample taken from submissions in court or in conversation with a speaker of received pronunciation is unlikely to do so. Thus, in sampling speech, for a comparison with a paradigm to be of value, techniques need to be used which would draw out particular features such as specific grammatical structures, or vocabulary. That can be achieved, for example, by asking for specific names for objects, or asking questions the responses to which would usually involve the use of certain grammatical structures. Given, however, that this is an interactive process, there is a danger, as identified by Prof. Nurse, whereby the interviewee adapts his or her language to suit that of the interviewer, either consciously or not.
30. Difficulties arise also with putting together a paradigm of how it is thought a person from a specific region speaks as that again requires some form of data collection or comparison against the language of a native or near-native speaker.
31. Prof. Nurse states that language and how people use it changes over time, and when the speakers of a particular dialect interact on an extended, daily, basis with a dialect used by a numerically greater number of speakers. We accept that, and there is no real challenge to that; as an expert linguist his view carries weight.
32. The primary criticism levelled at Sprakab in this case is not in how it interviews, or in its attempt to identify specific linguistic features of Bajuni in an individual's speech (subject to caveats about the individual changing his or her speech in the context of a formal interview) but that it uses as a comparator a form of Bajuni which is fixed in time and is no longer representative. Prof. Nurse, in summary, argues that Bajuni has changed to the extent that it is in reality a dying language, younger Bajuni speaking, in effect, Swahili with a Bajuni accent and using the odd word or phrase which is specifically Bajuni rather than its standard Swahili equivalent, for example, words for family relationships, food stuffs, fish and so on. This, he opines, has arisen due to the dispersal of Bajuni people over time, and their interaction with speakers of other Swahili dialects as a result.
33. We turn then to considering the historical context and to the extent to which Bajuni was and is now differentiated from standard Swahili.

Historical Background

34. We bear in mind that there are three extant Country Guidance cases regarding the Bajuni:
LS (Bajuni, Kibajuni speaker) Somalia CG [2002] UKIAT 00416,
SA & Others (Minority group, Swahili speakers) [2003] UKIAT 94
and
KS (Minority Clans, Bajuni, ability to speak Kibajuni) Somalia CG [2004] UKIAT.
35. Confusingly, SA is also reported as AJH (Somalia) CG [2003] UKIAT 94
36. These cases examined the basis on which the ability (or not) to speak Bajuni, referred to as Kibajuni, was indicative of an appellant being a Bajuni from Somalia and, thus, entitled to recognition as a refugee.
37. What, however, is meant by speaking (Ki)Bajuni is not discussed at any depth in these cases. As will be apparent from what we say below, whether a person speaks Bajuni this is not a question that can properly be answered with “yes” or “no”; the ability to “speak Bajuni” covers a spectrum of usage from those fluent in that dialect and able to conduct conversations solely in it to those who use only some words and phrases added to standard Swahili.
38. In LS at [14], the Asylum and Immigration Tribunal (‘AIT’) held that judges “should approach someone who claims to be a Bajuni resident of Somalia, but who cannot speak Kibajuni (let alone Somali), with great caution”.
39. Much of the conclusions as to the differences between Bajuni (or Kibajuni) and the extent to which they differ were taken from the evidence given by Elders and reported in joint British, Danish and Dutch fact-finding mission which visited Nairobi in September 2000. That can be seen in both LS at [6], and AM at [14]. The elders in their evidence stressed that there were significant differences between Swahili and Bajuni.
40. In SA, the AIT concluded [32] that
 32. As regards knowledge of matters that would generally be known to Bajuni or Bravanese from Kismayo, it is important to emphasise why this test of local knowledge is central in many cases brought by persons claiming to be from Somalia. It is simply not possible to make any simple equation of ability to speak Kibajuni and being a Bajuni from Somalia. That is because we know from the objective materials that the Bajuni are a highly mobile population and that a small but significant number reside in Kenya. Insofar as knowledge of matters to do with in Somalia, we have already seen that the Professor found both the second appellant (in respect of being a Bravanese) and the third appellants to show extensive knowledge of their respective tribal geographies.

33. What is needed therefore in cases in which claims to be Somali nationals of Bajuni clan identity are made is first of all: (1) an assessment which examines at least three different factors:

(a) knowledge of Kibajuni,

(b) knowledge of Somali varying depending on the person`s personal history; and

(c) knowledge of matters to do with life in Somalia for Bajuni (geography, customs, occupations etc).

But what is also needed is (2) an assessment which does not treat any one of these three factors as decisive: as the Tribunal noted in *Mohamed Ali Omar* [2002] UKIAT 06844, it is even possible albeit unusual that a person who does not speak Kibajuni or Somali could still be a Bajuni.

41. In KS the AIT saw no need to depart from SA but emphasised at [44] the need to consider the evidence as a whole.
42. It is now over seventeen years since KS (Somalia) and even a cursory glance at the Upper Tribunal`s decisions on Somalia AMM and others (conflict; humanitarian crisis;_returnees; FGM) Somalia CG [2011] UKUT 445 (IAC) MOJ & Ors (Return to Mogadishu) Somalia CG [2014] UKUT 00442 (IAC) and SB (refugee revocation; IDP camps) Somalia [2019] UKUT 358 (IAC) demonstrates that the situation in Somalia as a whole has changed significantly since then. These cases do not, however, address the position of the Bajuni, nor for that matter does OA (Somalia) CG [2022] UKUT 00033 (IAC)

