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LINGUISTIC IDENTIFICATION IN THE DETERMINATION OF NATIONALITY: A PRELIMINARY REPORT*

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ABSTRACT. The authors of this report are five Australian experts in the fields of sociolinguistics, phonetics (analysis of accent or pronunciation) and language testing. Their report raises concerns about the "language analysis" that is being done by overseas agencies and that is being used by the Australian government in determining the nationality of refugee claimants, and concludes that "language analysis", as it is currently used, is not valid or reliable. It appears to be based on "folk views" about the relationship between language and nationality and ethnicity, rather than sound linguistic principles. The report found that: i) a person's nationality cannot always be determined by the language he or she speaks, ii) a few key words and their pronunciation normally cannot reveal a person's nationality or ethnicity, iii) common perceptions about pronunciation differences among groups of people cannot be relied upon, iv) any analysis of pronunciation must be based on thorough knowledge of the language and region in question and must involve detailed phonetic analysis. Furthermore, in a study of 58 Refugee Review Tribunal (RRT) decisions in which this "language analysis" was at issue, it was found that there were doubts over its validity. The authors have grave concerns that the use of "language analysis" in the determination of nationality may be preventing Australia from properly discharging its responsibilities under the Refugees Convention and therefore call on the Australian Government to stop using this type of analysis.

Abbreviations: DIMIA – (Australian) Department of Immigration and Multicultural and Indigenous Affairs; LingID – the term used by the authors of this report to refer to the so-called "language analysis" (or "linguistic analysis") done by the overseas Agencies who analyse tape recordings of refugee claimants' interviews in order to make a report determining nationality; NAATI – (Australian) National Accreditation Authority of Translators and Interpreters; RRT – (Australian) Refugee Review Tribunal

1. INTRODUCTION

This report is prepared by five Australian linguists, who are all university lecturers or professors, and are all members of the Australian Linguistics

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Society and/or the Applied Linguistics Association of Australia, the two national professional linguistic organisations. Our aim is to raise concerns about the use of "language analysis" by overseas agencies in the determination of the nationality of refugee claimants in Australia. Our understanding of this "language analysis" comes primarily from our study of 58 decisions (available on-line) by the Refugee Review Tribunal (RRT) regarding cases in which the Department of Immigration (DIMIA) had previously used this "language analysis".

The RRT decisions use the terms "language analysis" and sometimes "linguistic analysis" to refer specifically to the work done by the overseas Agencies who analyse tape recordings of applicants' interviews in order to make a report determining the nationality of applicants. We use the term "linguistic identification" (LingID) for this work, as it appears not to be thorough analysis, but rather the use of clues in the language to identify nationality. We use the term "agency reports" to refer to these LingID reports. It should be said that these agencies make available very little information about their personnel or their methods, but indirect information can be gained from other sources, including transcripts of RRT decisions.

We are very concerned about the Australian Government's use of LingID in the determination of the nationality of refugee claimants. We believe that, as it is currently used by the Australian government, it is not a valid or reliable way of being sure about a person's nationality. We have grave concerns that it may be preventing our country from properly discharging its responsibilities under the Refugees Convention. Therefore, we call on the Australian Government to stop using this type of analysis.

Our report will discuss the problems we see with use of LingID in two main areas: linguistic concerns and procedural concerns (namely, the way it is used in DIMIA's processing of refugee claimants). In the first of these areas, dealt with in Section 2 of this report, we will explain the linguistic issues relevant to the relationship between language, dialect, and national borders. We will point out that although people often believe that they can reliably recognise a speaker's place of origin from their use of particular words or pronunciation, this is a folk-view, that is not always validated by linguistic research. In reality, the relationship between language and national borders is more complex. We discuss two important factors: language spread and linguistic change. We also point out some of the specific problems in using pronunciation as an indication of nationality, distinguishing between pronunciation differences that are above and below conscious awareness. We highlight four criteria essential to the valid use of the analysis of pronunciation in providing *some* evidence about

regional identity. Our research has found that these criteria are not met in the LingID being used by DIMIA. In addition, we show that a number of linguistic concerns have been raised by some RRT Members who presided over tribunal hearings, and summarise these. Further, we point out that linguists in other countries have expressed serious concerns about the LingID methods and assumptions that are being used by DIMIA.

Section 3 presents some observations about the way in which LingID is being used in RRT decisions. We recognise that our expertise is linguistic, not administrative; however, in conducting our analysis we discovered several points of concern about the consistency of the RRT's evaluation of LingID, and the particular linguistic matters raised by members. Firstly, there is considerable inconsistency in the way in which different RRT members assess the usefulness and validity of LingID. Several tribunal members have raised linguistically sound concerns and objections, and have disallowed the LingID evidence, while others do not share these concerns. There is thus inconsistency in the way in which the Australian government is applying the (linguistically problematic) LingID. This clearly leads to unequal treatment. Secondly, applicants before the RRT who engage their own linguistics expert have a much better chance of having an unfavorable LingID report ignored than those who do not.

Our understanding of the use of LingID by the Australian government to assess nationality is derived from the fact that the RRT publishes about 20% of its decisions, and through the internet we had access to full text copies of these published decisions. Using the keywords "language testing" and "language analysis", we found about 120 cases, in which language identification provided by an overseas Agency had been part of the basis for DIMIA's (formerly DIMA) denial of an application for refugee status. From this list, we focused on cases between August 2000 and August 2002. In total, we examined 58 cases (most of which involved Afghanistan nationality) in which "language analysis" had been used in the initial DIMIA decision. In the text of this report, we refer to cases by our own abbreviated reference system. Appendix A provides the official RRT reference number for each of these cases.

