Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: AA/02964/2011

THE IMMIGRATION ACTS

Heard at Field House	**Determination Promulgated**
On 25 March 2013	
Prepared on 31 July 2013	……

Before

UPPER TRIBUNAL JUDGE CRAIG

Between

MS Z A M

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr P Jorro, Counsel, instructed by Wilson Solicitors LLP
For the Respondent: Mr I Jarvis, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The chronology of this appeal is set out in the decision which I gave following a hearing on 3 September 2012, and this determination should be read in conjunction with that decision. As I set out in that decision, this appellant, who originally

claimed asylum on 2 March 2009, claims to be a Somalia national, and claims also that she was born on 2 February 1992. The respondent does not accept that she is a Somali national or that she is as young as she claims.

2. Following the hearing on 3 September 2012, as recorded in my Decision, I found that the appellant's age was older than she claimed and that, for reasons set out within that decision, adverse credibility findings which had previously been made in respect of this appellant by Immigration Judge Murray, must be retained, but that the Tribunal would now need to come to a fresh decision on whether it was safe, in light of the adverse credibility findings, but also in light of the then relatively new country guidance decision in *AMM*, to return this appellant either to Kenya (where the respondent believed she was from) or Somalia.

3. At a subsequent directions hearing on 23 January 2013, I directed that the appeal would proceed on the basis that the adverse credibility findings previously made should stand and also that the respondent should file a skeleton argument setting out (i) whether it was intended to return the appellant to Kenya and if so, the basis upon which it is said she could be returned there, and (in answer to the appellant's submissions previously made) that she would be safe there; and (ii) the respondent's answer to the appellant's submissions that she would not be safe on return to Somalia.

4. Following these directions, Mr Jarvis prepared and submitted detailed written submissions to the Tribunal, dated 19 March 2013. Contained within these submissions are detailed arguments as to why this appellant could now safely be returned to Somalia, including arguments as to why the country guidance given in *AMM* should no longer apply. However, these submissions are made against the assertion, at paragraph 2, that "the [respondent] argues that the Sprakab evidence supplied in this appeal is compelling evidence (to the required standard) to show that the A is in fact from Kenya". The respondent's submissions as to whether or not it would theoretically be safe to return this appellant to Somalia have been made only "because of the A's own claim (disputed) that she is from Somalia" (at para 81).

5. Just before the hearing, further submissions were received on behalf of the appellant also.

The Hearing

6. I heard submissions on behalf of both parties, which I recorded contemporaneously. My notes are contained in the Record of Proceedings. Much of the argument concerned whether or not the country guidance given by this Tribunal in *AMM* could still be relied upon. On behalf of the respondent, Mr Jarvis submitted that, for a number of reasons, it could not, while Mr Jorro, on behalf of the appellant, submitted that Mr Jarvis's arguments were not well-founded. I have had regard to everything which was said to me during the hearing as well as to all the documents contained within the file, whether or not they they are referred to specifically below.

7. Essentially, with regard to this appellant, the respondent's primary submission is that she is from Kenya and can be safely returned there. Alternatively, if she is from southern Somalia, then when one takes into account what this Tribunal said in *AMM*, relying on what the Supreme Court had earlier found in *MA (Somalia*) this appellant had failed to make out a claim that she would be returning without any clan or family links or that she would have no support from others. This appellant was continuing to maintain that she was from Somalia and must be returned to Mogadishu, whereas the evidence was that this was clearly not true. The appellant continues to claim that she has lived in one area of Mogadishu continuously, even though she has been disbelieved.

8. On behalf of the appellant, Mr Jorrro accepted that it had been found that the appellant is not Reer Hamar and that he was bound by this finding. She would not be entitled to refugee status, but she would be entitled to Article 3 protection. He relied in particular on the findings of the Tribunal in *AMM* at paragraph 594, which were as follows:

> "Despite the withdrawal in early August 2011 of Al-Shabab conventional forces from at least most of Mogadishu, there remains in general a real risk of Article 15(c) harm for the majority of those returning to that city after a significant period of time abroad. Such a risk does not arise in the case of a person connected with powerful actors or belonging to a category of middle class professional persons, who can live to a reasonable standard in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply. The significance of this category should not, however, be overstated and, in particular, is not automatically to be assumed to exist, merely because a person has told lies."

9. Mr Jorro relied on what was said in the Court of Appeal by Stanley Burnton LJ in *SG (Iraq)* [2011] EWHC 2428 (Admin) at paragraph 47 of his judgment (with which the other members of the court agreed):

> "... Decision makers and Tribunal judges are required to take country guidance determinations into account, and to follow them unless very strong grounds supported by cogent evidence, are produced justifying there not doing so."