The recent history of the Bajuni people

43. We have found it necessary to consider the material regarding the history of the Bajuni people over the past few decades in order to give context to changes in the language used by the Bajuni as identified by Prof. Nurse.
44. Much of the material in LS concerning the Bajuni people was drawn from the relevant CIPU Report, which in turn was based primarily on a report of a Fact-Finding Mission produced jointly by the British, Danish and Dutch governments as a result of a mission to Nairobi, Kenya which took place between 17 and 24 September 2000. In RB the panel had regard to a Landinfo Report at [128] to [135]. It is evident from that decision and from the conclusions at [142] that there are significant differences in the evidence regarding the history of the Bajuni people even as recently as the 1970s and post-1990.
45. We bear in mind that this appeal was not identified as a possible vehicle for giving country guidance on this issue but it is necessary to make some findings regarding the history of the Bajuni, given the extent to which it informs how their language may have changed as a result of migration and subsequent exposure to other dialects of Swahili, spoken by the far more numerous host communities. Whilst we accept that Prof. Nurse is

not an anthropologist or a geographer, he helpfully brings together from a number of sources information regarding the Bajuni Islands. His evidence is based primarily on assessments from Grottanelli, who in 1955 undertook study of the Bajuni. Essentially, the islands are for the greater part low-lying and form a continuous line stretching some 145 miles, from Kismayu in Somalia down to Pate Island in Kenya and Dodori Creek on the mainland opposite. How many islands there are, is not clear, as many of them appear never to have been inhabited and are little more than shoals (see Prof. Nurse's *The Case of the Bajunis* at page 168 to 169). Indeed, even the main Somali islands are small, Koyama being 7.5 square kilometres, Chovaye 6.5, Chula 5 and Ngumi 4.5.

46. According to *The Case of the Bajunis* at page 171, the period from CE 1400 to CE 1800 was the highpoint of Bajuni fortunes. They traded with the Portuguese and others and their captains and crews sailed the entire East African coast trading although they began to decline in the 19th to 20th century CE.
47. The number of Bajunis living in Somalia appears to have been small. The only official census made by the Italian administration in 1926 indicating only 334 people in Kismayu, 301 on Chula and 172 in Koyama. Grottanelli put the whole of the Bajuni population in Somalia at not more than 2,000 in 1953 and Prof. Nurse records that through the 20th century Bajuni individuals and families trickled down into Kenya long before the "Troubles" of the 1990s. It is stated:

"The size of the Bajuni population in Somalia in the years and decades even before The Troubles is disputed: the figure of 'perhaps 3,000 to 4,000' (Cassanelli 1995) is the best. Allowing for an annual compound increase of some 2% and the leakage down to Kenya, Cassanelli's figure fits reasonably well with the 1926 figure."
48. As the panel noted in RB at [128] to [135], it is unclear what happened to the Bajuni Islanders in the 1970s. The discussion there revolved around how the majority of Somali Bajunis were able to speak Somali, this being attributed to them being moved to the mainland in the mid-1970s, children and young people attending schools where the instructions were given in Somali, this being apparently as part of a forced migration. Alternatively, this is part of a forced collectivisation of Bajuni fishermen but equally it is of note that this was not mentioned in the 2000 report, again a source being Bajuni elders. What does appear to have occurred is that towards the end of the 1980s and shortly before the overthrow of President Siad Barre in 1991 some of the Bajuni drifted back to their ancestral homes.
49. Prof. Nurse reports that following the overthrow of Siad Barre in 1991, ethnic Somalis who for centuries had lived on the mainland flooded into the Bajuni Islands and their mainland settlements with a deliberate effort to exterminate or force the Bajunis out of Somalia. It was then later that others who felt at risk or were from displaced origins were also resettled there on the islands by the UN.

50. What does appear to have occurred is that the Bajuni on the islands then fled south into Kenya to stay with relatives or into the refugee camps near Mombasa or North East Kenya, where forms of Swahili were the lingua franca.

Bajuni – how different from Swahili?

51. Prof. Nurse's evidence, which is not in dispute on this point, is that Swahili was originally a language spoken in coastal East Africa which has spread inland and has become the predominant language in large parts of East Africa either as a native language or as a widespread widely used second language. It is spoken in some form or other by over 100,000,000 people. He describes Bajuni as one of the older traditional coastal dialects of Swahili. As to the differences between the standards of Swahili Prof. Nurse says this:

How different is Bajuni from other forms of Swahili? One way of answering would be to say that if two elderly Bajuni were using the traditional form of Bajuni to talk about cultural matters such as fishing or family relationships, speakers of other forms of Swahili would have trouble understanding (imagine someone from Mississippi going to the Gorbals for the first time). On the other hand, Swahili is often used as an abbreviation for Standard Swahili. In that sense it would contrast with Bajuni.

Another way of answering the question about how different Bajuni is from Standard Swahili would be to consider different varieties of English: for example BBC English, Cockney, Geordie, the English of the Gorbals, of the Highlands, of Dublin, of fishermen in Cork, and of farm workers in Mississippi. On the level of syntax (sentence formation) they differ little. On the level of morphology (word formation) they differ a little more. On the level of vocabulary, idiom, and pronunciation they differ considerably. So it is with (traditional) Bajuni and Standard Swahili. What they share is greater than what differentiates them.

52. In addition to his own analyses of the speech of Bajuni, he states that he compared these also with earlier studies classifying them in part by the age of the people who spoke and when they would have been born. He notes from these in essence that the language used by the young has changed to become less differentiated from standard Swahili. In "*The Question of the Bajuni*" he states:

"I personally have listened to 164 Bajuni (mainly counter-expertise) cases from Somalia which over a decade provided the ideal basis for a longitudinal study. At the start, there were older individuals who spoke Bajuni reasonably well but in recent years not one speaks traditional Bajuni anymore. (Verbal) morphology was lost first, then consistent use of phonological features leaving only lexical terms. Linguistic loss and age correlate well (see Schmidt, this volume). The asylum applicants have become younger and younger and at the same time their knowledge of traditional Bajuni has become less and less. Some speak no Bajuni, except for a few or very few lexical items. Predictably, these items refer to local matters (dances, kinship terms, food) or involved common conversational pieces ('I don't know', 'a few/little', pronouns)."

