

Mr Steve Karas
Principal Member
Migration Review Tribunal and Refugee Review Tribunal
Locked Bag 3
SYDNEY SOUTH
NSW 2000

Dear Mr Karas

I am writing to you to make a submission to the Tribunal under s423(2) of the *Migration Act 1958* on a number of matters relating to the weight to be attached to expert evidence including language analysis results, particularly as it affects refugee protection claims involving nationality and identity fraud issues. These have arisen particularly in protection visa applications concerning claims of Afghan nationality.

Entry and visa fraud has long been an issue of concern to the Department of Immigration and Multicultural Affairs (DIMA). The rise in the number of unauthorised arrivals to Australia since 1999, the particular nationality profile of unauthorised arrivals and the fact so many have arrived undocumented has placed increased pressure on the capacity of DIMA to identify such people on arrival and to maintain the integrity of processing should they apply for visas.

The increase in unauthorised boat arrivals has been substantial: from 921 in 1998-1999 to 4175 in 1999-2000 and 4137 in 2000-2001. It is estimated that around 80% of unauthorised boat arrivals arrive without any identifying documentation.

The overwhelming majority of arrivals in this time have claimed to have fled oppressive regimes in either Iraq or Afghanistan, with many having first sought refuge in the neighbouring states of Iran and Pakistan (where significant Iraqi and Afghan refugee communities remain).

There have been persistent allegations from some community groups in Australia and other sources that some people have been granted Temporary Protection Visas on the basis of a fraudulent identity (mainly Pakistanis claiming to be Afghans). The recent interception of an Australian-bound ship by Cambodian authorities indicated that 130 of the 242 persons aboard were Pakistani who were intending to represent themselves as Afghans for the purpose of claiming protection in Australia.

It is therefore critical that decision makers test claims of protection visa applicants effectively to match the challenge being posed by organised and sophisticated attempts at fraudulent nationality and identity claims. This submission provides advice to assist the Tribunal in such matters, in the interests of maintaining consistency of interpretation in accordance with Australian law and policy.

I would greatly appreciate your assistance in circulating my submission on these matters to Members of the Tribunal.

Yours sincerely

W.J. Farmer
November 2001

SUBMISSION TO THE REFUGEE REVIEW TRIBUNAL ON WEIGHING OF LANGUAGE ANALYSIS AND OTHER EXPERT EVIDENCE INCLUDING BENEFIT OF THE DOUBT/CREDIBILITY ISSUES

1 This submission provides written argument on issues concerning the use of language analysis and other expert evidence, in relation to protection visa decisions under review by the Tribunal (see subsection 423(2) of the *Migration Act 1958* ('the Act')).

2 The submission addresses a number of matters relating to the weight to be attached to expert evidence including language analysis results, particularly as it affects refugee protection claims involving nationality and identity fraud issues:

- The submission provides advice to assist the Tribunal in addressing applications involving expert evidence, in the interests of maintaining consistency of interpretation in accordance with Australian law and policy, as is appropriate to the facts of each particular case.

Background

3 The Government's commitment to the maintenance of the international protection system is matched by its commitment to ensure that the arrangements in place for handling unauthorised arrivals do not encourage the use of services offered by people smugglers. Accordingly, the Department continues to vigorously develop and pursue strategies to combat identity fraud and to enhance our response to it through improving information flows, utilising technology and building relationships overseas:

- While this submission focuses on language analysis issues, similar yardsticks apply in relation to the consideration, within the protection visa process, of any type of expert evidence.

4 In 2001 Afghanistan has emerged as the largest claimed country of nationality amongst unauthorised boat arrivals. Consistent and widespread reports from Australian and overseas sources indicate that there is significant and increasing nationality fraud amongst unauthorised arrivals (who usually have disposed of any identifying documentation before arrival here), predominantly by Hazaras from Quetta (Pakistan) as well as others from Pakistan attempting to pass themselves off as Afghans. The rise in the number of unauthorised arrivals to Australia since 1999, the particular nationality profile of unauthorised arrivals and the fact that so many have arrived undocumented has placed increased pressure on the capacity of decision-makers to maintain the integrity of visa processing.

Use of language analysis

5 Language analysis is a valuable tool in the refugee determination process to help establish the claimed place of origin of protection visa applicants. Given the increasing incidence of identity fraud, the Department now undertakes specialised interviews for the purpose of language analysis in respect of boat arrivals claiming to be of Afghan origin:

- Analysis is based on a tape recording of the applicant responding to questions at interview and talking freely. The language spoken and, more specifically, the vocabulary, accent, idioms and grammatical structure employed can indicate an applicant's country of origin.

6 Language analysis is a useful tool when there are strong suspicions, through knowledge of the case and/or information from a third party (such as 'dob-ins'), that a person is not from the country claimed:

- Verification of place of origin will generally be crucial to credibility. A language analysis report helps to inform judgments about whether a person is from the claimed place of origin or from a different place.

Language analysis providers

7 Some European countries with high numbers of asylum seekers (Germany, Netherlands, Switzerland, Sweden) have used language analysis for a number of years to help verify place of origin:

- The Department has commissioned language analyses from a number of specialist European testing agencies, principally two Swedish service providers: Skandinavisk Sprakanslys AB (SPRAKAB) and Ekvator, both of which conduct analysis for the Swedish immigration authorities as well as a number of other European immigration authorities. The other two organisations are the Netherlands Immigration and Naturalisation Service (IND) and Lingua, from Switzerland:
 - ◆ Information provided by those expert bodies on their approach to language analysis (at Attachment A) demonstrates the level of expertise of individual analysts and that guaranteed by organisational arrangements, such as recruitment, training and internal quality assurance mechanisms in the language analysis field;
- Attachment A demonstrates that analysts employed by these agencies possess a range of relevant qualifications and experience. Typically, they are native speakers in their particular language(s) of expertise and are matched to individual cases, to provide language skills that relate as closely as possible to those of the claimed place of origin in each particular case:
 - ◆ Analysts may possess academic qualifications in the languages in question or the study of linguistics and a sound grasp of analytical methodology. Analysts periodically return to their homeland to maintain current understanding of language trends;

- ◆ Prospective analysts are subjected to rigorous test procedures before gaining employment with these agencies. Importantly, each analyst's work is regularly cross-checked by other experts, such as linguists, so that the agency has confidence in the value of their work.