10. Although it had been argued on behalf of the respondent that the situation had improved in Somalia since the determination in *AMM* had been promulgated, the respondent had not given cogent reasons for so submitting. Evidence adduced on behalf of the appellant showed that the position was not as clear cut as Mr Jarvis was suggesting. Much of the evidence was disputed. Because there was an ambiguity in the evidence, this failed the test of "cogent evidence".

11. With regard to the Kenya issue, the respondent's case depended on the first Sprakab report, which was made following analysis of a seventeen minute recording which was said in the report to show that the appellant spoke a dialect of Somalia spoken only in Kenya. On the other hand, Mr Sheikh, who spoke with her for an afternoon and is a qualified linguistic, says that she is from southern Somalia. Both De Taal and Mr Sheikh say the Sprakab report does not make sense. The issue here was not

whether there was a reasonable likelihood that she was from Kenya, but whether there was a reasonable likelihood that she was from southern Somalia. If the Tribunal were to make a finding that there was a reasonable likelihood that she was from southern Somalia, then she would be entitled to humanitarian protection under Article 3. The respondent does not have the freedom to say that she is from anywhere; they must rely on the Sprakab report.

12. It should be noted that the writer of the Sprakab report has a law degree, but Mr Sheikh who interviewed the appellant and De Taal are in disagreement with Sprakab. So the respondent's case that the appellant can be returned to Kenya is based on very flimsy grounds.

13. Although Mr Jorro accepted that in certain circumstances it could be possible for an applicant to be returned to more than one country, insofar as she is either from one country or the other, this appellant had discharged the burden on her by showing that it was reasonably likely that she was from Somalia. It was the appellant's case that the Sprakab report was seriously flawed and that she would be at real risk on return to southern Somalia.

14. Even if the appellant was returned to Kenya, which was very unlikely, she would be at real risk of refoulement or alternatively, would be at risk within one of the IDP camps in Kenya. This was set out in more detail in paragraph 20 of the new skeleton argument submitted for this hearing.

15. In reply, on behalf of the respondent, Mr Jarvis submitted that Mr Jorro had had to gloss over the evidence. With regard to the situation in Somalia, this Tribunal had to scrutinise properly the evidence which had been put before it in order to look at what are nuanced legal and evidential approaches to the question of Article 15(c) – the Qualification Directive – and Article 3 and so on. The Tribunal should bear in mind the approach of the Supreme Court in *MA (Somalia),* particularly in paragraph 33. However, it was accepted that if the Tribunal was to find that this appellant was a lone woman and that *AMM* should be followed, then she would be entitled to humanitarian protection were it the respondent's intention to return her to Somalia. However, a person who had been totally disbelieved (as per *MA (Somalia*)) would not have satisfied the burden of proof even to the lower standard.

16. While it was accepted on behalf of the respondent that the evidence had to show that there had been a durable change in conditions in Somalia since the promulgation of *AMM*, the Tribunal in that case was particularly aware that because Al-Shabab had only just withdrawn, in August 2011, it may well have been the case then that the necessary test of durability had not been satisfied. However, now there had been changes which had continued. At the time of the decision in *AMM*, shelling had stopped, but because this had only stopped two months before the hearing, the Tribunal could not find the change was durable. This Tribunal had to consider not whether there had been a fundamental change since *AMM*, but whether the change which was recorded as having already taken place had continued. The situation now in Mogadishu was much safer than it had been at the time of *AMM*. The respondent

did not suggest there was no violence at all, but that the nature of the violence was greatly reduced. Al-Shabab had left and had not come back. They had had to withdraw from every major city in central and southern Somalia. Although it was argued on behalf of the appellant that Human Rights Watch was saying that it was still dangerous, there was a broad range of evidence on the ground that the situation had improved.

17. With regard to the Sprakab reports, the respondent relied also on the second more recent report in which the writer goes into in considerable detail as to the differences between Kenyan Somali and Somali. There plainly is a difference. The respondent also relies on the Tribunal decision in *RB (Linguistic evidence – Sprakab) Somalia* [2010] UKUT 329, which contains positive findings about the linguistic analysis reports from Sprakab, in particular at paragraphs 165, 166, 168 and 171. In that case, the criticisms which had been expressed of Sprakab report's general approach and in particular that the interviews were "brief" had been rejected by the Tribunal, which had found, at paragraph 168, that there was "no substantive reasons for distrusting Sprakab's reports either in this case or in general ...". The Tribunal had gone on to find that the Sprakab evidence was "of high quality". Finally, at paragraph 171, the Tribunal had fond that Sprakab's reports were not based solely on linguistic analysis, but were based on other relevant evidence.

