

IN THE IMMIGRATION APPEAL TRIBUNAL

LS (Bajuni - Kibajuni Speaker) Somalia CG [2002] UKIAT 00416

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IMMIGRATION AND ASYLUM ACT 1999

Before:

**John Freeman (chairman)
Mrs M Padfield JP and
Mr N Kumar JP**

Between:

**Secretary of State for the Home Department,
appellant**

and:

**Laila SULEIMAN,
(asylum-seeker)**

DECISION ON APPEAL

Mr J Jones for the Secretary of State

Miss A Savage (counsel instructed by Perera & Co) for the asylum-seeker

This is an appeal from a decision of an adjudicator (Mr RA Kay), sitting at Manchester on 20 August, allowing an appeal by someone who claimed to be a Bajuni citizen of Somalia, from directions for removal as an illegal entrant on 20 January 2001. The asylum-seeker said she had been born in Kismayu in 1962, and lived there till September 2000, when she left for Mombasa in Kenya: she arrived here, she says, on 4 November. Leave was given on the basis of whether the adjudicator has taken proper account of the background evidence, or given adequate reasons of his findings on the asylum-seeker's credibility. The points on the facts concern the asylum-seeker's account of her origins, and whether she is a Bajuni at all. While we have to decide them on the basis of the individual case before us, anything we are able to say which is of general application may be of some importance, as the appellate authorities have had, and go on having a considerable number of cases before them involving contested claims of Bajuni origins. The removal directions were set for Somalia, although the Home Office did not accept that the asylum-seeker came from thereat all. At one time this might have been fatal

to any meaningful disposal of the appeal; but in the light of **Hwez (CO-2090-01)**, it now has to be decided whether the asylum-seeker is a refugee as such. If we uphold the adjudicator, there will be no question of any removal directions applying; if not, then the present ones will no longer be appropriate, and Mr Jones undertook to withdraw them, for fresh ones to be issued.

2. The adjudicator's findings of fact appear at § 37:

I therefore have to make a finding of credibility bearing in mind the lower burden of proof which is required in these cases. Given that she is an uneducated woman having ever been to school I would not have expected her to understand or know very much about the political situation in Somalia. I also formed the view that for this Appellant it would not be unreasonable to expect that she would have very little knowledge or understanding of the world around her. I think that her life would revolve around her home and her children and her husband. The suggestion is that she is not from Somalia but from Kenya because she only speaks Swahili which is the language of Kenya. The object evidence does seem to indicate however that Kibajuni which is the language she is supposed to speak as a Bajuni a dialect related to Swahili. Today she constantly referred to the fact that Kibajuni was the same as Swahili expect for a different pronunciation and or different colloquial term. I find that she is credible. I find that she is a citizen of Somalia and that she comes from Kisimayo and that she is a member of the Bajuni tribe. I believe her story. I believe that her husband and her mother were killed and she was raped and I am satisfied that she has a well founded fear of persecution if she were to return to Somalia.

3. Clearly the asylum-seeker did know a certain amount about Somalia, and in particular Kismayu (as it most often spelt), which is the southernmost coastal town, near the Kenya border. We may assume that, if the details she gave at her first interview about the hospital and roads there had been wrong, then the Home Office would have had something to say about it. We can see for ourselves that at the second interview (Q50) she correctly gave the names of three of the other main tribes of Somalia. She also, correctly, gave the main occupation of the Bajuni as fishermen, named its principal export as bananas, and the SNF as a political party. Whether there was at any time in question a government of Somalia for it to take part in, as the asylum-seeker said, is another matter; though immediate after that answer to Q48 she set off into an explanation of how she had not been to school, or followed events, and how women were discriminated against. Despite all of those things she is clearly well able to speak up for herself.

4. When the adjudicator refers to "the lower burden of proof", he should be taken as meaning the Karanakaran [2000] Imm AR 271 threshold. That means that he was to take due account of the asylum-seeker's claim to be a Bajuni resident of Kismayu, if on the evidence as a whole there was any doubt about it. What we have to decide is whether or not he was clearly wrong in the answer he came to. If he was right, then he was obviously also entitled to accept the asylum-seeker's claimed to have been raped by Darod soldiers in September 2000 in Kismayu, and to have fled to Kenya as a result' but, if wrong, then the whole scenario for that disappears. If he was clearly wrong about her origins, then he cannot have been right to accept her story. Whether he was or not is what we have to decide. We also bear in mind the points we have noted in the asylum-seeker's favour at § 3 above; though it has to be

said that individual points of information of that kind are likely to be supplied by any briefing worth the name. A person of any sense, as this asylum-seeker clearly is, despite any lack of education or seclusion from which she might have suffered, might also have been expected to realize that a coastal people were likely to be fishermen, and an acronym to represent a political party. Having said that, this asylum-seeker did get what she had been asked about Somalia and Kismayu right rather than wrong. We should also point out, because it is in her favour, thought not canvassed at the hearing, that a possible discrepancy between her first interview, where she says at Q4 that her husband was killed by policemen, and her evidence to the adjudicator, where she blamed soldiers, is no such thing. As is well known to anyone used to hearing cases from this part of the world, both are 'askari' in Swahili.