8 It cannot be assumed that an interpreter will be competent to undertake language analysis:

- Interpreters translate words from one language to another and there is not a basis for concluding that an interpreter is capable of identifying the cultural or geographical origins of a person, in the absence of any capacity to test the accuracy of their opinions. That capacity - to verify the reliability of language testing procedures - is provided through the methodologies followed by DIMA's testing agencies.

9 The Department has developed procedures to respond to advice from language testing agencies (evident in the comments at Attachment A) on the importance of interviews being of sufficient length and quality to provide a good basis for analysis. Interviewers have accordingly been trained to ensure that interviews provide free-flowing dialogue which is recorded on high quality equipment to ensure good reproduction.

10 DIMA's approach to language analysis involves minimal nexus with local communities and individuals in Australia, who may have an interest in influencing case outcomes.

Legal considerations

11 The issue of language analysis was briefly considered by the Full Federal Court in *Sook Rye Son v MIMA* (23 March 1999); subsequent Departmental legal advice (3 February 2000) relating to the issue of whether language analysis can be conclusive, which drew in part on *Sook*, indicated that:

- Language analysis can be useful in establishing an applicant's country or region of origin, provided the analyst is appropriately qualified and experienced;
- A finding by an analyst may be persuasive but should not be regarded as determinative, not least because it does not prove nationality or that residence rights exist;
- Decision-makers should regard an expert opinion on language analysis as one of the factors that they must consider and have regard to all other matters in making their decision; and
- Language analysis can be undertaken, without the consent of the applicant, for the purpose of establishing whether Australia owes the applicant protection obligations. The only qualification to the above position is that information must not be disclosed to the authorities in the country where the applicant claims to fear persecution.

12 Language analysis must be given appropriate weight as expert evidence. After taking legal advice (3 July 2000, drawing on *Fuduche v MILGEA*), the Department is of the view that if the Tribunal finds an expert's opinion is relevant to the decision making process, it would not be appropriate to reject it unless other expert evidence justifying rejection is available:

- If, for example, a Member is a language expert and so able to challenge an analyst's expert opinion, the Member's expertise would need to be broadly commensurate with that of the expert under challenge. Further, it would be appropriate for the Member to prepare a detailed report or analysis to justify that alternative view, which should then be set out in the decision record.

13 In 2001, Federal Court case law upheld Tribunal reliance on linguistic analysis – as well as its general approach to credibility testing – using, *inter alia*, entry interviews and 'inconsistencies' in accounts provided by applicants:

- *Mchinangome* [2001] FCA 1089 (6 August 2001) concerned an applicant claiming to be Rwandan, whom the Tribunal considered to be a Kenyan citizen on the basis of linguistic evidence. The Court indicated that in appropriate cases decision-makers can use language testing as the means to reach the state of satisfaction required in order to make a decision;
- *Martizi* [2001] FCA 1112 (10 August 2001) considered linguistic analysis generally, with reference to Ekvator reports. As with *Mchinangome*, the Court clearly suggested that language analyses can be highly probative, noting that:

having regard to the substance of them [language analyses], it was open to the decision-maker to form the view that she was not satisfied that the applicant came from Rwanda. ... The state in which the evidence was left, in the opinion of the decision-maker, was unclear and was not sufficient to enable any inference to be made as to the precise history of the applicant. The fact could not be established or had not been established that the applicant came from Rwanda. Accordingly, it followed in the view of the decision-maker that the claim had not been made out; and

- *Odhiambo* [2001] FCA 1092 concerned a Tribunal finding that the applicant had fabricated his claim of Sudanese citizenship. Language analysis indicated that he spoke a Kenyan coastal variety of Swahili, almost as his mother tongue. The Tribunal's decision that he was a national of Kenya was based, in part, on language analysis. The Court held:

... it was open to the decision-maker to rely on this material: see the decision in *Zhou v MIMA* (2000) FCA 811, by way of comparison, where the Court considered the use of this type of linguistic evidence. Accordingly, since the applicant relies on the claim that there was a mistake in relation to the finding concerning his origins in Sudan and the finding that he is a national of Kenya, I do not consider that there has been any error in principle or law which would warrant judicial review in this case.

Weighing of evidence

14 If the results of language or other tests contradict applicants' country of origin or identity claims, Tribunal members are expected to closely investigate those claims. Applicants should be asked to provide evidence to support their claims and

to explain inconsistencies:

- An adverse test result on its own is still capable of an innocent explanation and so needs to be considered along with other available information.

15 Where applicants are willing to provide genuine information – thus enabling full assessment of their claims - Tribunal members will be in a position to judge whether that information is thin on detail or not credible. For example, claims may be a mere shell obtained through prior coaching by smugglers (involving even familiarisation trips back into Afghanistan):

- If language analysis indicates that an applicant is not from their claimed country of origin, then that evidence should be accorded considerable weight in assessing the applicant's claims;
- Where language analysis results raise credibility issues, it is incumbent on the applicant to provide a coherent and plausible explanation about the adverse findings or results. Thus, applicants claiming to be Afghans should reasonably be expected to explain tests indicating they are Pakistanis; and
- If the claims appear flimsy in light of expert evidence, it would be necessary to put it to the applicant that, unless the applicant can show why this should not be so, it is open to the decision maker to rely on that evidence and refuse the protection visa application:
 - ♦ Accordingly, the Tribunal is expected to give appropriate weight to expert language analysis evidence and other rigorous checks carried out by the Department, accompanied by suitable reasoning to support a grant or refusal decision.