18. In this case, the appellant had never suggested that she had spent half her life on the border with Kenya and had given no evidence relating to Kenya. Also, the Tribunal must note her lack of knowledge of Mogadishu as noted by IJ Bircher, who disbelieved her account.

19. Although it was submitted on behalf of the appellant that the evidence of Mr Sheikh and De Taal was that there was no basis for saying this appellant was a Kenyan Somali, clearly there was such evidence. The underlying data and the process by which Sprakab produce their reports meant that they should be given significant weight. The letter of 19 February 2013 from Sprakab (the second report) shows very clearly the evidence on which their analysis has been based. The writers of the report are very familiar with Kenyan Somali dialects.

20. In De Taal's response of 22 March 2013 to Sprakab's second report, numerous things are said which show that they do not approach analysis in the same way Sprakab does. For example, at page 3, De Taal expressed surprise that Kenya was even in play. They thought that the argument was about the Af Reer Hamar dialect. De Taal's approach was to look at this through the tunnel of what they expected, whereas Sprakab looked at the issues from a purely linguistic approach.

21. The original De Tal response, in the appellant's bundle at pages 8 to 18, is a report seemingly written by one person, whose CV is at page 18, but that person is not a native Somali, as Sprakab pointed out, and appeared to have acted alone. Although at page 17 it was noted that the appellant's case is a difficult one which required further examination, there did not appear to have been any further examination, which was of concern. It was not until the March 2013 De Taal letter or report that

one finds out that De Taal now says that the writer of the report also used a "native speaker" to assist, but no biographical details had been given of this person.

22. However, so far as Sprakab is concerned, the Tribunal has noted in *RB* that Sprakab had very transparent procedures, which finding was supported by the Court of Appeal (in *RB (Somalia)* [2012] EWCA Civ 277).

23. Complaint was made on behalf of the appellant to the Sprakab 2009 report, because it was said that it had been carried out by an analyst and therefore did not comply with international standards. In fact, it had been carried out by two analysts, one of whom was a Reer Hamar speaker (as is apparent from B6 of the respondent's bundle) and a linguist. Accordingly this report did follow the proper procedure as affirmed by the Court of Appeal in *RB*. Clearly the report contained a high level of analysis from native speakers as well as an academic linguist.

24. Insofar as the appellant relied on the report of Mr Sheikh, which was not wholly consistent with that from De Taal, it was said that he was a linguistic expert, who, accordingly to his CV, had a diploma in linguistics. Whatever that amounts to, a Tribunal cannot ignore that Mr Sheikh has claimed that the appellant spoke with a southern Somalia dialect which included the Reer Hamar dialect, whatever that means. He also concluded that she was from Mogadishu and the Reer Hamar clan, which had been shown not to be true. Also, Mr Sheikh did not engage in any technical analysis of the appellant's speech which Sprakab did.

25. Although it was said on behalf of the appellant that Mr Sheikh spent an afternoon with the appellant rather than just relying on analysis of seventeen minutes' conversation, as Sprakab was said to have done, this was not the case. At page 205 of the appellant's bundle, Mr Sheikh's account is that he spent one hour and twenty minutes speaking to the appellant. Although this was longer than seventeen minutes, it was certainly not an afternoon.

26. Because there had been no flaw in Sprakab's approach, the Tribunal should place very considerable weight on Sprakab's conclusions. That was a justifiable basis for the respondent adding a second removal direction to the immigration decision. If the appellant had a form of lawful residence in Kenya, she could be returned safely.

27. The respondent would submit that the evidence supported a finding that she was from Kenya. In addition to the Sprakab report, the respondent would rely also on the fact that her evidence about her links with Somalia was completely incredible. It was the respondent's case that if the respondent was able to remove her to Kenya, her Article 3 rights would not be breached, but it was not for the respondent to establish at this stage that this could be done.

28. On this point, Mr Jorro accepted that the issue for the Tribunal was not whether the appellant was a Kenyan national, but whether she would be at risk on return to Kenya. He agreed that it was not for the Tribunal to decide whether as a matter of fact she could be returned to Kenya.