5. The Home Office's case that the adjudicator was wrong is based on three questions:
- a) Why could the asylum-seeker speak only Swahili?
 - b) Why did she seem to know nothing about the cataclysmic events of 1999 in Kismayu? and
 - c) Why did she describe it (in her oral evidence and before) as "a village near Mogadishu"?

c) was not seriously pursued before us by Mr Jones. While Kismayu is certainly bigger than a village, to our way of thinking, it may well be less than the city the Home Office called it. From the names of the hospital and roads which the asylum-seeker gave, she clearly had in mind a town at least something like the real one. While the 'Times Atlas of the World' shows Kismayu about 500 km from Mogadishu, there is no reason why the asylum-seeker should be expected ever to have made that journey. It is questions a) and b) on which the Home Office say the adjudicator should not, in the light of the background evidence, have accepted the asylum-seeker's explanations for her ignorance on the points in question.

6. **a) Language** The position of the minority tribes in Somalia is covered in unusual detail in the report of a joint British, Danish and Dutch fact-finding mission which visited Nairobi in September 2000. Of course there would have been great difficulty in their carrying out their inquiries in Somalia itself' and they were able in Kenya to speak to a large number of Somalis and others with knowledge of that country, as well as considering previous research from people who had been there. This is what they say about the Kibajuni language, on the basis of their talks with a group of elders from the Bajuni islands (see § 56 of the report):

5.2 Language

According to the elders most Bajuni speak some Somali, although the main language spoke by the Bajuni is Kibajuni, a dialect related to Swahili. The Bajuni elders advised the delegation that younger Bajuni, who have lived in exile, alienated from mainstream Somali society, may have only a very limited knowledge of Somali but they stressed that they should know at least some key words in Somali as their family elders would have taught them. Barnard Harborne, Chief of the UN Co-ordination Unit for Somalia, with whom the delegation met, also stated that most Bajuni are able to speak some Somali in addition to Kibajuni.

The Bajuni elders informed the delegation that, although their language, Kibajuni, is related to Swahili, their language is very different to the Swahili dialect spoken in the areas of Kenya immediately below

the Kenya-Somalia border, including the islands that continue from the Somali border down along the coast towards Mombasa, although there are some common words.

7. The reference to Kibajuni being related to Swahili (sometimes called kiSwahili) is easily appreciated from their common structure: both are Bantu languages, with their characteristic prefixes, *ki* for inanimate nouns, and *ba* for people in the plural or collectively. Perhaps the language should strictly be called 'kiJuni'; but we shall use the terms in the material before us, rather than risk confusing anyone. Somali is of course a language from the wholly different Hamitic family: see the discussion in **Mukhtar Shala Mohd. [2001] Imm AR 162**. This asylum-seeker speaks no Somali at all, which the report suggest that she might have been expected to do, having lived in Kismayu all her life till she was nearly 38; but that is not the language point on which Mr Jones relies. What he says is that the Swahili which is her only language is not consistent with her being a Bajuni at all, on the basis of what the Bajuni elders told the joint fact-finding mission [FFM].
8. Miss Savage on the other hand points to the asylum-seeker's own evidence about the Bajuni language being "the same as Swahili expect for a different pronunciation and or different colloquial term [sic]". To support that, she relies on the CIPU report: the relevant part reads

5.25 The small **Bajuni** population, numbering some 3,000 to 4,000, possibly as many as 11,000, are mainly sailors and fishermen who live in small communities on the coast south of Kismayo and on islands between Kismayo and the border with Kenya. The Bajuni are of mixed Arabic, Bantu, Somali and possibly Malay ancestry. Their principal language is Kibajuni, a dialect of Swahili. Bajuni elders who met with the delegation of a joint British-Danish-Dutch fact-finding mission on Somali minority groups to Nairobi in September 2000 informed the delegation that most Bajuni also speak Somali. The elders stated that younger Bajuni, who have lived mainly in exile, might only have a limited knowledge of Somali but they stressed that they should know at least some key words in Somali as their family elders would have taught them. The elders stated that the Bajuni do not regard themselves as a Benadiri people, although they had some trading links with the Bravanese people. **[39]**