16 If a claimed Afghan has been linguistically assessed as being from Pakistan, but the Tribunal feels the weight of evidence is nevertheless in favour of a finding of Afghani nationality, it is submitted that the Member should not make a decision in favour of the applicant unless satisfied on the fundamental issues of identity and nationality. As those issues are critical to satisfaction regarding protection obligations, that satisfaction can be lawfully arrived at through comprehensive inquiries and consideration of expert evidence, such as language analysis:

- It is critical that these issues are comprehensively explored by the Tribunal in relation to caseloads involving allegations of widespread fraud; and
- Where the Tribunal has tangible evidence from a testing process that an applicant's nationality or identity are fraudulent, then the Member has appropriate grounds to infer that the person's claims are not well-founded, on which basis the application can be refused.

17 Doubts or suspicions regarding an applicant's identity or nationality may have been satisfactorily resolved through effective protection checks undertaken by the Department. Effective protection checks cover issues of available re-entry and residence rights as well as UNHCR checks to establish whether the applicant has received prior protection through that organisation. For claimed Afghan nationality, checks with the Pakistani authorities may need to be undertaken:

- Continuing work is under way to set up functioning arrangements with Pakistan to confirm nationality. This is of critical importance given the large numbers of claimed Afghans amongst unauthorised arrivals and the prevalence of allegations that numbers of these applicants are in fact Pakistani nationals.

18 Information used by the Department in assessing the primary application will generally be relevant to the review application and of assistance to Members.

19 It is submitted that it would be appropriate for the Tribunal to give due weight to the Department's comprehensive *Fraud and Effective Protection Procedures*, issued in July 2000 (Attachment B). Those procedures require that where there are strong suspicions of fraudulent claims being made by an applicant about identity, nationality or experiences, claims are to be closely scrutinised and identity and nationality checks commissioned:

- Where such checks are not practicable, other options should be pursued, such as further language analysis, follow-up interviews and placing the onus on the applicant to provide documentary proof of nationality.

20 The Department would be happy to set in place procedures for the RRT to commission further language analysis or other tests where this is considered necessary to assist in consideration of a review application. Contact should be made with the Assistant Secretary, Onshore Protection Branch in the first instance.

Benefit of the doubt

21 Where Tribunal members have serious suspicions or doubts concerning identity or nationality issues, they should ensure that those issues are thoroughly and realistically examined and resolved before proceeding to make a decision on the application:

22 The UNHCR Handbook notes, at paras 203-209, that while it will not generally be possible for a refugee to 'prove' every part of his or her case, the benefit of the doubt should only be given when all the available evidence has been obtained and checked and when the examiner is satisfied as to the applicant's general credibility. The applicant's statement must be coherent and plausible, and must not run counter to generally known facts:

- Currently available information from Australian and overseas sources points to an increasingly sophisticated effort by people smugglers to intensively school Pakistani unauthorised arrivals to Australia so as to present themselves as Afghan nationals. Rigorous examination and testing of claims is required, rather than mere acceptance of an applicant's story; and
- In weighting hearing or interview performance of an asylum seeker for purposes of credibility assessment, decision makers should critically and objectively consider the reliability of such a source in the face of possible widespread and sophisticated efforts by some individuals to present a coherent but fabricated account.

Disclosure of information

23 Persistent, widespread and consistent allegations of organised nationality fraud, especially in relation to Afghanistan, have led the Department to change its disclosure procedures. The Department is putting in place arrangements to restrict the provision of PV interview and language analysis tapes to applicants:

- The Tribunal should be aware that the issue of disclosure to applicants of records of interview arose in *MIMA v Al Shamry* [2001] FCA 919. *Al Shamry* is authority for the proposition that information previously given to the Department by the applicant - including statements made in an interview - and which is before the RRT, will need (for the purposes of section 424A of the Act) to be provided back to the applicant if it is information that the Tribunal considers would be the reason, or a part of the reason, for affirming the decision that is under review.

24 If the information obtained from an expert is adverse to an applicant's case, at least the substance of that report must be given to the applicant for an opportunity to comment on it (sections 57 and 424A of the Act, relating to primary and review applications, respectively):

- It is not legally necessary to give the full report to the applicant. It is necessary only to provide the applicant with the particulars of any information to be relied upon in rejecting the application for review (see *Al Shamry* at para 39).

25 So far as interview tapes are concerned, section 424A does not, in terms, require their provision to applicants. Where statements made by an applicant in a recorded interview are to be relied upon in refusing the application for review, s.424A(2) requires, in effect, that particulars of the statements be given in writing; a tape recording would not suffice.

26 In any event, provision of tapes is considered inappropriate given the risk that they may be used for coaching other applicants, for example through modelling speech patterns. There may also be concern in some circumstances about the release of personal details (such as name and address) of an expert who conducts a language analysis (see, for example, *Zhou v MIMA* [2001] FCA 811).

Summary

27 Language analysis is a valid tool to assist in the asylum determination process:

- The language analysis approach followed by DIMA requires particular expertise on the part of overseas testing agencies it uses and intensive training for the analysts.