29. With regard to the risk on return to Kenya, it was not accepted that the appellant would be at risk of refoulement. It was accepted that if the Tribunal found that she would be at risk if removed to Somalia then she would be at risk whether removed from this country or from Kenya. It was also accepted that if the appellant had no status or connections in Kenya, there was a real possibility that she would be returned to Somalia from that country; it was also accepted that there would be a real risk that if she was put into a displaced persons camp in Kenya her Article 3 rights would be engaged. Accordingly, it was accepted that if the Tribunal found that the appellant had no connections in Kenya, and would therefore have to be returned there without any support, she would be at risk. However, in this regard, the respondent relied on the judgment of the Supreme Court in *MA (Somalia)*, especially at paragraphs 32 and 33.

Discussion

Removal to Somalia

30. I consider first whether this appellant can safely be removed to Somalia. Mr Jorro, in his submissions before me, asserted at one point that at paragraph 34 of Judge Murray's determination, she had found that the appellant had come from southern Somalia. In fact, Judge Murray did not so find. Her finding at paragraph 34 was that "since all three reports [that is the Sprakab report, the De Taal report and Mr Sheikh's report] confirm that the appellant speaks Somali to the level of a mother tongue speaker and she speaks with a south Somalia dialect I accept that this is so". As Mr Jorro acknowledged later in his argument, at paragraph 49 Judge Murray had stated that it was not for her "to speculate where she is from". She did, however, make a clear finding that the appellant was not from Mogadishu, and was not Reer Hamar as she had claimed.

31. When considering whether this appellant can safety be removed to Somalia, I must take account of Mr Jarvis's submission that the situation in that country is now so different from how it was when the country guidance decision in *AMM* was promulgated that this decision need no longer be followed. My starting point, when considering this submission, must however be the Court of Appeal decision in *SG (Iraq)*, which emphasised the importance of following country guidance. I also have in mind the observations of the Tribunal in *AMM* itself, at paragraph 345: in which the Tribunal stated as follows:

> "Despite our rejection of the appellants' submissions to the effect that the respondent bears a legal burden of showing that a place previously unsafe has become safe, it is the case, as the Tribunal said in EM and Others, that any assessment that the material circumstances have changed, will need to demonstrate that 'such changes are well established evidentially and durable'".

32. Mr Jarvis's submissions were interesting, and were extremely well presented, both in his oral argument and also in written submissions which were prepared before the

hearing. Essentially he argues that what the Tribunal had in mind in *AMM*, was that at the time being considered in *AMM*, Al-Shabab had only just withdrawn from Mogadishu and it was too soon then to say whether or not that withdrawal was permanent, or durable, but that as they had not come back since, this could now be found. Also, the famine which the population was then suffering had now ended. The respondent was not arguing that there was no violence any longer, but that the nature of the violence had changed significantly. The conventional fighting which had taken place up to July and August 2011 had stopped. The frontline had gone. Al-Shabab had left and had not come back. Although there were some targeted attacks and sometimes civilians got caught up in the cross-fire, this was now much reduced, especially from February 2012.

33. Mr Jorro's position was that these arguments were not clear cut, and are certainly not so clear cut as to permit this Tribunal now to depart from the country guidance contained within *AMM*.

34. I have in mind that the Tribunal in *AMM* considered a huge body of evidence, which was considerably more than the evidence put before me for the purposes of this appeal, and in far greater detail. It may well be that the guidance in *AMM* will have to be revisited, by another Tribunal, and that Mr Jarvis's arguments will form the basis of the Secretary of State's submissions then, but well made though these arguments are, having considered his submissions very carefully, I do not feel able, currently, to find that the guidance given in *AMM*, in particular with regard to the position of a lone female returning to Somalia without any support, should no longer apply. I am not sufficiently satisfied that the situation has changed so significant since *AMM* was promulgated as to allow me to find that a lone female, being "returned" (or at any rate sent) to Somalia without any support would not be at risk.

35. I now consider Mr Jarvis's argument, relying on the guidance given by the Supreme Court in *MA (Somalia)* (and also by this Tribunal in *GM (Eritrea)* and *AMM*) that I should nonetheless disregard the appellant's claim that if removed to Somalia she would go there as a lone female without support. Mr Jarvis's argument is that because her evidence has been so totally discredited, she has not discharged the burden on her to establish that she has no support in Somalia. As the Tribunal has found that her ethnicity is not Reer Hamar as claimed, she has not established that she would be without support.

36. The difficulty with this argument is that it disregards the respondent's own position with regard to the evidence, which is that it is established by the Sprakab report that the appellant is in fact from Kenya. Indeed before me Mr Jarvis asserted in terms that it was the respondent's case that the appellant "has been residing in Kenya or is Kenyan".

