



**Upper Tribunal  
(Immigration and Asylum Chamber)  
AA/05350/2015**

**Appeal Number:**

**THE IMMIGRATION ACTS**

**Heard at Glasgow  
on 7<sup>th</sup> March 2016**

**Determination issued  
on 30<sup>th</sup> March 2016**

**Before**

**UPPER TRIBUNAL JUDGE MACLEMAN**

**Between**

**RASHID YUSUF BAKARI**

Appellant

**And**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr M D Templeton, of Quinn, Martin & Langan Solicitors  
For the Respondent: Mr M Matthews, Senior Presenting Officer

**DETERMINATION AND REASONS**

1. The appellant identifies himself as a citizen of Somalia, born on 3<sup>rd</sup> March 1983. It is accepted that he speaks Kibajuni, and is of a Bajuni background. The question has always been whether he is from the small population of the Bajuni islands in southern Somalia, or from elsewhere in East Africa, where many other Bajuni live, passing himself off as Somalian to gain asylum.
2. The appellant's original claim resulted in a determination by Judge Forbes, promulgated on 4<sup>th</sup> February 2009, dismissing his appeal.
3. A renewed claim arising from further submissions resulted in a determination by Judge Debra Clapham, promulgated 23<sup>rd</sup> December 2015, again dismissing his appeal.

4. The first ground of appeal to the Upper Tribunal is that Judge Clapham erred by failing to accept the submission for the appellant that *Devaseelan* [2002] UKIAT 00702, [2003] Imm AR 1, did not apply. That ground is misconceived, as was the corresponding submission in the First-tier Tribunal. The submission there appears to have been made without any direct reference to what *Devaseelan* actually says. As stated at paragraph 39(1) thereof, the previous determination is *always* the starting point. That does not mean that subsequent evidence may not lead to another outcome, but that requires to be reasoned. *Devaseelan* accepts at paragraph 42(7) that there may be occasional cases where it would be right for the judge to look at the matter as if the first determination had never been made. If that is what the appellant's representatives meant by their submission, it is a principle to be found within *Devaseelan*, not an argument that *Devaseelan* was inapplicable.
5. In any event, this case did not go so far as to require the second judge to look at the matter as if the first determination had never been made. The proper case for the appellant was that some of the findings of Judge Forbes fell to be disregarded, based on later and better information which was had not been before Judge Forbes, and that a fresh decision required to take account of all evidence now available.
6. The appellant's second ground of appeal is that Judge Clapham inadequately considered the fresh evidence which was available to her but had not been available to Judge Forbes.
7. The most significant aspect of this ground is that the respondent founded upon a *Sprakab* report dated 23<sup>rd</sup> October 2008. That report is partly based not on linguistic analysis but on the appellant's lack of knowledge of "country and culture", including inability to describe the currency of Somalia. At paragraph 50 of his determination Judge Forbes founded strongly upon this point, on the view that the appellant said that he had accurately described the bank notes used in Somalia, and there was no reason for the analyst to lie. Before Judge Clapham the appellant relied upon new evidence including certified translations of the *Sprakab* interview by which he sought to show that the information he gave about Somalian currency was accurate. This would then become evidence not going against the appellant but positively in his favour.
8. The respondent's submission to Judge Clapham, recorded at paragraph 13 of her determination, is that *Sprakab's* comments about currency should be disregarded. That was an appropriate concession, although perhaps it should have gone even further. It was not the function of *Sprakab* to comment on matters of local knowledge, but is the appellant was right about the currency, that was not neutral, but in his favour. The submission for the appellant was of course that the appellant's correct answers to those questions were to his credit.
9. Under the heading of Findings and Reasons, Judge Clapham does not return to this particular issue. She takes the determination of Judge Forbes as her starting point, and finds (correctly) that his conclusions were

not based solely on the *Sprakab* report. She notes that Judge Forbes was highly critical of a report by Dr Faulkner, upon which the appellant relied at the earlier stage, and she goes on to deal with a second report by Dr Faulkner, dated 22<sup>nd</sup> June 2015. At paragraphs 39 to 44 she gives her reasons for not accepting Dr Faulkner's conclusions. Those reasons have not been subjected to any specific criticism.