He says also:

I did a detailed survey of the speech of 155 Bajuni refugee cases from Somalia¹⁵, who arrived in Europe between 2004 and 2017. All were born between 1962 and 2000. A handful of those born in the 1960s might be described as more or less speaking Bajuni, although not quite that of their grandparents. The rest, 95%, no longer spoke Bajuni. They have replaced it by Swahili: all used a Swahili syntactic framework with embedded bits of Bajuni morphology¹⁶, phonology, and lexicon. The younger they were, the fewer Bajuni features in their speech. Bajuni is no longer spoken in Somalia and has not been spoken there for decades. The reason is still unclear. This survey is published as Nurse 2018 (page 19)

53. Prof. Nurse explained that there are limited differences in morphology and syntax between Bajuni and standard Swahili.

54. Having described the forced migration of the Bajuni from 1991 onwards during the collapse of the Somali state, Prof. Nurse's evidence that thousands of Bajuni fled south by sea:

... into Kenya, to stay with relatives in Malindi or Mombasa, or to refugee camps near Mombasa (Kwa Jomvu) or near the border in northeast Kenya and southeast Somalia (Dadaab, Liboi, Garissa, etc, some were even settled in Kakuma, in northwest Kenya). In these refugee camps, forms of Swahili were the lingua franca. The refugee camps held other refugees from Somalia. Bajuni in the camps might have spoken Bajuni to each other but they would have had to be careful because the other refugees were mainly Somalis, who did not like Bajuni or the use of their language, whether in Somalia or in Kenyan camps. When talking to the other refugees, the Bajuni did not use Bajuni, but Kenyan Swahili or camp Swahili (see 2.4, below). Not surprisingly, Bajuni did not like the camps. Incidentally, the camps were porous and refugees in Kenya were allowed to live and work outside camps if they had the right documents, and any doing so would use Kenyan Swahili as their main language of communication.

2.4 The current sociolinguistic situation in the region Listening to many refugee cases, it became clear to me that the Bajuni spoken by young Somali Bajuni was not that of their grandparents or even parents: they speak a form of Swahili with some Bajuni features. The difference can easily be seen by comparing the speech of younger Somali Bajuni today with that of Bajuni recorded in 1980. The many pages of Bajuni in Nurse (1994) are transcriptions of elderly Bajuni born between 1910 and 1930, interviewed and recorded by Nurse around 1980. The Bajuni of those pages and the grammatical sketch in Nurse (1982, also 'Grammatical Sketch' in Nurse 2013) is clearly not the language used by younger Somali Bajuni today.

55. In short, over time, the language used by the young has changed, to become less differentiated from standard Swahili. He says:

I did a detailed survey of the speech of 155 Bajuni refugee cases from Somalia, who arrived in Europe between 2004 and 2017. All were born between 1962 and 2000. A handful of those born in the 1960s might be described as more or less speaking Bajuni, although not quite that of their grandparents. The rest, 95%, no longer spoke Bajuni. They have replaced it by Swahili: all used a Swahili syntactic framework with embedded bits of Bajuni morphology, phonology, and lexicon. The younger they were, the

fewer Bajuni features in their speech. Bajuni is no longer spoken in Somalia and has not been spoken there for decades. The reason is still unclear. This survey is published as Nurse 2018 (page 19)

...

The Appendices clearly document Bajuni competence in Bajuni in Somalia dropping over the four decades since the 1960s, but steadily and most drastically since the 1970s. It did not start with the 1991 exodus to the refugee camp(s).

56. Bajuni is, in his opinion, a dying language which is only part remembered:

Bajuni morphology was replaced first, followed by phonology and lastly vocabulary. While a small minority has no discernible Bajuni features, even today most speakers can produce some Bajuni words in their Swahili, if pushed. That said, there was at least until recently a range of Bajuni ability²². In Appendix 1, compare the levels of knowledge for NE20 and NE21 with those for NE3 or UK8: NE21 has 6 morphological, 11 phonological features, 40 lexical items: NE20, despite time spent in Jomvu, is similar. At the other end of the scale, UK8 has no discernible Bajuni features, and NE3, born back in 1965, is similarly low. The range can be seen in Table 1:

The lowest incidence of Bajuni features is in the youngest (1990 onward) speakers. It cannot be demonstrated that the decline is the direct result of the refugee period. It seems that the camp period reinforced a linguistic decline that was already well under way. Page 22 (14 of report) It is inaccurate to talk of Swahili and Bajuni as if they were quite different languages/varieties. Even for the few remaining good Bajuni native speakers, the similarities are greater than the differences, and there are many who switch or switched easily between the two.

- Somali and Kenyan Bajuni, at least up to a few decades ago, were essentially identical. This contradicts what elders told the authors of the JFFM report in 2000.

- No younger Somali Bajuni speak Bajuni any more. They have replaced it with Swahili, with embedded Bajuni components, some more, some less. How much they embed depends on the individual and the situation.

With the exception of the very few older people, the rest can be characterised as “rememberers” (see 2.4). In this case they use a Swahili morphosyntactic (see section 3, line 3) framework, into which they insert Bajuni or Swahili components, some more Bajuni, most more Swahili. Fluent Bajuni is a plus, but use of a mixed language, with Bajuni elements inserted into Swahili as a base, or a total inability to speak Bajuni, is normal and compatible with applicant’s claim to be a Bajuni of Somali origin. Most Somali Bajuni I have heard are likely to have more Bajuni elements in their speech when speaking to other Bajuni and fewer when speaking to monolingual Swahili speakers or officials.

57. In his oral evidence Prof. Nurse confirmed what he had said in his written material as summarised above. Much of what he wrote in the various articles is repeated within them and in his report on this appellant. He says in respect of the appellant’s answers to the interview conducted at his (Prof. Nurse’s) behest that the appellant had got the timing to the traditional dances wrong, they were danced at harvest and when they cut

down the bush but as that did not happen anymore that might explain why he got it wrong and thought they were done at weddings. He said that the Isaaq clan had not come to the Bajuni Islands until the 1990s. He said it was not known how many Bajuni Islands there are but five major inhabited ones and dozens had been named in colonial documents. As a shepherd, the appellant would not be expected to know this. Asked to comment on the appellant's inability to name his clans, he said it was puzzling as a real Bajuni with mother and father would immediately know their clan names automatically, the talk about Kenya, Somalia and Isaaq was very confusing. He did not understand the reference to Kenya at all and that Arab is a language, not a clan.