37. I have in mind the observations of the Tribunal in *AMM*, at paragraph 577, as follows:

> "It will be for judicial fact-finders to decide, on the basis of the totality of the evidence before them, whether, to the extent that this country guidance remains authoritative (in

terms of Practice Direction 12), the case before them is one, where notwithstanding an appellant's lies, it will be 'fanciful' to conclude that the appellant falls within one of the various exceptions we have identified in the country guidance in the preceding part of this determination."

38. In this regard, I refer in particular to the findings in *AMM* at paragraphs 357 and 358:

> "357. Nevertheless, the evidence before us points to there being a category of middle class or professional persons in Mogadishu who can live to a reasonable standard, in circumstances where the Article 15(c) risk, which exists for the great majority of the population, does not apply. A returnee from the United Kingdom to such a *milieu* would not, therefore, run an Article 15(c) risk, even if forcibly returned. Into this category we place those who by reason of their connection with 'powerful actors', such as the TFG/AMISOM, will be able to avoid the generalised risk. The appellants argued that no such category exists; but we reject that submission. Indeed, the category that emerges from the evidence is wider than the 'powerful actors' exception, and covers those whose socio-economic position provides them where the requisite protection, without running the risk of assassination faced by those in or associated with the TFE.
>
> 358. The significance of the category we have identified should not, however, be overstated. For most people in Mogadishu the Article 15(c) risk persists, at the present time. In the case of a claimant for international protection, a fact-finder would need to be satisfied that there were cogent grounds for finding that the claimant fell within such a category."

39. Given the respondent's position, which is that this appellant is in fact from Kenya, even though this appellant's evidence cannot be accepted, I do not accept that I can be satisfied that she would fall within the category of persons referred to in paragraph 357 of *AMM*. Notwithstanding the appellant's lies in this case, I find that such a conclusion would indeed be "fanciful."

40. Accordingly, the appellant cannot safely be removed to Mogadishu, and nor is there anywhere else, within Somalia, to where, as a lone female without support, she could safely relocate. Even despite the appellant's lies, there is simply no basis upon which I could be satisfied to any standard of proof that she would have any support within Somalia.

41. Accordingly, I find that insofar as the respondent might intend to remove this appellant to Somalia, such removal would be in breach of her Article 3 rights.

Removal to Kenya

42. I am satisfied that unless this appellant has support within Kenya, she cannot safely be removed to that country. This is because she would either be at risk of refoulement to Somalia (which I have already found would put her at risk) or she would be at risk of being placed in a displaced persons camp, which Mr Jarvis has accepted would put her at risk if she was without support or contacts in Kenya. The

key questions therefore are first, whether she is indeed from Kenya and secondly, whether, in that event, she would be without support if removed there. This second question would have to be considered in light of the guidance given by the House of Lords in *MA (Somalia)*.

Where is the Appellant from?

43. My starting point when considering where this appellant is from must be the findings of fact which have been made, and in particular that the appellant's claim to be from Mogadishu has been disbelieved by every Tribunal which has considered her evidence. Mr Abdi's evidence has also been disbelieved (including by myself at the previous hearing).

44. Sprakab's finding in relation to this appellant is clear and unambiguous. "She speaks a variety of Somali with certainty not found in southern Somalia. She speaks a variety of south Somali with certainty found in Kenya." In other words, the linguistic analysis shows that she is from Kenya.

45. The De Tal response to the initial Sprakab report effectively challenges the basis upon which it was made. It refers to the "quality of language analysis report" (the Sprakab report) as "poor" and states in particular that "the report does not provide any evidence for the conclusion that the applicant's variety of south Somali is not found in south Somalia, but in Kenya". It challenges Sprakab's finding that there is "a variety of south Somali found with certainty in Kenya" because "according to our experts, different varieties of Somali are found in Kenya, but there is no such thing as a variety of south Somali that is not found in southern Somalia but is found only in Kenya". In other words, the whole basis of the Sprakab analysis is challenged.

46. In De Taal's conclusions, at paragraph 6, it is said that "the applicant is a native speaker of Somali and she will socialise in Somali (or in a Somali-speaking milieu)". While from her speech, an origin from northern Somalia or even from the central parts of the country "can be excluded with certainty" it is nonetheless concluded that her speech could be from somewhere in southern Somali. What is challenged is that her origin can be further localised to Kenya. Effectively therefore the challenge to Sprakab's more specific finding that this appellant is a Somali speaker from Kenya is a challenge to Sprakab's expertise, rather than as a result of any specific finding that she is not from such an area. What De Taal is saying is that it is impossible to be that specific about anyone.