28 Language analysis, used in conjunction with other expert material, enables the Tribunal to arrive at robust decisions, if the circumstances and available evidence justify that outcome:

- The Tribunal should carefully and objectively consider claims of identity and nationality, particularly at interview or hearing, and make a full and proper assessment about the weight that applicants' accounts can be given in the

decision making process; and

- ◆ Where effective protection checks or language analysis checks have been initiated, Tribunal members are strongly encouraged to take into account the results of those checks before finalising the case. It is submitted that, where a language test has been commissioned, no protection visa decision should be made until the results of that analysis have been received unless the underlying reason for commissioning the check has been conclusively and reliably addressed through other means.

ATTACHMENT A

THE APPROACH OF SPECIALIST EUROPEAN TESTING AGENCIES TO LANGUAGE ANALYSIS**1 DIMA's questions to agencies**

Dear

I understand that in the past you have been in contact by e mail with a number of officers in the Section. However, I think that this is the first time I have contacted you or any of your colleagues direct.

We have identified a number emerging challenges and problems in relation to linguistic analysis reports being commissioned by the Australian Department of Immigration. To enable us to address these issues, we are writing to Ekvator and other providers through whom the Australian Department of Immigration obtains such reports to obtain information about the procedures which providers follow in linguistic analysis and the preparation of reports.

One of the major challenges facing us is the authoritativeness of the reports and their ability to withstand challenge both before administrative review tribunals and the Australian Courts. In fact there have recently been a number of occasions where the administrative review tribunal which undertakes *de novo* review of unsuccessful refugee applications has been reluctant to give weight to linguistic analysis reports conducted by overseas service providers, including Ekvator.

These concerns have arisen because it is difficult to ascertain the extent of expertise held by individual report providers or guaranteed by organisational arrangements, such as recruitment, training and internal quality assurance. There are cases where representatives of applicants have produced local "experts" whose credentials can, at least, be identified and whose evidence is used to challenge your reports.

Clearly, this is of great concern to us. We are, therefore, moving to put in place processes and procedures to enable us to address this and other emerging problems which have the potential to undermine the effective use of linguistic analysis as a tool in the process for the assessment of claims made by persons seeking Australia's protection.

We intend to approach the question of the authoritativeness of linguistic analysis reports on two fronts. Firstly, we are reviewing the format, methodology and content of reports in a effort to make them more robust and therefore able to be used more effectively in the determination process. I will be writing to you and other providers separately on this issue in the near future.

Secondly, we are seeking immediate information in relation to provider organisations, their qualifications in the linguistic analysis field and their quality assurance mechanisms, particularly in relation to the contracted analysts. We are taking this approach to address concerns frequently expressed by review authorities that their ability to make greater use of linguistic analysis reports is hindered by the lack of availability of such information. I should add that the issue has assumed a degree of urgency as there has been a large number of unauthorised arrivals in Australia by boat in the past 2-3 weeks and we are anxious to ensure that we have appropriate processes in place to underpin the value of linguistic analysis reports.

I would, therefore, be grateful if you could arrange for detailed information on the following issues to be provided to me as soon as possible:

- . what are Eqvator's procedures for the selection of analysts?
- . what educational criteria do Eqvator require for the appointment of analysts? If an analyst does not possess tertiary qualifications, what criteria are applied for selection?
- . what quality control mechanisms are in place to "guarantee" the quality of analyses?
- . what methodology does Eqvator require analysts to apply in actually undertaking an analysis, for example are analysts required to report on phonetics, morphology, lexicon etc? What are the threshold requirements for reporting against those criteria?
- . do analysts have access to initial and ongoing training in relation to linguistic analysis and preparation of reports?
- . how do analysts keep abreast of language/dialectical changes and changes in the in-country situation? What mechanisms does Eqvator have in place to ensure that analysts maintain their relevant linguistic and in-country knowledge?

I would also be grateful if you could provide me with background information on Eqvator.

Yours

2 SPRAKAB response

Below please find our answers to your questions. I fully appreciate the background of these questions. Rest assured that also we are most interested in presenting language analysis in such a way, that it can withhold the scrutiny and challenge of both the Administrative Review Tribunals and the Australian Courts.

As you know, language analysis has already undergone similar "due diligence" proceedings in other countries and, may I add, so far successfully. At present we are assisting the Bundesasylamt in Austria in this regard.

1. Procedure for selection

SPRAKAB has a wide contact net for procuring experts. The staff employed by the company is very experienced in the particular field of expertise of the company. In fact among them are two of the three individuals, who where the driving force at the Swedish Immigration Authority behind the development of language analysis in Sweden from 1993 and onwards. Another person responsible for the recruiting and testing of experts, is himself a certified interpreter and also very much engaged in the education and vetting of interpreters at the Universities of Uppsala and Stockholm. The staff further consists of a linguist with university degrees in Arabic and English.

In addition we can draw on the extensive contacts of our sister company, Intervendum AB. Their 58 employees have access to 1.000 translators, over 100 interpreters and 80 language teachers. Many of Intervendum's employees work with the recruiting of linguists and Intervendum also works with several external recruiters.

Our experts are carefully selected and we take into account not just their formal education and skills in their specific field of expertise, but also their dependability and moral standards. We prefer whenever possible to engage/employ persons with a university degree, most preferably in linguistics. We avoid engaging persons who are pro or con certain political or other fractions.

The expert to be is scrupulously tested with a method specially developed by us for this line of work. The candidate listens to a number of tapes prepared in a way that makes it difficult to detect the dialect in question. The results are evaluated and an expert is used only up his/hers level of performance according to an internal formal scale.

When a candidate is found to meet our requirements he/she begins listening to actual tapes. He/she has to make an assessment in close co-operation with a member of our staff. An expert known to us and long used by us listens to the same tape. His/hers result is compared with the findings of the candidate. When the two have made the same observations and reached the same result several times, the candidate starts doing the first analysis and the checker observes and makes his own analysis. This procedure continues until the candidate feels comfortable with the results and the staff is convinced that his/hers performance has reached the standard where the candidate is able to work on his/her own.