58. Prof. Nurse said that there was nothing linguistic to link the appellant to Tanzania and it is his expert opinion there was sufficient evidence to say that the appellant is from Chula and speaks Swahili with a Bajuni accent. He said that it is the local knowledge that pointed at Chula. He said that the appellant may have misunderstood the question about Chula village.
59. Prof. Nurse said that although he did not speak Bajuni he understood it enough to analyse it and said that the appellant speaks Swahili with a Bajuni accent which was different.
60. Turning to the Sprakab Report, he said that the small pool of interviewers had not changed nor had the questions or conclusions. He said that he did not know how they operate but assumed it was from a general questionnaire that they adapt but that they did not ask follow-up questions and there were many things that they could ask, for example names of fish, which they rarely did.
61. In cross-examination, Prof. Nurse said that he had done his research in coastal East Africa, and had never lived in Somalia. Although he had been there he had not lived in the Somali Bajuni-speaking islands but had lived in the Kenyan ones. He accepted that the Sprakab analyst who had said that she had lived there was in a different position. Turning to the evidence of the sources he had used, he confirmed that one - Brian Allen is a retired religious worker who spoke Swahili but not a linguist, and whose evidence had been considered in KS. He stood by his assessment that the analysis was not long enough although he accepted that the analysis he had done was not much different in length of time. He said he was not needing to listen to sentences as the syntactic patterns were identical between Bajuni and Swahili and said it was lexical and phonetic evidence he was listening to. He confirmed that the process he had done was a questionnaire administered for an interpreter and accepted that it did not include follow-up questions as he would have needed it to be in there. He said sometimes the interviewer did not understand the question and only then were there follow-up questions. He accepted that the procedure was similar to Sprakab and the data quantity was short and ideally it would have been face-to-face. He said that his interview was short but not unreliable. He denied that the evidence of the appellant was inconclusive as there needed to be an explanation for Bajuni features which occurred in

his speech and that the apparent inconsistency was what one expects in mixed speech (see [56] above) and that he is able to distinguish clearly in the recording six different words.

62. Prof. Nurse said that Sprakab ignored the fact that two of the words used can also be heard in Kenya but disagreed with their conclusions on lexica. It was put to him that one explanation of the appellant not knowing many Bajuni words was a generational issue but that another possibility is because he was not from coastal East Africa or from Chula. He accepted that this was possible.
63. Prof Nurse did not accept that the analyst from Sprakab was in a better position to analyse the appellant's speech and he denied being an advocate rather than acting as an expert. He said he would not have expected more features of Bajuni, given the appellant's age, in a short interview like that but he said he was very surprised that the appellant did not know fish names, coming from a fishing community, and that he had no formal education and travel would explain why he did not know the region. He was surprised that the appellant did not know the tribe on the largest island and it was impossible for the Nafali, a Bajuni clan, to be part of the Isaaq. He did expect the appellant to be able to say and name some major clans when asked. He said he did not know what the appellant had been asked as regards the names of other islands. Asked about clans, he accepted that the response regarding the mother's clan, the giving of a nationality, was not the correct response but that one did not know when he was asked. He said that the Isaaq do not live on the island on Chula but might have raided there. He said that on balance he thought the appellant was familiar with Chula but cannot think of how he knows about it but he is deficient in some respects. He accepted it was possible that he did not grow up there but that they did not ask the question as to where he got the knowledge from.
64. To summarise, we have not been provided anything in the way of material directly from Sprakab and therefore we can only go by what was said in previous cases. But what we can say is this: what a linguistic analysis is doing is seeking to analyse by a relatively small but focussed sample of a person's speech as being indicative of where that person is from, albeit that a person's language may change if they move and live in another language community. Whether, and to what extent it is useful in the case of Bajuni is difficult to determine. Given the small number of Bajuni who existed even in the 1950s, the extent to which they were interconnected with much larger communities who speak different dialects of Swahili and given the serious upheavals that took place in the 1990s resulting in them fleeing to Kenya and the greater part then returning from exile, having lived primarily in a Swahili-speaking milieu, we accept in consequence it is important to look particularly carefully at how the process of language analysis is undertaken. As noted above, it is primarily an exercise in sampling an individual's speech and comparing it against a norm either formed from data collected over time and from different speakers of different ages (as Prof. Nurse did) or from a native own speaker's usage.

65. Prof. Nurse's evidence is that the language used by Bajunis has changed markedly over the last 50 years and that there are few, if any, users of "pure" Bajuni left.
66. That, we consider, is borne out by the data Prof. Nurse has produced in the statistical tables set out in the Appendices to his report which show changes in usage of Bajuni over the years and by different age cohorts. There is no similar data from Sprakab. At best we are told that their analysts speak Bajuni but we are not told to what extent nor are we told in detail what particular features would be more indicative than others. Whilst we accept that they have used speakers of Bajuni, Sprakab relies also on linguists for the necessary expertise to analyse the morphology, syntax, phonology of those they are listening to and to be able to explain why this is different from a Bajuni speaker nor do they explain properly how they would expect a Bajuni speaker to be speaking. In short, the paradigm that they are using is unclear and there is no evidential basis shown as to how it was developed or why it reflects those of the Bajuni Island heritage.
67. In summary, Prof. Nurse's evidence is that the speech of the Bajuni is now less different from Swahili than for the past, which is an entirely natural progression, given that it was spoken by a relatively small and isolated population later exposed to a bigger population speaking a similar language/dialect. We find considerable merit in his opinion, supported by the evidence, that what the Bajuni (and in particular younger Bajuni) speak today is Swahili but with certain Bajuni characteristics such as turns of phrase or specific words relating to specific cultural matters such as names of fish, dances and so on.
68. Neither Sprakab nor Prof. Nurse have tested whether the appellant speaks Somali. He said that he does not and therefore no conclusions can come from that.
69. What differentiates Prof. Nurse's analysis from that carried out by Sprakab is that to an extent it relies on cultural and geographic features whereas Sprakab does not do so. Again, there is a problem in that in that it is difficult to decide objectively what the right answers should be.
70. A further problem arises from the fact that as is evident a large proportion of the Bajuni will have moved around from the islands to Kenya and possibly back, which may well have affected their speech, given the extent to which they were living in a partially Swahili-speaking milieu. We accept Prof. Nurse's evidence that this leads to features such as mixed speech (see [56] above)
71. The principal defect with the report from Sprakab is that it appears to draw a false distinction between Swahili and Bajuni, given the latter is a dialect of the former. Insofar as it identifies features consistent with Swahili as spoken in Tanzania [2.2] and [2.4] it is entirely defective and unreliable in

that it fails properly to explain whether those features are also common in Swahili and spoken in places other than Tanzania.