47. When considering this challenge to Sprakab's expertise in this area, I must have in mind the observations of this Tribunal regarding Sprakab's evidence in *RB* (linguistic evidence - Sprakab) Somalia [2010] UKUT 329 (as largely upheld subsequently in the Court of Appeal). I set out the relevant findings:

> "154. We are satisfied that Sprakab is a bone fide organisation that is linked to international linguistic organisations. Its general manager, Pia Fernqvist, has an

academic reputation to enhance and protect and we are quite satisfied that it is a devised and refined system analysing language that requires interaction between several employees. It is thus, to an extent, self-checking and its mechanism minimises the opportunities for one person's incompetence or indifference leading to a false result …

156. We reject the criticism that Sprakab is not independent. …

159. Sprakab does not claim to be infallible. ... The kind of linguistic analysis offered by Sprakab is a serious step toward 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 Sprakab's 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, are reproduced and checked. Sprakab is sensitive to the changes in language use and notes and keeps in contact with those of a like minded interest. Further no final conclusion is reached just on one person's opinion. …

165. Professor N... 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 Professor N... found that the interviews were sometimes brief, sometimes over unsatisfactory telephone lines, and sometimes used question in a form or in a language of which 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. …

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 judgment, 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 opinion are entitled to very considerable weight.

169. This is particularly so when there is available such a detailed report as that ... in the present case; but even where less detail is available Sprakab's recent opinion should be regarded as carrying weight because it comes from a reputable and apparently reliable body with the characteristics and methodology we have described. Any evidence opposing the Sprakab evidence will need to deal with the reasons Sprakab has given for its view; and it seems to us highly unlikely that an opposing report based solely on anecdotal reasoning or personal opinion would be a proper basis for rejecting the Sprakab opinion."

48. I note that at paragraph 6 of the first De Taal report there is an attempt to justify or excuse the appellant's lack of specific words from Mogadishu. Instead of concluding that it was highly unlikely that she was from Mogadishu (which this would seem to demonstrate) the report instead says as follows:

> "That she does not speak with a typical Mogadishu accent may be stranger but it is not completely impossible if the applicant really spent most of her time at home and if we consider her young age (it is well possible that many old Italian loans and typical words of the Mogadishu dialect are by now obsolete or less common)."

49. However the writers of this report are nonetheless obliged to find that the appellant's claim "to have been born and socialised in Mogadishu, and more specifically in Xamar Weyne, looks doubtful and cannot be confirmed". But they are not prepared to be more specific than to say that "her speech points in general to the southern part of Somalia as a place of birth and/or socialisation".

50. Where the writers of the De Taal report make a direct challenge to Sprakab's analysis is at paragraph 7, where at 7.2 under "*Evaluation of the language analysis report(s")*, it is stated in terms that "The present expert [that is De Taal's expert] does NOT agree with the expert's idea that the applicant speaks a 'dialect of Somali spoken in Kenya'". It is said that "this hypothesis makes linguistically little sense" because "Somali as spoken in Kenya has never, as far as the present expert knows, been investigated, and this means certainly a gap in our knowledge of the Somali-speaking world". It is then said that "the present expert maintains that such a specific hypothesis such as an origin from Kenya must be proved against the easier hypotheses and better documented and supported". In other words, this is a challenge to the expertise of Sprakab.

51. Sprakab's response is contained in a report dated 21 February 2013. It is noted that all Sprakab Somali analysts are native Somali speakers "mastering the language and its dialects at the mother tongue level". They also have experience of growing up and living in Somalia and other Somali-speaking areas "(Kenya, Ethiopia and Djibouti for example)". It is said that "this kind of linguist knowledge cannot be learned at a university in Italy" or "by spending a few years in Somalia (or other Somali speaking communities)".

52. Sprakab has tested "many would-be analysts who are non-native speakers", but although they have all been fluent and many had studied linguistics and the language, "despite these persons' extensive academic qualifications (up to the level of doctorates as well as professors), they did not pass Sprakab's rigorous tests".

53. It is noted that De Taal's expert did not speak Somali at "the mother tongue level" and had only spent a total of three years in Somalia. Also, their expert had not spent time in Kenya or amongst Kenyan Somalis "which of course makes it difficult for him/her to be able to recognise Kenyan Somali features in the applicant's speech".

54. Sprakab's conclusion that the appellant speaks a variety of Somali found in Kenya is repeated. It is stated that although the south Somalia varieties spoken in south

Somalia and the varieties spoken in Kenya are very similar, they have differences which "can be observed and marked by native speakers with the proper analytical ability and experience". However, these differences cannot be observed "by persons who are not familiar with Kenyan Somalia varieties".