2. Educational criteria

We do not have an absolute requirement as regards formal education. As stated above, we strive to employ experts with university or similar training. However, the most important factor is excellent command of the mother tongue in question, good language abilities and a sound grasp of the analytical method.

3. Quality control

Each analysis is checked by one of our permanent staff before release to the customer to ensure the quality of the actual analysis. To check on the language understanding and the actual analytical work of the individual expert, performances are regularly evaluated by randomly taking in second opinions and in some cases through direct contact with the customer.

We also would like to refer you to the two Evaluations of Language analysis made 1996 and 1998. We will send them to you by post.

4. Methodology

Language analysis involves the assessment of regional and local linguistic traits within phonetics, morphology, syntax and vocabulary. In some languages stylistic traits can be taken into account. The expert opinion normally describes the findings in the following categories: Obvious, most probable, probable or possible.

In the descriptive part of the expert opinion we include the most apparent and revealing examples of the dialect spoken on the tape. In the future our aim is to improve this section further by including additional linguistic elements and examples that will be satisfactory also on a more scientific level.

Securing a continuously high quality level as regards the analytical work depends to a large degree on the skills of the permanent staff. It is for example of great importance to make the expert realise his/hers particular strengths and weaknesses and carefully to bring forward the merits of the individual case. The staff is also providing judicial bearings on each case. The staff further checks that the analysis is not ambiguously worded and that it contains all the relevant points of interest.

5. Training

As regards initial training, please our comments to question 1. All analysis work is made on our premises and in close contact with our permanent staff. Thereby each analysis in itself contains a degree of mutual on going training. Any need for further, more in depth training is therefore quickly discovered.

6. Keeping abreast with changes

It is obviously of great importance, that the experts we engage are keeping their own special dialect up to date and that they are keeping abreast with the situation at home. We therefore make sure that they are doing so by returning home regularly, working as interpreters (which many of our analysts do and often in asylum cases) and/or engaging themselves in associations with fellow countrymen, etc.

7. SPRAKAB's standing

What Bengt Sjögren referred to at your meeting in Sydney was our discussion with the US INS Resource Information Center and their procedures authorising suppliers in all fields, not just linguistics. As the US Immigration Authority still has not decided to go forward with language analysis, we have not pursued the question of supplier authorisation. There is to our knowledge, however, no authorisation scheme regarding language analysis or linguistics available. We have to rely on being continuously judged by our customers and if the expert opinions are upheld or not in the ensuing judicial proceedings. We are convinced that the expert opinions we provide are already of a high quality. Nevertheless, we are working hard

to improve them further, both as regards the quality and the scope. In addition to yourselves, our customers include Austria, Denmark, Finland, Great Britain, Netherlands, Norway, Sweden and Switzerland.

SPRAKAB works continuously on the development of language analysis and other related services and we consistently engage highly qualified experts of appropriate competence. We are in the process of establishing a Linguistic Council with representatives from the academic world of course including linguists and government authorities. We work on an international level and are participating in a forum for information exchange between the countries presently engaged in language analysis.

In case you need any further information, please do not hesitate to contact me.

3 EQVATOR response

Thank you for your letter. Obviously it is difficult for Australian authorities to know what weight to give reports produced by overseas companies. Therefore it is very important that you get more information about our work and us. For us it is useful to know what difficulties you encounter before the Australian authorities so that we can provide the information you need. This letter will hopefully give you a clearer idea of who we are and what we do. Briefly I will explain what a linguistic analysis is, who our clients are, what the criteria for our selection of analysts are, what quality assurance we have, what linguistic features we are observing in our analyses and what we require in order to get a good material to analyse. If you should need more detailed information about something of the above mentioned points you are very welcome to contact us.

Eqvator

Eqvator is an agency specialised in translations and linguistic analyses for Government authorities. Eqvator was founded in 1969 and until 1998 it was a part of the Swedish Immigration Board. In 1998 SpråkCentrum, one of Sweden's biggest agencies for translation and interpreting, purchased the company. Eqvator's activity has remained unchanged after the purchase. We developed the linguistic analysis in the early 90's, and today we provide linguistic analyses for the Swedish Migration Board (former Swedish Immigration Board) as well as for immigration authorities and national police departments in Europe and Australia. Being the first company using the method we have the longest experience from this area.

Linguistic analysis service

This is a brief description of our linguistic analysis service. The linguistic analysis is one among many methods to help document-less asylum seekers confirm their statements about their origin country. The asylum seekers are asked to speak freely in their genuine idiom. We require a recording of good technical quality (see Recording and recording quality) and of sufficient length (at least 15 minutes. Some languages, f.ex. Afghanistan/Pakistan, require a longer recording.). The speech is analysed by a native speaker who gives his/her opinion of the origin of the recorded language. This assessment is given with more or less certainty. In some cases the analyst only excludes a certain country. In such and other doubtful cases the tape is forwarded to another analyst specialised in the same language. Apart from what is said on the tape, Eqvator and the analyst do not know any details about the case.

Selection of analysts

Eqvator has selected its analysts carefully. Many of our analysts are accredited translators and interpreters. However being an accredited interpreter or translator doesn't automatically qualify for the conducting of language analyses. Nevertheless interpreting on a daily basis gives an analyst the possibility to stay in contact with the dialects he/she is analysing. As for the qualifications of our analysts we do not require an academic dialectology education with the language in question as speciality, even though we count linguistics on university level among our collaborators.