72. On the basis of Prof. Nurse's evidence, which we accept, a language analysis is going to be of limited value in assessing whether somebody is a member of the Bajuni or not. That is because younger people from this area will display in their speech only a limited use of Bajuni words and phrases and unless they are specifically asked about these words including for example the names of fish, it is in the round of limited use.
73. There is a further problem on the specific facts of this case in that as Prof. Nurse identifies in his analysis of the Sprakab Report: it does not identify some of the Bajuni words the appellant used - the words for older brother, older sister, maize, fish, fishing; and that he had displayed Bajuni phonological features.
74. Although Prof. Nurse is not a speaker of Bajuni we are satisfied that he has the necessary expertise in Swahili to be able accurately to record words used and to transcribe them and compare them.
75. The Sprakab Report does not appear in any way to take account of how people's language will have changed as they acquire different features in different places as they move around.
76. The respondent criticises Prof. Nurse's interpretation of data on the basis that the sample is small and the criteria for selection are unclear. That may be so, but there is no evidential basis for showing that an expert would select inappropriate criteria or thought that the sample was too small. The respondent has not adduced any evidence to support this assertion.
77. It is also submitted that the data do not bear out the assertion that most Bajuni (and particularly young Bajuni), do not speak Bajuni as 98% demonstrated some knowledge of Bajuni.
78. We find little merit in that submission. The figure of 98% indicating "Some knowledge" of Bajuni, includes a large number who only use a few words (lexica) but no morphology or phonology. Some knowledge cannot properly be equated in any normal sense with "speaking Bajuni". Further, the respondent's criticism proceeds on the basis of speaking/not speaking Bajuni as a binary option but that is not what, properly understood, Prof. Nurse says. He identifies, as is borne out by the evidence, that there is a wide spectrum of the use of Bajuni. Older people may a greater number of features of Bajuni; younger people may just use a few words. There is a spread of usage, showing a diminution of the features with age.
79. Taking these factors into account and in particular the detailed evidence of Prof. Nurse, we consider that the utility of Sprakab Reports is considerably more limited in the case of Bajuni than might have been supposed, given evidence that the speech of younger Bajuni is now considerably less

different from other dialects or standard Swahili. If, for example, a person showed no features or knowledge of Bajuni, then one might expect that to indicate that they are not of Bajuni origin; equally if their speech includes a greater number of features characteristic of Bajuni, particularly vocabulary and phonology peculiar to Bajuni, then it is more likely to indicate that they are of Bajuni origin. As Prof. Nurse said, Bajuni is a less well-regarded dialect, even by those of Bajuni origin and it is unlikely that non-Bajuni would have acquired this sort of knowledge. This spectrum of knowledge needs to be taken into account in assessing whether someone is of Bajuni origin. That will involve an evaluation of, for example, knowledge of places, cultural events and words specific to Bajuni cultural matters.

80. On the other hand, the absence of Bajuni language knowledge, features, vocabulary or phonology does not mean that a person (and particularly a younger person such as this appellant) is not or less likely to be Bajuni in the light of the factors already discussed.

Amending Country Guidance

81. One of the reasons this appeal was reconvened was to consider whether there is need to amend the Country Guidance provided in SA & Others (Minority group, Swahili speakers) [2003] UKIAT 94 ("SA") (see [40] above).

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

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

a) knowledge of Kibajuni,

b) knowledge of Somali varying depending on the person`s personal history; and

(c) knowledge of matters to do with life in Somalia for Bajuni (geography, customs, occupations etc).

But what is also needed is (2) an assessment which does not treat any one of these three factors as decisive: as the Tribunal noted in Mohamed Ali Omar [2002] UKIAT 06844, it is even possible albeit unusual that a person who does not speak Kibajuni or Somali could still be a Bajuni.

82. We bear in mind that the guidance provided relates to *knowledge* of Bajuni. We accept the evidence of Prof. Nurse that the use of Bajuni is in decline and that the speech of younger Bajuni in particular shows fewer features of Bajuni beyond a few words or phrases.

83. We disagree with the submission from the respondent that the guidance should not be changed. We consider that it is appropriate now to augment the guidance in the light of the comprehensive and updated evidence of Prof. Nurse generally, including that Bajuni is, in effect, dying, and younger Bajuni use fewer distinctive Bajuni features in their speech. We reject the submission that this is just a hypothesis; it is supported by his research and analysis, and the respondent has adduced nothing to disprove it.

84. We consider, therefore, that the guidance should be amended to take account of this. We consider that the guidance should be rewritten as follows:
- (1) In assessing P's claim to be a Somali national of Bajuni origin, the decision-maker must take a holistic approach, taking into account the extent of P's knowledge of:
 - a) matters to do with life in Somalia, particularly as relevant to Bajuni (geography, customs, occupations etc);
 - (b) Somali, the importance of which will vary dependent upon P's personal history;
 - (c) Bajuni, the importance of which will vary dependent upon P's personal characteristics and history (including age, family history, residence etc).
 - (2) Where P seeks to adduce expert evidence of knowledge of Bajuni, this should include a linguistic analysis of the individual's speech, identifying clearly by reference to morphology, syntax, phonology and vocabulary those features which indicate that he or she is of Bajuni origin; or, that such features are not present. Such reports should also, where possible, indicate how P's speech compares with known Bajunis of the same age range, bearing in mind that the speech of younger Bajuni is now considerably less different from other dialects or standard Swahili.