55. It is noted that in the De Taal report it is stated that Kenyan Somali has never been researched, but stated that this is only true in the case of people, such as the De Taal expert, who are not native speakers or lived in Kenya amongst Kenyan Somali speakers (as Sprakab's analyst has). The "inability of the [De Taal] expert to conduct linguistic analysis" is noted, in particular at paragraph 8 of the De Taal report in which it is said that "further investigations and recordings are needed in this difficult case". It is then said, with regard to Sprakab's work environment, as follows:

> "In the Sprakab Somalia work environment, this case is not perceived as difficult. It is a basic case of a Kenyan Somali variety, **cases which are encountered and analysed at Sprakab every week**. [My emphasis]"

56. There then follows a number of illustrations demonstrating the differences between the appellant's pronunciations/how she forms her words or sentences in Kenyan Somali, contrasted with how these would appear in Somali varieties spoken in Mogadishu in south Somalia.

57. The conclusion of the Sprakab expert (who is named – Torbjörn Norbom) is set out as follows:

> "The [De Taal] expert fails to observe and mention phonological, grammatical and lexical features in the applicant's speech which are typical of Kenyan Somali, as shown above. Since the south Somali varieties spoken in South Somalia are very similar to the south Somalia varieties spoken in Kenya, this is a common mistake by analysts who are not familiar with Kenyan Somali. However, an analyst who lacks that knowledge should not analyse Somali, since they then mistake Kenyan south Somali with Somali south Somali. This adheres to the [De Taal] expert."

58. It is also noted that the De Taal expert had failed to mention the "vast number of incorrect statements in the knowledge assessment of the applicant".

59. In response to the latest Sprakab report, De Taal provided a document headed "Response". Part 1 of this document contains a "response by the counter-expert" in which he confirms that he is not a native speaker and that his knowledge is mostly academic, but he claims that he "consulted with a native speaker". He maintains that there is "simply no evidence – again, in the literature ... – of [a variety of "Kenyan" Somali]."

60. It is clear that this response adopts an academic approach to this issue.

61. Part 2 of the response is from Mr Verrips, who is the "founder and director of De Taalstudios". He refers to the working methods of this organisation.

62. The core of his response is his claim regarding "Kenyan Somali" at the top of page 4:

> "The central point in the disagreement between Sprakab and De Taalstudios' expert, the provisional Somali dialectologist, is the issue of the existence of a Kenyan variety of Somali. The Somali dialectologist takes the view that in the absence of solid linguistic research, it is irresponsible to claim that a distinction can be made reliably between speakers of Somali who have lived in Kenya for a long time and those who are from southern Somalia."

63. Mr Verrips continues as follows, in the next paragraph:

> "Sprakab's response to this point boils down to the claim that Sprakab DOES know how to distinguish between speakers of both sides of the Kenyan- Somali border. In doing so, Sprakab fails to address the essential point, which is that there is NO research basis for such a distinction. In fact Sprakab does not even provide ANY explanation as to how Sprakab knows that the distinction can be made reliably. From the face of it, Sprakab relies on the opinion of one or more native speakers who claim that he can make the distinction. There is no evidence whatsoever that these claims are correct."

64. In other words, De Taal is claiming that the whole basis of the Sprakab analysis is faulty. It is not suggested that De Taal can show that this appellant is from anywhere else, but rather that no expert could properly reach the findings which Sprakab made.

65. Before dealing with the issue as between Sprakab on the one hand and De Taal on the other, I must deal briefly with the evidence of Mr Sheikh. In my judgment, his evidence must be discounted. Not only is his report inconsistent both with those from Sprakab and De Taal, but his conclusions, both with regard to the appellant's clan and that she is from Mogadishu have been found to be incorrect.

66. As this Tribunal found in *RB*, at paragraph 168, "Sprakab evidence is of high quality and its opinions are entitled to very considerable weight". In my judgment, the real foundation of the opinion given by De Taal that one cannot reliably distinguish between Somali spoken in Kenya and that spoken in parts of southern Somalia is that there is no academic foundation for this thesis. However, Sprakab does not assert that there is. Rather, using the methods which this Tribunal in *RB* considered to be reliable, it has given very firm evidence indeed that this appellant speaks a variety of Somali found "with certainty" in Kenya and not found, again "with certainty" in southern Somali. As is noted in Sprakab's second report, cases involving the Kenyan Somali variety "are encountered and analysed at Sprakab every week".