10. At paragraph 45 the judge notes "for the sake of completeness" that she also had before her a Medical Foundation report and a GP's report, but she sees nothing therein to allow her to depart from the original findings "in relation to them", which appears to overlook that there was a later GP's report, mentioned below.
11. At paragraph 46 the judge describes a statement by the appellant as "self-serving" and notes that he made no attempt to explain queries about his birth certificate.
12. Ground 2 also criticises Judge Clapham for failing to make findings on whether the appellant's credibility is advanced by production of a letter from Glasgow Central Mosque confirming his attendance for worship there since January 2009, and on fresh evidence in a GP report regarding scars on the appellant's body.
13. Mr Matthews conceded that it could not be said that within the four corners of the determination Judge Clapham showed that she took into account that the appellant had previously been thought to have been unable accurately to describe the currency of Somalia, whereas in fact he had got that right. He acknowledged that it was a point which weighed heavily with Judge Forbes, and which Judge Clapham had not met head on. However, he submitted that her decision as a whole was nevertheless an adequate explanation of why the appellant did not succeed, even taking proper account of the further evidence he presented. There was no error in the judge's analysis and rejection of the further report by Dr Faulkner. She did not specifically mention the letter from the mosque, but the appellant's attendance there from 2009 to 2015 was all subsequent to his original claim, and even to its rejection by the Tribunal.
14. I agree with the submission for the respondent that it is of little significance that the judge did not deal specifically with the letter from the mosque. The appellant's attendance from 2009 onwards has little if any bearing on whether his evidence in 2008 and in January 2009 was consistent with his claim to be a Muslim. (The underlying importance is that all Somali Bajuni are of a Muslim background, whereas speakers of Kibajuni or Kiswahili from elsewhere in East Africa might be of either Muslim or Christian background; so if not a Muslim, as he claimed to be, the appellant was unlikely to be from Somalia.)
15. Mr Matthews also submitted that there was no material error in the lack of further analysis of the medical evidence, as the new point on which the appellant sought to rely was evidence of some scarring, whereas he was recorded at paragraph 12 of the determination by Judge Forbes as saying

in evidence that he “carried no marks on his body”, and in the end his representative at that stage did not appear to have pursued an application for an adjournment to produce a further medical report. This historic matter does not appear to be capable of having any significant affect on the outcome. Mr Matthews further submitted that any evidence of memory problems would not explain away findings about deliberate prevarication.

16. Having heard the submissions for both sides, I indicated that while I was not persuaded by ground 1, or by all the elements in ground 2, I was satisfied that the unfortunate omission to tackle head on the matter of the evidence about Somalian currency was so material that the decision by Judge Clapham could not safely stand. It was plainly a point of great significance to Judge Forbes. It was one to which he was entitled to give a good deal of adverse weight on the evidence before him (although Mr Matthews accepted that the view that the analyst would have to have been guilty of lying, and the whole report thereby tainted, went too far). Although the submission before Judge Clapham for the respondent was that the comments by *Sprakab* about currency should be disregarded, which was fair as far as it went, the matter went rather further. The point had been converted from an adverse one to a favourable one, and a central point of the first adverse determination had been eliminated. Although even a brief reason might have been enough, I think the appellant had to have an explicit explanation from the second judge of how this particular point was resolved.
17. Although the case requires a fresh decision in the First-tier Tribunal, the second Judge’s reasoning of those matters on which she did opine does not have to be either formally excised or formally preserved. It is there for parties to make such further submissions as they think appropriate, and for the next judge to make up his or her mind as he or she sees fit.
18. The decision of the First-tier Tribunal erred in law, as explained above, and as to some extent was conceded. The error is so material as to require the decision to be **set aside** and remade. No findings of the First-tier Tribunal are formally preserved. Under section 12(2)(b)(i) of the 2007 Act and Practice Statement 7.2 the nature and extent of judicial fact-finding necessary for the decision to be remade is such that it is appropriate to **remit the case to the First-tier Tribunal**. The member(s) of the First-tier Tribunal chosen to reconsider the case are not to include Judge Clapham.
19. No anonymity direction has been requested or made.



11 March 2016  
Upper Tribunal Judge Macleman