The Appellant's Case

85. It is for the appellant to demonstrate he has a well-founded fear of persecution, to the lower standard. In the case of nationality, however, he has to show on the balance of probabilities that he is a national of a particular state.
86. The panel considered the appellant's oral evidence as a whole. It came to a conclusion that the appellant was not a witness of truth for the reasons set out below.
87. The appellant's evidence as set out in his witness statement is that he was born on Chula, that his mother is part-Somalian and part-Kenyan as her father, although born in Somalia, has Kenyan parents. His maternal grandmother was born in Somalia of Somalian parents. The appellant also states he had always lived on the Island of Chula and left in about 2015 when he was 17 or 18 due to conflict there between Al-Shabaab and the government. His father had been a fisherman who had disappeared in 2012, his younger brother and sister had disappeared in 2013, the brother when he was out grazing livestock and his sister while she was at the madrassa. His mother sold jewellery to arrange for him to come to the United Kingdom and he had not had contact with them since.
88. The appellant gave evidence with the assistance of a Bajuni interpreter at both hearings. He adopted his witness statement and was asked to

explain his answer in the screening interview at 1.13 to say his racial/ethnicity/tribal group was “Bajuni/Chondra”, because his father was from Chondra and his mother from Bajuni. His mother’s mother was Bajuni. He did not know where they had lived. He said that his mother had tried to explain it to him but he had not understood when she had tried to explain this to him. He said that his mother had explained to him when he was young how his father was a member of the Isaaq tribe but he did not understand it when she tried to explain it, nor did he recall the age when she had explained to him.

89. In 2012 the appellant was approximately 17 or 18 and said that he did not know the family history as he had not taken time to sit with his mother for her to explain this to him. He did not have the time as he was busy doing work and had things to do. But he knew he was Bajuni because his mother had told him. Asked why his mother had not sold the jewellery to help him to leave Chula earlier, he said that she did not have the idea to do so. He did not know why she thought of it at the time she did and had no contact with her since he left. He had no contact details for his uncle either.
90. Cross-examined, the appellant said that a lot of people on Chula did catch fish, that he knew about it and he knew some of the names of places on the island. It was put to him that he was not the sort of person (a shepherd) that Al-Shabaab would target and he did not agree with the Home Office’s position that Al-Shabaab were not present at the time of the incident. He said his brother and sister had been taken. Asked to explain the delay of two years between them disappearing and him leaving or that his mother needed to sell her jewellery (as he had said in the previous case to Judge James) he said that in 2013 she did not know of anybody to buy it and nobody was interested in it and she had no idea that she could sell it for his journey.
91. Asked about minority clans, he named the Darood and the Hawiye. Asked to confirm his age, he said that he had been born in 1997, not 1999, the date he had given when first interviewed as he was panicking. He said that he recalled being asked how many islands there were, explaining the difference between him saying there were five and the evidence that there were nine as he did not travel with his parents and so did not have that knowledge.
92. Asked about the questions put by Prof. Nurse that he had been asked to name places he would see walking around the island, he gave the name for another island, Ndoya. It was put to him that this was the wrong answer. He said that he did not understand the question. Then, when it was put to him that the question was put in Bajuni he said that he did not understand as he did not remember. He said that his answers about traditional dances were wrong and they were recorded, then he changed his evidence to the correct answer about when the Randa dance was performed.

93. It was put to him that he had said that his father was from the Isaaq clan, which he accepted was Somali, adding that his father's mother was Isaaq, his father's father was Bajuni, the Isaaq being mixed with Kenyan. It was put to him that he had said Isaaq and Arab, Prof. Nurse had said it was wrong, he said that some spoke Arabic which is why he had said that. It was put to him also that he had said his mother was half-Somalian and half-Kenyan. It was put to him that these were nationalities, not clans and he said that he did not have knowledge about that as he did not know his mother's clan as he did not have time to sit with the family to explain it as he was running for his life. He accepted that these were the sort of things that families talked about and he said he recalled talking about the Dir and the Isaaq. It was put to him that the Dir were from Western Somaliland and that the Isaaq were from Somaliland, not Chula. He said that was not true. He said some of the leaders had come from those areas to Chula.
94. The appellant accepted being asked to name six types of fish but had only named two, saying that he could not remember all of them, saying that at the time he did not understand the question. Asked if he spoke Swahili, he said he spoke Swahili and Bajuni and could understand Somali. It was put to him that he knew only about eight Bajuni words and he said he knew a lot of words in Bajuni. He denied being unable to count from one to ten in Bajuni despite Prof. Nurse's finding to that effect (AB 29).
95. On the second occasion on which the appellant gave evidence, he adopted his witness statement of 15 February 2022. He said that although he spoke English to a good standard, that would not help him to get a job in Somalia, and that he had no links with the Reer Hamar.
96. Cross-examined about his parents' backgrounds, the appellant said that his parents did not tell him where they were from, then that they were from Somalia but he had not been told in which part, and that he had been born in Chula. He said that he knew they were probably Bajuni. It was put to him that he had said in his witness statement that they were not Bajuni. He replied that he was born in the area which is why he thought he was Bajuni. Questioned further, he said that he did not remember making the statement that they were not Bajuni; all he knew was that they lived and grew up in the Bajuni area. He said his father was pure Bajuni as he speaks the language and that his mother was a mixture.
97. We take it as axiomatic from the country guidance cases on Somalia and indeed all the background evidence, that the clan is of great importance in Somalian society. As Prof. Nurse says:

"Most anomalous are his [the appellant] answers to the questions about clans. Asked about his father's clan he replies Isaaq and Arab. Asked about his mother's clan he replies half-Somali half-Kenyan. He says his own clan is that of his father. Asked about clans on Chula, he says Dir, Isaaq, Darood, Hawiye; Bajuni who grow up in a Bajuni area with two Bajuni parents can state their clan and the clans of their parents but he cannot: he says Isaaq (a Somali clan, Kenyan Arab). Asked to name the clans in Bajuni Chula he reels off the major Somali clans. The nearest equivalent in the UK would be

to ask a Highlander in Scotland called Macdonald for the surnames of his parents and he replies Smith, Jones and Robinson and asked for the names of the clans in the neighbourhood and he gave the same answer.”