67. Given the finding at paragraph 154 of *RB* that "Sprakab is a bona fide organisation that is linked to international linguistic organisations" and (at paragraph 168) that its evidence is "of high quality and its opinions ... entitled to very considerable weight", and also (at paragraph 169) that "any evidence opposing the Sprakab evidence will need to deal with the reasons Sprakab has given for its view" and that "it seems to us highly unlikely that a ... report based purely on anecdotal reasoning or personal opinion will give a proper basis for rejecting the Sprakab opinion", I do not consider that the reasons advanced on behalf of the appellant for doubting the unambiguous findings made by Sprakab cast real doubt on the validity of that evidence.

68. In these circumstances, I am entirely satisfied on the totality of the evidence before me, that this appellant is from Kenya.

Would This Appellant Be At Risk in Kenya?

69. I have already indicated above that even were I to find, as I have, that this appellant was from Kenya, she would still be at risk if she was to be returned there without any support. However in this regard I must have in mind the observations of the House of Lords in *MA (Somalia).* At paragraphs 31 and 32, giving the judgment of the court, Sir John Dyson SCJ, stated as follows:

> 31. What Laws LJ was saying at para 54 [of *GM (Eritrea)]* was that, where a claimant tells lies on a central issue, his or her case will not be saved by general evidence unless that evidence is extremely strong. It is only evidence of that kind which will be sufficient to counteract the negative pull of the lie. But much depends on the bearing that the lie has on the case. The Court of Appeal correctly stated at paragraph 104 of its judgment in the present case:
>
> > 'The lie may have a heavy bearing on the issue in question, or the tribunal may consider that it is of little moment. Everything depends on the facts. For example, if in the Eritrea cases the Secretary of State had prima facie evidence that the appellants had left legally, the tribunal might think it appropriate to put considerable weight on the fact that the claimant told lies when seeking to counter that evidence. The lie might understandably carry far less weight where, as in *YL* itself, the judge is satisfied that the appellant has lied where the lie is against her interests.'
>
> 32. Where the appellant has given a totally incredible account of the relevant facts, the tribunal must decide what weight to give to the lie, as well as to all the other evidence in the case, including the general evidence. Suppose, for example, that at the interview stage the appellant made an admission which, if true, would destroy his claim; and at the hearing before the AIT he withdraws the admission, saying that his answer at interview was wrongly recorded or that he misunderstood what he was being asked. If the AIT concludes that his evidence at the hearing on this point is dishonest, it is likely that his lies will assume great importance. They will almost certainly lead the tribunal to find that his original answers were true and dismiss his appeal. In other cases, the significance of an appellant's dishonest testimony may be less clear-cut. The AIT in the present case was rightly alive to the danger of falling into the trap of dismissing an appeal merely because the appellant had told lies. The dangers of that trap are well understood by judges who preside over criminal trials before juries. People lie for many reasons. ... "

70. Of particular relevance to the present case is what was stated at paragraph 47, as follows:

> "47. In our view, there was no need to interpret paras 109 and 121 in the way that the Court of Appeal did. There is an interpretation of these paragraphs which is consistent with the self-direction at para 105 and is unimpeachable. In our view, all that the AIT were saying at para 109 was that, because *MA* had not told the truth about his links and circumstances in Mogadishu, the possibility that he was a person with connections in Mogadishu could not be excluded. In other words, he had not discharged the burden of proof which the AIT had correctly said rested on him."

71. If one substitutes this appellant for MA and Kenya for Mogadishu, the parallel is evident. This appellant has not attempted to tell the truth about her connections and circumstances in Kenya, which is where I have found she is from. Accordingly, the possibility that she is a person with connections in Kenya cannot be excluded. So, in other words, she has not discharged the burden of proof which is upon her in this case. Unlike the situation with regard to Somalia, where there is other evidence which would suggest that she lacks support (particularly the Sprakab evidence which I have accepted) there is no such evidence with regard to Kenya. The consequence of this appellant choosing to tell lies about where she is from (as I and every other Tribunal considering her case have found) is that, like the applicant in *MA (Somalia*), she has failed to discharge the burden of proof which rested on her. She has not shown that she is without support or connections in Kenya, and accordingly has not shown that she would be at risk if she was returned there.

72. For this reason, I find that if and to the extent that the respondent is able to remove this appellant to Kenya, this removal would not be in breach of her Article 3 or any other rights she may have. It follows that insofar as there is a removal direction to Kenya, the appellant's appeal must be dismissed.

Decision

I set aside the determination of Immigration Judge Murray, as containing a material error of law, and substitute the following decision:

The appellant's appeal is dismissed, on all grounds.

Signed: Date: 22 August 2013

Upper Tribunal Judge Craig