



IAC-AH-KRL-V1

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

Appeal Number: AA/07184/2014

THE IMMIGRATION ACTS

Heard at Bradford

On 29 September 2015

**Decision & Reasons
Promulgated**

On 23 March 2016

Before

UPPER TRIBUNAL JUDGE CLIVE LANE

Between

[Z M]

~~(NO ANONYMITY DIRECTION MADE)~~

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr W Evans, Templeton Legal Services

For the Respondent: Mrs R Pettersen, a Senior Home Office Presenting Officer

DECISION AND REASONS

1. The appellant, [ZM], was born on [] 1990 and claims to be a citizen of Somalia. The appellant was refused asylum on 8 September 2014 when a decision was also taken to remove her from the United Kingdom. She appealed against that decision to the First-tier Tribunal (Judge K

Henderson) which, in a decision promulgated on 1 December 2014 dismissed the appeal. The appellant now appeals, with permission, to the Upper Tribunal.

2. The basis of the appellant's claim was that she is a Somali national from Chula Island which is part of the Bajuni Island complex and that she is of Bajuni ethnicity. She claimed to have been raped by members of the majority Darood clan who also killed her mother. She claims asylum on the basis of her ethnicity and that she will be at real risk of persecution or ill-treatment at the hands of majority clans in southern Somalia. She relied upon an expert report prepared by Dr Derek Nurse.
3. At [51], the judge concluded her analysis by finding that the appellant was not a credible witness and that she was not a citizen of Somalia and that she would not be returned to that country.
4. Granting permission to appeal, Upper Tribunal Judge McWilliam noted that the judge had concluded that she should prefer the Sprakab Report upon which the respondent relies, rather than the report of Dr Nurse. The question is whether the judge's conclusions are equivocal and unclear (as Judge McWilliam found that it was arguable that they were) or, indeed, perverse. The grounds of appeal exclusively concern the report of Dr Nurse upon which the appellant relies.
5. The judge was concerned [28] that Dr Nurse had never met the appellant. She also noted that there was no full transcript of a telephone interview upon which Dr Nurse had relied. The judge considered Dr Nurse's report against that from Sprakab and concluded,

When I compare the depth of the Dr Nurse's report in terms of the linguistic analysis of the Appellant with the Sprakab report it does emphasise that the expert has very carefully considered the Appellant's language and accent. I note that he has made general criticisms of the interview. However he has specifically considered the linguistic analysis and the conclusions. He agrees with the expert that the Appellant's mother tongue is Swahili. He notes however that the assertions regarding exactly where the Appellant's Swahili originates includes the coastal regions of Kenya and Tanzania. He notes however that these are not mentioned in the data analysis. He also notes that in the first paragraph (section 2.2) of the Sprakab report five Swahili words are listed in support of the claim that her speech exhibits "*phonological features congruent with those of Kenyan Swahili.*" He comments that the phonological features characterise not just Kenyan Swahili but Swahili spoken by tens of millions of people in all countries where Swahili is spoken. He notes that the Sprakab analysis ignores material in Bajuni. He notes that the second paragraph of the report refers to 5 short sentences/phrases and states that the

Appellant uses grammatically correct Swahili. He agrees with this but he does not agree that these are Kenya specific features. He submits that these are features present in the Swahili spoken by tens of millions in Kenya, Tanzania, Burundi, southern Somalia and Rwanda. He states it would be clear by putting them side-by-side with the same Bajuni sentences to show that they are in fact identical.

6. The judge's detailed analysis continued at [34-38]:

With regard to the third paragraph of the report (section 2.4) Dr Nurse notes that the Sprakab report refers to the use of five words to support the claim that her speech "exhibits lexical features congruent with those of Kenyan Swahili." He states firstly that these words are not particular to Kenyan Swahili and are used widely across the Swahili speaking world and that three of the five words are wrong. He gives his explanation as to why these three words are incorrect. He notes that other than supporting the general claim that the Appellant speaks Swahili all the other datasets do not prove the claims advanced.

The expert notes that the Appellant does not speak Bajuni but has Bajuni elements in her Swahili. He states that this may be explained in two ways. Either she is not really a Bajuni and has learnt bits and pieces which she inserts into her Swahili base, or that she is "code switching." He explains code switching in his report as the process whereby individuals mix the two language varieties whereby one acts as the matrix language and the other as the embedded language.