98. We find the appellant’s evidence about where his parents were born and whether they are Bajuni or not to be riddled with inconsistencies as set out above, and we find his explanations for not knowing where they originated to be evasive; and, further, to be contradictory to what he said previously (see Prof. Nurse’s comments above). No proper explanation has been provided for these.
99. We find that the appellant’s responses when asked about his inability to name clans were evasive. We find it wholly incredible even taking into account the appellant’s lack of education and literacy that he would not have had the opportunity to know about the family history as claimed. His answers are, we consider, extraordinary in the context of a person claiming to be Somali and unexplained.
100. We accept that the appellant has demonstrated some knowledge of Chula as particularised by Prof. Nurse. He lacks knowledge of local lands and fish, could not name nearby islands and was unclear as to what traditional dances were performed. For the reasons we have already provided, we do not find that the absence of Bajuni language features or knowledge necessarily undermines his claim to be Bajuni. However, this appellant claims to have been born and grown up on Chula to the age of 17. He has not claimed displacement prior to this. In his particular circumstances we find his limited knowledge of Chula surprising.
101. Although we give the appellant some credit for accepting in oral evidence on the first occasion that some of his earlier answers were incorrect, even his own expert viewed his lack of knowledge as egregious and anomalous. His basic knowledge of his clan identity was either absent or incredible and this infected the remainder of his evidence.
102. Taking all of these factors into account, and viewing the evidence as a whole, we find that the evasions and contradictions are so serious and go to the core his claim, that his evidence is devoid of any shred of credibility and that we simply cannot rely on what he says unless it is undisputed or supported by other evidence.
103. We turn, then to applying the guidance set out above to the facts of this case. In doing so we have considered the evidence as a whole.
104. The appellant has, we accept, shown some knowledge of the Chula area and Bajuni customs. We attach some weight to Prof. Nurse’s report that the appellant may well be from Chula despite strong evidence to the contrary. But that must be balanced by Prof. Nurse’s comments about the anomalies and in his inability to be consistent about straightforward matters.

105. We note from the Sprakab Report and from Prof. Nurse's evidence that the appellant has grown up in a milieu where Bajuni or some form of that is spoken, but where we do not know. We note from Prof. Nurse that there is no evidence that Bajuni is spoken in Tanzania and for the reasons given above we consider that the comments in the Sprakab Report placing the appellant in Tanzania are defective.
106. We find that, viewing the evidence as a whole, it is more likely than not that the appellant is Somali and has had some connection with Chula, be that through relatives or otherwise, but we are not, given the type of knowledge he does not have, satisfied that he grew up there. We consider that the appellant has failed properly to explain his background and has not been open with us about this or indeed about his claimed inability to speak Somali. We consider it reasonable to infer from his answers and claim not to speak Somali that he is hiding the truth. We do not accept any claim that he has no family in Somalia and we find he is not a Bajuni.
107. We accept that the appellant is Somali. But, contrary to the assertions he has made, he has not been able to credibly demonstrate that he does not speak Somali or that he has no family in Mogadishu; or, that he does not know if his family are still living in Chula or whether they have fled and he has no means to contact them. We note his assertions that he never sent remittances back to Somalia, has no contacts within the Somali community in the UK and would not be able to rely upon any connections from the Somali community in the UK on return to Somalia and would have no one to rely upon for remittances" were he to be returned. As noted above, the appellant's evidence on family and his origins is wholly lacking in credibility, evasive, and indicative that he has something to hide.
108. In the circumstances we find, applying the guidance in MOJ and OA (Somalia), that the appellant has not shown that he would be at risk of persecution on return to Mogadishu or that would face ill-treatment of sufficient severity to engage article 3.
109. We reach these conclusions on the basis that he has not shown us he is anything other than an ordinary healthy civilian, nor has he shown us he is from a minority clan. Nor that he has no links to Mogadishu which he could use to access a livelihood. He is clearly a healthy, resilient and resourceful young man who would be able to support himself in Mogadishu in the light of the current country conditions there. He has not satisfied us that he would be destitute nor that he would be forced to live in conditions which would engage article 3.
110. Accordingly, for these reasons, we dismiss the appeal on all grounds.

Notice of decision

1. The decision of the First-tier Tribunal involved the making of an error of law and we set it aside.
2. We remake the decision by dismissing the appeal on all grounds.
3. Pursuant to rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008, the appellant/respondent is granted anonymity.

No-one shall publish or reveal any information, including the name or address of the appellant/respondent, likely to lead members of the public to identify the appellant/respondent. Failure to comply with this order could amount to a contempt of court.

Signed: Jeremy K H Rintoul

Date: 25 July 2022

Upper Tribunal Judge Rintoul

**Upper Tribunal
(Immigration and Asylum Chamber)**

Appeal Number:

THE IMMIGRATION ACTS

**Heard at Manchester CJC
At a remote hearing via Skype for
Business
On 15 December 2020**

Decision & Reasons Promulgated

Before

UPPER TRIBUNAL JUDGE PLIMMER

Between

**ASA
ANONYMITY DIRECTION MADE**

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Ms Rogers, Immigration Advice Centre

For the Respondent: Mr Diwnycz, Senior Home Office Presenting Officer

DECISION AND DIRECTIONS (V)

Pursuant to Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008 (SI2008/269) an Anonymity Order is made. Unless the Upper Tribunal or Court orders otherwise, no report of any proceedings or any form of publication thereof shall directly or indirectly identify the original Appellant. This prohibition applies to, amongst others, all parties.

1. I maintain the anonymity direction made by the First-tier Tribunal ('FTT') because the appellant, who claims to be a citizen of Somalia (having resided on Chuna island), has made a claim for international protection. The appellant's citizenship of Somalia is disputed by the respondent who contends that he is a Swahili speaker from Tanzania, and not a Swahili speaker from Chuna island. The respondent relied

upon an earlier finding to that effect made in a decision dated 8 December 2016 (FTT Judge James), which relied upon a Sprakab report dated 27 June 2016.