We do require at least

1. that the analyst has the language in question as his mother tongue
2. that he/she has proved capable of listening, making and formulating observations on a linguistic level
3. that he/she is able to give logical and credible answers to questions put by Eqvator's linguist in conjunction with the assessment writing
4. that his/her assessment fits in with other assessments in the same case (cross checking)
5. that he/she has passed a thorough test where he/she shall identify languages and dialects
6. that he/she has passed our security control

Eqvator's clients

We count among our analysis clients the Swedish Migration Board (former Swedish Immigration Board) and immigration authorities as well as national police departments in Europe and Australia. The Swedish Aliens Appeals Board (Utlänningsnämnden) as well as corresponding institutions in other countries also engage Eqvator. Furthermore, before starting language analyses of their own, the unit within the Dutch Ministry of Justice dealing with language analyses tested us and the method as such. Judging from the amount of assignments our clients have confidence in Eqvator and Eqvator's services.

We would like to stress that we produce linguistic analyses only for authorities in charge of asylum inquiries. We do not conduct analyses on request from private companies or asylum seekers' legal representatives. This is because of the need for objectivity in our work. An authority or a court that consults Eqvator for linguistic analyses can be sure of our objectivity and is guaranteed that the consulted analyst is trained for the assignment

Quality assurance

Our analysts are working in accordance with strict guidelines when making the assessments. They must only make statements that they can answer for; i.e. they must not express themselves with certainty if there could be any doubt about the origin of an applicant's language. Doubtful cases are forwarded to a second analyst (or a third one), who is not informed about the previous assessment, so that the first analyst won't influence the second (or third) one. In this way we have a cross-checking system. In case an analyst should have any queries regarding an assessment they discuss it with the person responsible for the linguistic analysis field at Eqvator. This person, who is a linguist, does always look at all reports before delivery to our clients.

Furthermore Eqvator has made a thorough evaluation together with the Swedish Migration Board. In the report our analysis results are compared to those of the Swedish Migration Board (i.e. what country actually received the refusal-of-entry refugees) in a number of cases. According to the report Eqvator has a high rate of accuracy. We find it very important to have a close co-operation with our clients in order to maintain the high quality of our work. This is of great importance, both for our clients as and us. This evaluation is to be done on a regular basis.

Analysis development

Today when conducting linguistic analyses we make observations regarding the following criteria: phonology, morphology, syntax and lexicon (i.e. elements of sound, patterns of word formation, formation of grammatical sentences and vocabulary).

However our customers' need for information in the analysis reports changes with the current refugee situations. Therefore it is productive to have a dialogue with our clients so that we can reply to the your needs. The analysis report should be adjusted to these needs. Today we are planning for a development of our linguistic analysis and we would like to know your opinions of the reports that we make today. It would be of great help if you let us know what else you would like to add to our reports. Would you for example find it useful if we described the pronunciation patterns in phonetics?

Recording and recording quality

The quality of our work, i.e. the certainty of our assessments, is to a great extent depending of the quality of the recording. The recording should be of at least 15 minutes length and the asylum seeker should talk alone, without being interrupted. Due to the delicate migration situation in Afghanistan/Pakistan the analyst must listen very carefully for slight nuances in the applicant's speech. Therefore we require a bit longer recordings when it comes to cases regarding this area. We are aware of the fact that it is sometimes difficult to make asylum

seekers talk. Therefore it is wise to help them and suggest topics related to their country and region (f. ex. food, holidays, religion, society and other things specific of their culture). They could also count to twenty and give the names of the months (the denomination of the months can vary between countries).

The technical quality of the recording is crucial when it comes to listening for nuances in the asylum seeker's speech. A tape recorder with a microphone should be used during the hearing. The microphone should preferably be placed near the applicant and background noises should be avoided if possible (it is unwise to place the microphone near the tape recorder or a keyboard when someone is taking notes). The immigration officer can always check the recording quality in the beginning of the hearing and then continue.

I hope that this brief information can answer your questions. Please contact us if you should have further queries.

4 IND response

In the following I will try to answer your questions as best I can. I have identified seven points:

NOTE: language analysts are strictly anonymous. For reasons of security all language analysts are referred to as men: he, his, him. This should not be construed in any way as an attempt to slight women. Some –highly valued- language analysts are in fact women.

1- IND procedures for selecting analysts.

Initially, language analysts are sought amongst native speakers of the language or languages concerned. Candidates are requested to enter into contact with us, rather than the other way round, because we want to be sure that they are willing to do the work for us. Recruitment is done informally. This is to say, we ask certain persons or organisations to keep a look-out for potential candidates. These are interpreters, civil servants, interest groups, job mediation organisations, and so on. The overall approach is that the language analyst is a potential neighbour of the person to be analysed. That is to say the language analyst should himself possess origins that come as close as possible from the area the person to be analysed claims to come from.

Each language analyst undergoes an intake procedure, which is made up of quite a long conversation and a test. The conversation, which may take up to two hours, will cover the entire background of the language analyst: when did he learn which languages where?, where has he been in the areas the language is spoken?, what are his ethnic, social, political, educational, and professional backgrounds?, why does he want to engage in language analysis?

The test is made up of a simulation of a normal language analysis. The candidate is presented with a tape, the contents of which is known to us, and asked to determine the origin of the person using the same criteria, that are used in a standard report of language analysis. The candidate has to listen to the entire tape at least once.

If the candidate is successful in the intake (required knowledge and experience, successful test), a first set of ten to fifteen cases is carried out, during which the new language analyst's progress is closely followed. Marked progress and sufficient quality in the evidence must be shown to be accepted as a full-fledged language analyst. New analysts are also cross-checked with more experienced language analysts or with analyst abroad.

2- Educational criteria for language analysts.

As touched upon in the first question, language analysts in principle are native speakers of the language in which they carry out their language analyses. The sole exception to this is formed by university professors. Our basic approach towards language analysis is based on the belief that a native speaker, who has grown up speaking a language is nearly always better placed to hear the fine distinctions in a language than a university professor, who in many cases has only started to learn the language at a later age.