9. Miss Savage of course relies on what is said about "Kibajuni, a dialect of Swahili", and it being the Bajuni's *principal* language. However, as pointed out to her, the text of the CIPU report very clearly shows that it is derived from the FFM one: since we have the original of that before us, it would be absurd to rely on secondary evidence of its contents, when we can look at what the elders said themselves about the relationship between Kibajuni and Swahili, and what languages the Bajuni speak. The work '*principal*' is of course an ore portentous version of the FFM's '*main*'. We do take account of her next point, about some Bajuni only having a very limited knowledge of Somali: whether that would extend to a lady of this asylum-seeker's age who had lived in Kismayu all her life not knowing any at all is, as we have said, not something we are called on to decide here. As Miss Savage goes on to point out, the asylum-seeker said at the first question of her first interview that she only spoke Swahili: at Q35 of the second she said of the language used by Bajuni: "Some of us speak Kibajuni and the rest of us speak Swahili".
10. In reply Mr Jones refers us to what the asylum-seeker herself told the adjudicator at § 23: leaving out the *oratio obliqua*, it reads

... the Bajuni's [sic] do not usually speak Kisibuni they mostly spoke Swahili. It is the same language ... but with different accents and it was colloquial. ... the Bajuni tribe do not speak Somali.

Everyone agrees that “Kisibuni” is a transcription error for “Kibajuni”. Mr Jones’s point is that here was the asylum-seeker not making a difference between Swahili-speaking and Kibajuni-speaking Bajuni, but claiming that all of them spoke a language which was essentially the same as Swahili.

11. It will be convenient for us to give our views on the language question here before we come on to part b) of the Home Office case: see § 4 above. No-one should think, however, that we have not considered the whole of the evidence in this case before making up our minds. The adjudicator was content to accept the asylum-seeker’s case on the language point in rather impressionistic terms, which we have set out. We do not mean to criticize him unduly for that: adjudicators are busy enough with taking the oral evidence, and we certainly bear in mind that he heard the asylum-seeker and accepted it in this case. However, his acceptance of the asylum-seeker’s individual case-history is, rightly, based on his acceptance of her account of her origins:

I find that she is credible. I find that she is a citizen of Somalia and that she comes from Kisimayo and that she is a member of the Bajuni Tribe. I believe her story.

12. Essentially the adjudicator was faced with two quite different accounts of what language the Bajuni speak. The asylum-seeker told him they speak a language which did not seriously differ from Swahili: looking at the passage we have quoted at § 9 above, the obvious comparison is with the difference between English and Scots, speakers of which might well describe their language as English, especially to a foreigner. The elders on the other hand told the FFM that their language was “very different” from the language spoken in neighbouring areas of Kenya, though there were “some common words”. That is another picture altogether: the reference to “some common words” puts into context what the elders meant by “very different”. If their account is to be relied on, then someone who spoke Kibajuni could not possibly describe their language as Swahili, nor assert that there was no serious difference between them.
13. We have no doubt that the adjudicator was wrong not to take account of this point, and to write off the difference between the two languages as merely one of dialect, in the sense put forward by the asylum-seeker. We should make it quite clear that we are not relying on any supposed order of magnitude difference between ‘languages’ and ‘dialects’: as someone once said (no doubt before the advent of air forces), a language is merely a dialect with its own army and navy. The real point is that, according to the elders, the neighbouring version of Swahili and Kibajuni are only mutually understandable to a limited extent. There is nothing in the background evidence to support any suggestion that there are separate populations of Swahili-speaking and Kibajuni-speaking Bajuni; nor was that the case put forward by the asylum-seeker herself in her oral evidence before the adjudicator.
14. Miss Savage rightly points out that the elders came from the islands, and this asylum-seeker, she says, from Kismayu on the mainland. However, there is an obvious difficulty for her in writing off what they had to say in that way: if the asylum-seeker’s language is like enough to the local version of Swahili for her to describe it as such, then it cannot have enough in common with Kibajuni as known to the elders for her claim to speak that language at all. There is no evidence of any intermediate form; and on what the elders say about the difference between the languages, none

could reasonably be expected. The FFM also make clear (at § 5.1) that the elders described the Bajuni as “a united people that are not divided into sub-groups”. While there may well be young Bajuni who have grown up in refugee camps in Kenya speaking Swahili, that is not this asylum-seeker’s history. We shall decide what view should be taken of her case when we have dealt with all the evidence; but we think adjudicators should approach any involving someone who claims to be a Bajuni resident of Somalia, but who cannot speak Kibajuni (let alone Somali), with great caution.