2. The appellant made fresh claim submissions, placing reliance upon a report dated 26 September 2019 prepared by Professor Nurse. He concluded that the appellant spoke Swahili with embedded Bajuni linguistic material (albeit at the low end) and with a slight Bajuni accent. The respondent refused the fresh claim on 12 October 2019, which generated a further right of appeal before FTT Judge Fisher. In a decision sent on 24 January 2020, Judge Fisher dismissed the appellant's appeal on international protection and human rights grounds. Judge Fisher did not regard the fresh evidence to justify any difference in conclusion to that reached by Judge James i.e. the appellant was a Tanzanian citizen and not a Somalian citizen.
3. At the hearing before me Ms Rogers relied upon the written grounds of appeal and Mr Diwnycz relied upon a position statement dated 11 September 2020. After hearing from both representatives I indicated that Judge Fisher's decision contained a material error of law such that it would be set aside and remade in the Upper Tribunal ('UT'). I now give my reasons for doing so.
4. I have no hesitation in concluding that Judge Fisher erred in law in attaching little weight to Professor Nurse's evidence on the basis that there was insufficient evidence to support his claim to be a linguistic expert on the use of Swahili. Judge Fisher was primarily concerned as to the absence of a CV for Professor Nurse as explained at [12] of the FTT decision, and this led to the conclusion that there was a limit to the weight that could be attached to the report. That concern is repeated at [21].
5. Mr Diwnycz acknowledged that there was evidence of Professor Nurse's qualifications and expertise before Judge Fisher. Although the CV that was attached to his first report was inexplicably excluded from the fresh claim submissions and the FTT bundle, Professor Nurse's addendum report dated 15 January 2020 (as contained in the supplementary FTT bundle) expressly provided an embedded link to his CV and a further embedded link to his publications - see [7c] of the addendum report. This includes over 40 years of teaching, research and publications in East African languages including Swahili and Bajuni as well as teaching at the University of Tanzania. It is difficult to see why in these circumstances this matter could not be easily and quickly resolved at the hearing. In addition, the bundle before the FTT included a published article 'The Case of the Bajunis' authored by Professor Nurse. This clearly contains a lengthy analysis of the use of linguistics on the part of Bajuni people. This article lends support to its author's claimed expertise and experience.
6. Mr Diwnycz nevertheless submitted that the FTT's concern as to the absence of a CV was not a material error of law because Judge Fisher

conducted a detailed analysis of Professor Nurse's evidence in any event. I entirely accept that Judge Fisher addressed this evidence in detail at [12] to [21]. However, at [21] Judge Fisher clearly considered the absence of a CV to be a material factor (in addition to a failure to consider other explanations for the appellant's deficiencies) relevant to the conclusion that Professor Nurse was not objective and significant weight could not be attached to his evidence. Indeed, Judge Fisher was clearly impressed by the fact that the Sprakab analyst lived in both Tanzania and the Bajuni islands [21], and by contrast Professor Nurse did not demonstrate any expertise on Swahili spoken in Tanzania [20]. A casual perusal of Professor Nurse's CV makes the clear point that he taught at the University of Dar es Salam in Tanzania, where Swahili was the national language. In this regard, Judge James has not engaged with the detailed reasons provided in Professor Nurse's addendum report as to why merely speaking Swahili was unhelpful to the issue to be determined - see section 4 of the addendum report.

7. In this case a key issue was whether or not the appellant spoke Swahili with Bajuni features consistent with his claim to be from Chula island. Professor Nurse addressed both linguistics and knowledge and considered those two matters holistically. He was entirely candid and straightforward in explaining on many occasions that the appellant's lack of knowledge was surprising. Had Judge Fisher properly considered the nature and extent of Professor Nurse's expertise and experience, a different conclusion on objectivity and weight may have been reached in relation to those matters which went in the appellant's favour.
8. Furthermore, there was an obligation on the part of Judge Fisher to examine the Sprakab report critically in light of all the evidence - see SSH D v MN and KY [2014] UKSC 30. As the grounds submit Judge Fisher examined the report of Professor Nurse far more critically than the Sprakab report. This may well have been for reasons linked to Judge Fisher's unjustifiable concern as to a lack of CV or sufficient evidence of experience.
9. I am therefore satisfied that the error of law I have identified above is material and infects the other findings made by Judge Fisher, such that the FTT decision must be set aside.
10. I have had regard to para 7.2 of the relevant *Senior President's Practice Statement* and the nature and extent of the factual findings required in remaking the decision, and I have decided with the agreement of the parties, that this is an appropriate case to be remade by the Upper Tribunal. There is a need to make fresh findings, but these are limited to narrow areas. It is noted that there was no cross-examination before Judge Fisher. This case may also be an appropriate vehicle to provide updated guidance on the approach to Sprakab reports, in the light of the observations at [51] of MN and KY.

Decision

11. The decision of the FTT involved the making of a material error of law. Its decision cannot stand and is set aside.

Directions

- (1) The appellant shall file and serve a consolidated bundle of all evidence relied upon in electronic and paper format before 31 December 2020.
- (2) The appellant shall file and serve a skeleton argument cross-referencing to the consolidated bundle before 14 January 2021.
- (3) The respondent shall file and serve a written position statement (i) outlining her response to the appellant's skeleton argument, (ii) indicating whether she wishes to cross-examine Professor Nurse or the appellant, (iii) cross-referring to any additional evidence, before 28 January 2021.
- (4) The matter shall be listed for a case management hearing before UTJ Plimmer on the first date after 29 January 2021. When the decision is remade, it may be before a panel, who will consider giving guidance on the issues that have been raised above. In these circumstances the parties may wish to consider instructing Counsel in this matter.

Signed: *Melanie Plimmer*
Upper Tribunal Judge Plimmer

Dated: 15 December 2020