On top of the criterion of "native speaker", we try to recruit persons who have an academic background and an affinity with languages. Obviously, this is not always possible. For instance, for many African languages this is clearly an impossible requirement. Except for our analysts from Africa, most of our language analysts, however, do meet these standards. Even African analysts usually belong to the elite in their country and have undergone extensive schooling.

In this last respect, I would like to point to a difference between a language analysis, the object of which is distinguishing between dialects of one and the same language, and a language analysis, which serves to determine which language is being spoken. The former is far more difficult and requires more skills than the latter. Each new case calls for a specific appraisal of skills.

By contract, language analysts are required to acquire extra knowledge both about their language and about the local knowledge required to determine a person's origins.

3- Tertiary qualifications.

We try to reduce tertiary requirements to a minimum. Sometimes political or asylum related factors are taken into account. In Afghan cases, for instance, we try to take account of ethnic sympathies.

Of course, language analysts need to be reliable, professional, and to possess a minimum of social skills. However, I would like to point out that as far as their reliability is concerned I do not want to depend solely on my analysts. I have their work cross-checked often enough to be able to have a fair appraisal of the value of their work. Language analysts are made aware of this.

In some cases we offer to help language analysts with their computer and Dutch language skills.

4- Quality control mechanisms.

Although language analysts are indispensable for our work, the main emphasis of language analysis lies on the *process* of language analysis as a whole. The better the process is carried out, the better the quality control will function. In this way the focus of attention is put there where it belongs in the first place: the Language Analysis Report and its determination of origin (rather than the person of the language analyst, whose anonymity we have to protect).

The first element in the process of language analysis is formed by the detailed contents of our language analysis reports. The language analyst is asked to offer so much detail about the speech and local knowledge of the person concerned, that another specialist is able to understand how the analyst reached his conclusion.

The second element is the IND linguist. In drawing up a language analysis report, the language analyst determines the conclusion, but the IND linguist looks at the formal aspects of the report. Is the evidence complete and compelling? Is it well stated? Often questions like "Have you thought of this or that?" are posed to widen the horizon of the analyst. Over time, the linguist also watches over the quality of the analyst's work.

The third element in the process of language analysis is furnished by the literature that is available to check whether the information the analyst offers is in accordance with the existing research. Often research may offer new insights into possibilities of determining the origins of a person.

The fourth element is formed by the advice and control that may be gained from academics and other specialists. In the past we have consulted both professors at university and other specialists, some of whom lived in the country we were investigating, to check on the contents of language analysis reports.

The fifth element is cross-checking. We often carry out cross-checks, by asking another language analyst to carry out a language analysis in the same case. Needless to say, neither of the two language analysts is informed beforehand of the conclusions of the other. This may only be done *afterwards* to talk cases through. We also send cases abroad for purposes of cross-checking.

The sixth element of our process is the possibility of carrying out what we call a "counterexpertise". This is to say, the person concerned, if he/ she disagrees with the outcome of a language analysis, may organise his/ her own language analysis. This analysis is carried out independently of the ones that are carried out by our bureau and the foreign sister bureaux.

In combination, these factors should ensure that a language analyst offers accurate and trustworthy information.

5- Methodology.

The methodology of language analysis is based on the fact that language is a social phenomenon. People from a certain society will share certain speech features. Language analysts are sources of information, but should not be viewed as oracles: there are more people who have partaken of this speech community.

On the other hand, it is important to consider who says what. Most dialectologists will agree that native speakers can often hear speech features a trained linguist will have difficulties to identify. The problem with native speakers is often that their presentation of the facts is less attractive than that offered by a university professor.

Additionally, they should be able to describe their daily life in some considerable detail. In fact, every person is a specialist in his or her own daily life.

6- Access to initial and ongoing training in relation to linguistic analysis and preparation of reports.

Native speakers have undergone an intensive training during their youth and schooling days. During this period they have acquired listening skills that later training will not yield as easily.

Of course, in the course of their work, language analysts learn how to listen to speech and where to look for the best examples of dialectal speech. The problem with language analysts is mostly not so much their ability to identify differences in dialects and local knowledge, but the way in which they present their evidence (with academics it is usually the other way round).

By contract, language analysts have pledged to increase their knowledge. Language analysts are exhorted to do the necessary reading about their language and local knowledge. They usually also use the available networks of family and friends to expand their knowledge. The IND also provides language analysts with materials.

7- Information to keep abreast of language/ dialectal changes and changes in the in-country situation.

Up to date information about languages is offered wherever possible and deemed necessary. In the case of Afghanistan, we have done detailed field research on dialects in refugee camps in Peshawar. Remarkably, young men, who had been born in the camps in Peshawar, retained a flawless Qandahari Pashtu dialect. Social groups in the camps

apparently possess the requisite size and cohesion to transmit language in the same way as if they had stayed in Afghanistan.

It should be stressed, that language as a means of social communication, is an inherently conservative medium. Over time language does change, but once a person acquires command of a language, he will not want to or —often— be able to change his speech. Moreover, dialects may change, but not in the sense that one dialect will become like the next one. Each dialect has its own dynamic. Dialects mark the boundaries between speech communities and as long as these communities exist (often even longer), the dialects will remain distinct.

Changes in languages and dialects, moreover, are incremental. Being a vast and complex field of human activity, language/ dialect may change in some areas but remain much the same in others. Keeping abreast of changes in dialects is useful, but focusing too much on changes diverts attention from the main issue at stake: on the whole languages and dialects are remarkably stable.

So far my answers to your questions. I hope to have been of some assistance and if you have any further questions, please do not hesitate to ask me.

5 LINGUA response

As a "LINGUAist" by conviction, I am of course sorry that language analysis in your country is not fully established yet. The questions you sent us are very pertinent - and I can say that we have (or have had) quite similar problems or points of discussion.