The expert notes that there is no supporting evidence to the assertion that the Appellant speaks a variety of Swahili found in Kenya. He states that the only evidence given consists of the three words under linguistic data and that they do not support this claim because they are used by millions of Swahili speakers in several countries Kenya. He also asks the question what are the general features of Kenyan Swahili? He also notes that several varieties of Swahili (not Bajuni) used in Somalia derived from those in Kenya and so it is hardly surprising there is no clear line between those kinds of Swahili and that of Kenya. It is also his opinion that there is no supporting evidence for the assertion that "it is very unlikely" that she speaks the type of Swahili found in Somalia. He notes that the Sprakab report does not state which variety of

Somali Swahili the applicant does not speak he notes that there are five varieties of Swahili which have been or are spoken in southern Somalia by minorities.

I accept from the information I have given above that the experts report should be given weight. He has provided a very detailed analysis of the Appellant's language and I conclude logical and detailed reasons for rejecting the Sprakab report. My conclusion is that the expert has given clear facts to support the conclusions he has come to. I make this finding taking into account that this expert has a very jaundiced view of Sprakab reports.

Dr Nurse has also considered the Appellant's local knowledge. He notes that she was allegedly born in 1990 just before the exodus to the Kenyan refugee camp occurred. She would have had little or no opportunity to acquire local knowledge or traditional lore. He notes that she had no formal secular education and that judgements about large numbers, dates, distance, numbers and time are likely to be unreliable. He has considered the questions asked about Chula and Bajuni life. He notes that the Appellant has answered correctly. Most of her answers are generic and anyone on the coast would give similar answers. Others are Bajuni specific although not Chula specific. He also notes that two of the replies are useful information because it is detailed information known only to local Bajunis. He also notes that the Appellant cannot be blamed for not mentioning what she is not asked. I agree with him that the depth of the questions asked is not clear from the knowledge assessment. In order to properly consider the Appellant's knowledge it is necessary to see what questions were asked and what kind of knowledge is required to show her particular origins.

7. The judge considered that Dr Nurse had expressed "valid concerns" regarding the Sprakab analysis [41], notwithstanding those concerns, the judge went on to reject Dr Nurse's conclusions. She did so for reasons set out at [43-49] of her decision:

There remain however significant difficulties with the Appellant's account and inconsistencies which the expert does not appear to have thought relevant but are important factors to be taken into account. The expert does appear to concentrate on the positive aspects of the Appellants language and knowledge. For example I would question how the Appellant would not know how fishermen catch fish if she has lived all her life on Chula in a fishing

community. He omits analysis of certain information for example the Appellant's response to what crops are grown on Chula island. The Appellant states that corn, maize, sorghum, banana and tomatoes are all grown. Is this correct or is it simply generic information?

The Appellant states the name of a mosque on Chula and that she does not know the other ones. The expert does not comment on that. If there is just one mosque then why does the Appellant not state this? I question why she would not know the names of all the mosques if she is living on an island where she has lived her whole life and the island can be walked from north to south in ninety minutes. Even if she does not visit the whole island I find it implausible that she would not get to know the names of these mosques during the twenty three years she lived there.

A further question I have is over Dr Nurse's analysis of the Appellant's type of Swahili. He states in his expert report that at one end of the scale there is more or less full fluency in Bajuni and that such individuals "tend to be elderly and living on the islands." He contrasts that with the language shift which occurred as a result of the refugee camps in Kenya. I am puzzled as to why the Appellant would not speak full fluent Bajuni if she remained on the island and did not experience this movement to Kenya. Her account is that she remains living on the island with her mother. Her mother was of that older generation. Putting this into the background presented by the expert I am puzzled as to why the Appellant would not have retained fluent Bajuni given her upbringing with people who had always lived on the island and because she was remained there. Where would the dilution have occurred in her case? Why would her Bajuni be like that of those in the refugee camps if she had never been in those camps and remained on the island? There is a gap in the explanation for this scenario. The language analysis describes what would happen if the Appellant was living or had lived in the refugee camps. It does not explain her circumstances.

A further factor became apparent during the hearing. I asked the Appellant to clarify whether or not she had any education. I noted in her interview that she stated that she had never been to school and that she had always lived on Chula Island and never travelled to the mainland except when she left. I asked how she was able to write her name at the end of the interview. She at first

stated that she had been able to learn this as a result of classes. I noted however that although the Appellant had not signed a screening interview the substantive interview took place 19 days later and she then wrote her name. She stated that she was able to look at the paper and copy her name. I noted that the Appellant has signed her name in the western script four times throughout the substantive interview. She signed in her full name. Whilst I am not an expert in handwriting or literacy I do not accept that it is credible that she would have obtained this knowledge within two weeks of arriving in the United Kingdom or that she would have been able to simply copy the letters.