15. **b) events of 1998-99** This is what the CIPU report says, so far as relevant:

3.43 Heavy fighting took place around Kismayo in early November 1998 as the Marehan SNF advance on the city, held by General Morgan’s SPM forces. 65 people were reportedly killed. Peace talks were held in Nairobi in November 1998 but many people fled Kismayo and further heavy fighting took place in December 1998, with Morgan retaining control of the city. It was reported in January 1999 that the Puntland administration had sent arms to Morgan’s militia in Kismayo. [19a][19b][19c][25][26b]

3.44 After several months of calm there were renewed clashes in Kismayo in May 1999 between SNF and Morgan’s SPM forces. The SNF and allied Habr Gedir clan forces, grouped together as the Allied Somali Forces (ASF), attacked Kismayo in June 1999 and finally ousted General Morgan and his forces. 26 people reportedly died in fighting but calm was restored quickly after the ASF had assumed control. ASF fighters were removed from Kismayo and taken to designated areas outside the town. Colonel Ali Hashi Buraleh, one of the leaders of the ASF grouping, stated that the alliance was free of tribalism or factionalism. He appealed for outside aid for Kismayo, stating that the security of international aid workers would be safeguarded. [7p][22h][22i][26e][28]

The FFM (§ 5.4) more graphically quote the chief security officer for UNDP-Somalia as describing the situation in Kismayu since its capture by the SNA/SNF as “hell”.

16. Miss Savage relies on what the asylum-seeker said at her second interview, in answer to Qs 30-31:

I never lived in peace, since soldiers would attack our village and kill some people. There was a state of [illegible]. They raped girls and women in the village. [asked when the war in Somalia had started] Many years ago around the 1990s I can’t remember exactly when.

There is also what she said in her statement filed with the Home Office by her solicitors:

My father was a fisherman by occupation. Our country was peaceful before the war but ever since the war our country has changed dramatically. Women were raped, men were killed, our houses burnt and most of the Bajun property was looted.

We suffered the most because we belong to the minority clan. Most of our people are self-employed because they did not have the chance to obtain any education and therefore have no employment opportunities in the government. We are the

most vulnerable group in Somalia. The war was instigated by, the major clans of Somali, the Darood, Hawiye and Issac and including other major groups of Somalia.

[The statement then goes straight on to the events of September 2000].

17. The adjudicator's conclusions on this point, which he clearly set out at § 24, appear from his § 37, quoted in full at our § 2. Again he is content to take a somewhat impressionistic view of what the asylum-seeker would be likely to know about events outside her home. Some people (not us) might also criticize it as tending to the stereotypical. However, the accounts given by the asylum-seeker are a reasonably accurate account of general events in Somalia, and may also be regarded as a reasonable summary of the position of the Bajuni: Mr Jones's point is that they completely fail to mention the specific events of 1998-99 in Kismayu. It was not inappropriate for the presenting officer before the adjudicator to take this point in closing, rather than in cross-examination, because the question was what the asylum-seeker had been able to tell the Home Office about the events, rather than what she knew by the time of the hearing.
18. Bearing in mind the asylum-seeker's own account of being an uneducated and presumably secluded woman, in our view even someone in that category, who had lived through the dramatic events of 1998-99 in Kismayu, would have taken in more of them than she has given in her accounts. She for her part was well able to speak for herself, as we have noted from her interview, whatever her educational and social background. These were not events being played out on a remote political stage; but the ebb and flow of war in what she said was her own town. We have no doubt that the adjudicator was wrong not to take the view that a person who had lived through them might have been expected to have something to say about them, significantly over the general account given by the asylum-seeker.
19. **Conclusions** For each of the main reason – a) and b) – put forward by Mr Jones for the Home Officer we have come to the conclusion that the adjudicator was clearly wrong to accept this asylum-seeker's account as he did. We should not want him or anyone else to take that criticism unduly to heart. His decision was a very conscientious piece of work indeed, and he clearly set out the Home Office case. So far as we have any general message for him or adjudicators at large, it concerns the importance of closely assessing the individual asylum-seeker's account with reference to the available background evidence. The more specific this is, as here, the more important the result to the decision-making process.

Appeal allowed

John Freeman (chairman)