As a general comment : the better the tape is the more successful language analysis can be. Sometimes tapes are too short to allow the expert to develop a well based argumentation - in these cases an expertise is impossible. The more information a tape contains the more clues an expert has to analyse it. Some of the tapes you recently sent us were too short and/or did not contain enough specific information - that is why the experts were not able to get a clear result.

About questions 1 and 2: We are looking for new experts in universities or research institutes. The internet provides us sometimes with good information regarding potential experts. Scientific publications about specific languages/dialects are also a good source for finding experts (the authors!), as well as recommendations from experienced experts or federal officers. Our experts all have a university degree, most of them in linguistic or dialectology and some of them in related domains or social sciences. This qualification is combined with a very good knowledge of the country/region or social environment the expert has to analyse.

About questions 3 and 4: When we contact a candidate-expert (linguist) we normally already have some information about his/her scientific-work (i.e. we know what he/she has published). When we invite the candidates (linguists and non-linguists) for the first time we take at least a day to discuss with them and to find out about their knowledge of the constellation. The first cases they analyse are all given to other experts (to our own or to experts of our A8 partners) for "cross-checking". That means that we let a second expert analyse the same case and compare the two expertises afterwards (the results and the way of arguing). This cross-checking is maintained (regularly, but not for every case) even after the test-period of the expert has ended and for the cases the expert finds difficult to analyse.

It may occur that the two cross-checked expertises are inconclusive. It is the duty of the LINGUA-staff-member to find out if this is due to a lack of quality in one of the analysis (cf. our criteria for quality - we will send you a revised version of the paper as soon as it is translated) or if the case is indeed so difficult to analyse that it will never be solved. We can get a third or a fourth opinion about the case from the experts of the A8 partners. Different points mentioned in the expertise (concerning country knowledge or linguistic) can also be checked with scientific documentation.

In any case the LINGUA-staff-member in charge has to control whether the quality standard is fulfilled. The close work with the experts and the discussions of the cases can give you important hints about the experts' ability.

About questions 5 and 6: The experts are chosen because of their competence. They have the contractual obligation to make sure that their scientific knowledge is up-to-date. We do not employ persons who need to be trained in

the domain of linguistic or country knowledge. Nevertheless, LINGUA-experts are always accompanied by a scientific staff member (who also has a university degree in linguistics). We also offer a specific training in interview techniques. If necessary, we provide them with maps and detailed regional information. Each expertise is discussed between the expert and a scientific staff member of LINGUA. If LINGUA would train the experts more intensely, their neutrality and independence could be questioned.

Almost all of our experts often return in the countries they analyse or have at least regular contacts with reliable persons in the countries. For our experts the fact that they are (during their interviews with the asylum seekers) directly confronted with a lot of different persons and speeches is an appreciated occasion to keep up-to-date with the evolution of the languages/dialects.

I hope we could help you with this information! We are very interested in how the situation will develop in your country.

ATTACHMENT B

FRAUD AND EFFECTIVE PROTECTION CHECKING PROCEDURES

Area of concern	Checklist (criteria for undertaking check)	To
a) To identify persons who are making fraudulent claims about their identity, nationality, or experiences	<p>Are there allegations from reliable sources that this person is making fraudulent claims about their nationality and/or other personal data (eg name, family composition, etc)?</p> <p>Does this person display a lack of knowledge about local conditions in the country of his/her claimed nationality, for which there is no reasonable explanation (eg left the country of nationality as an infant)?</p> <p>Are there inconsistencies in this person's accounts or documentation which give rise to serious credibility concerns about his/her identity or nationality?</p> <p>According to reputable sources, does this person display any linguistic patterns, difficulties or inconsistencies that give rise to serious credibility concerns about his/her identity or nationality?</p> <p>Does this person match the profile of a high risk group on which Central Office has requested that selective checks be made?</p> <p>Is a nationality/ID fraud check in the third country(s) likely to be practicable, and are results likely to be obtained in a timely fashion (eg does the country have a well-developed and reliable records system, and/or agreed procedures with Australia on such information exchange)?</p> <p>In cases where the person claims to have had contact with UNHCR in any country of residence or transit, would advice from UNHCR to confirm or provide details of such contact substantially impact on the credibility of the applicant in relation to the protection claims made in Australia?</p>	<p>Nat the pos ma and the hol</p> <p>Lan</p> <p>UNI</p>
b) To identify persons who could avail themselves of protection in a third country	Is there any indication that this person may have more than one nationality (eg because of place of birth, length of residence in a third country, the citizenship/nationality laws of a third country, etc) and could avail themselves	Nat Thi resi whe

	<p>of the protection of one of the countries for which he/she is a national?</p> <p>Is there any indication that this person has resided in or transited through a third country that the Minister has declared a 'safe third country', or with which any other form of readmission agreement has been signed?</p> <p>Does this person have a spouse, parents or children who are citizens/nationals/residents of a third country, and information exists which indicates that this would entitle the person to (re)enter and reside, temporarily or permanently, in that country?</p> <p>Is there any indication that this person has resided in or transited through a country with well-developed immigration and refugee determination procedures (eg IGC member countries), where they may have re-entry/residence rights, however that right arose or is expressed (including through grant of refugee status)?</p> <p>Is there any indication that this person has previously obtained temporary or permanent residence in a third country that does not have safe third country status or a readmission agreement with Australia, or a refugee determination system, but that appears willing to readmit persons, and there is no risk of refoulement?</p> <p>Is there any indication that this person may have been granted refugee status by the UNHCR and resettlement arrangements to another country concluded?</p>	<p>pe</p> <p>Re co</p> <p>UN</p>
--	--	--------------------------------------