The interviewer asked the Appellant to give specific dates and times of departure and various incidents of her life. My experience in dealing with individuals who have no education is that they may have difficulties in recalling specific dates. However her responses to questions asked indicates that she is aware of the western calendar and she is also able to give precise information in terms of times. I am aware that she may have learnt some of this information from some source. However the reading of her interview would indicate that she does have a knowledge of not only times and calendars but also basic numbers.

The Appellant has stated that a neighbour helped her to leave the island and paid an agent taken from the island. It is unclear why a neighbour would agree to spend what must be a sizeable sum for her departure not only from Somalia but through several other unknown countries and to cover the costs of false documents and the expertise of an agent. I do not find it credible that a neighbour would be willing to spend this money in assisting the Appellant. The decision to bring the Appellant to the United Kingdom indicates detailed planning including a specific end destination. The Appellant would have to cross many borders and take several flights with documents which would be scrutinised in a number of airports. I question for example why the neighbour would simply not arrange for the Appellant to go to Kenya with her child to avoid immediate risk. This journey would have been quicker and cheaper. She would also be going to a place with a sizeable Somali diaspora. My conclusion is that the Appellant's account is not credible in terms of her exit from Chula.

The Respondent raised the issue of the Appellant leaving her child. Whilst I accept that many mothers take desperate measures in desperate situations I

do find it odd that she would not have some means of contacting the neighbour to make sure that plans were also in place for her daughter to be protected. It does not make sense that she would leave her daughter in the hands of a neighbour when a specific threat had been made against her and her daughter. This would surely place the neighbour at risk. It is also likely that leaving her daughter would mean problems in finding out if she was safe and well cared for. I am unclear as to how there would be such trust placed in a neighbour and why this neighbour would be willing to put herself in danger and make such a large financial contribution to the Appellant's safety.

8. The judge summarised her findings at [50]:

I cannot speculate about the Appellant's background in any detail but if as the expert has concluded she speaks the Swahili associated with Bajuni exiles as a result of time in Kenya then the Appellant has not been straightforward regarding her connections and background in Kenya. I am not satisfied that the Appellant has provided a credible account regarding her origins and nationality. My conclusion is that she is not from Chula but she has knowledge of Chula. It is entirely plausible that she has some connections in the past with the Bajuni Islands and this would account for her local knowledge. I have some information on this in the expert Professor Nurse's report when he refers to the historical and current connections between Zanzibar, coastal Tanzania and Kenya. I do not accept that she has recently lived on the island of Chula or that she left a daughter on the island.

9. I have Dr Nurse's comments on Judge Henderson's decision but that document is, of course, not relevant to my consideration of the question as to whether Judge Henderson erred in law such that her decision falls to be set aside. I find that she did not so err. I say that for the following reasons. First, I do not identify any perversity in the conclusions of Judge Henderson including those at [50]. The judge accepted that the appellant had a knowledge of the island of Chula, she was not an ethnic Bajuni and had not lived and suffered persecution and ill-treatment on the island as she claimed. That is not a perverse finding, in my opinion. There was no reason for the judge necessarily to conclude, as the appellant now asserts, that because the appellant had some knowledge of life on Chula she could only have acquired that knowledge by living her entire life on the island and being of Bajuni ethnicity. Quite rightly, the judge did not speculate as to how the appellant acquired her knowledge of Chula but she has given very careful reasons to explain, why in her judgment, the appellant is not a Bajuni as she claimed. It may well be arguable that an individual arriving in the United Kingdom and having a knowledge of life on the island of

Chula is more likely to be an ethnic Bajuni who had lived on that island, rather than a non-Somali national who had acquired knowledge of life on the island. However, that is not necessarily the case so the submission of perversity simply does not stand up in this instance. Having rejected the submission of perversity, the grounds of appeal amount to no more than a disagreement with findings which the judge has made both as regards the appellant's evidence and in relation to the expert reports which were open to the judge on the evidence. The Upper Tribunal should hesitate before interfering with the findings of fact of the First-tier Tribunal where those findings are not perverse and where they are supported by clear and cogent reasoning, as is the case here. In the circumstances, the appeal is dismissed.

Notice of Decision

10. This appeal is dismissed.
11. No anonymity direction is made.

Signed

Date 10 March 2016

Upper Tribunal Judge Clive Lane

**TO THE RESPONDENT
FEE AWARD**

No fee award.

Signed

Date 10 March 2016

Upper Tribunal Judge Clive Lane