2. Linguistic Issues

2.1. *What Is Linguistics and How Is It Different from Other Types of Expertise about Language?*

Anyone who speaks a language knows a great deal about that language. A number of professions and academic disciplines (e.g., computer special-

ists, language teachers, speech pathologists) study aspects of language to varying degrees. However people who have studied linguistics to professional levels (not merely as part of another specialisation) have particular knowledge which is not available to either ordinary speakers or specialists in other disciplines. (Further information can be found on the internet at www.linguistlist.org.)

Language is very much more complex than is often realised, and many statements about language can only be made with appropriate hedging. Many points that an ordinary person considers to be "obvious facts" turn out under linguistic analysis to be half truths or worse. Consider for example the idea that "a noun is a word for a person, place, or thing", "the word 'cat' is made up of three sounds", or "acoustic analysis can create a voiceprint which identifies a person in a way similar to a fingerprint does". Many people would consider these to be truisms but in fact each of them has very serious limitations in linguistic analysis.

Unfortunately, however, most people are unaware of the limitations of their knowledge of language – in fact many are unaware that there even is a discipline of linguistics. This is quite different from other sciences like chemistry or biology. In these fields ordinary people similarly have considerable non-technical knowledge, and applied practitioners often use aspects of technical knowledge, but there is a clear recognition that a specialist discipline exists for consultation on important or complex matters, especially in forensic cases. The same should be true with linguistics: where weighty decisions are made on matters of language, professional linguists with expertise in the relevant subdiscipline should be consulted.

Though linguists know a great deal about language, it is a relatively young discipline and there are some aspects of language about which rather little is known. In particular there are many geographical regions whose linguistic situation we understand only very poorly. Afghanistan is a good example – in common with many other war torn regions where the linguistic situation changes very rapidly and the conditions are not conducive to detailed academic study of language use.

In order for linguistic analyses to be useful in forensic and other applications, it is essential that the linguist be clearly aware not just of his or her expert knowledge, but of the limitations of that expertise. Linguistic evidence is only valid within strict boundaries related to the types of question being asked, the type of data available, and the particular expertise of the analyst.

2.2. *Some Specific Linguistic Issues Raised by the Agency Reports*

2.2.1. *Language Boundaries and Vocabulary*

The evidence used by the agencies in LingID is not given in all the RRT cases. However, in the cases where information about the evidence is given, it is clear that decisions were made primarily on the basis of "folk views" about the relationship between language and nationality and ethnicity rather than on sound linguistic principles. In contrast to these views, linguists have established that a person's nationality cannot always be determined by the language he or she speaks, and a few key words and their pronunciation normally cannot reveal a person's nationality or ethnicity.

A common view is that there is a one to one correspondence between nationality and language – for example, that people from England speak English, people from France speak French, etc. But this is not true. First, with widespread migration, there are immigrant groups in most countries who speak different languages – for example, Turkish in Germany, Vietnamese in Australia and Urdu in Afghanistan (Grimes, 1992: 502). Second, national borders do not always coincide with linguistic borders. For example, the following indigenous languages are spoken in France as well as in neighbouring countries: Flemish, Occitan, Catalan, Basque, Alsatian and Corsican (Mesthrie, Swan, Deumert & Leap, 2000: 38). And the following languages are spoken by indigenous people in Afghanistan as well as in neighbouring countries: Baluchi, Aimaq, Brahui, Farsi (Dari) and Turkman (Grimes, 1992: 497–502).

Perhaps because of the "shibboleth" story in the Bible (*Judges*, 12, 4–6), many people believe that a person's national or ethnic identity can be determined by the use of a particular word or the way it is pronounced. But this is not necessarily true because of two factors: language spread and linguistic change.

First, words from one language can spread to another language. This can occur as the result of immigration. For example, Italian words such as *espresso, lasagna* and *ciao* have spread to Australia via the many immigrants from Italy. People also pick up words from other languages when they travel. For example, the words *taboo* and *kava* came into English when people travelled in the Pacific. In addition, words can spread even if there has been very little contact between speakers of the different languages. For example, in the 1980s and 1990s, many people in Australia used the words *apartheid* (from Afrikaans) and *glasnost* and *perestroika* (from Russian) even though they had never been to South Africa or Russia. Similarly, the Arabic words *intifada* and *jihad* are widely used in English today. Furthermore, words associated with languages used in religion, such

as Arabic and Hebrew, very commonly spread to countries where the associated religions are practised (Ferguson, 1982).

The second factor is that languages are always changing. One way they change is by adopting words from other languages, as we have just seen. For example, from 1066 to 1450, English changed by adopting over 10,000 words from French, including *people, beautiful, judgement* and *mansion* (Crystal, 1995: 46). The pronunciations (and, in some cases, spelling) of these words have also changed over time to become different from French.

Dialects can change in the same way. For example, since World War II, the American words *radio* and *truck* have almost completely replaced *wireless* and *lorry,* which were formerly used in Australian English. And the American words *guy*, *movies*, *pump* and *fries*, for example, are now commonly used in Australian English for *bloke*, *pictures, bowser,* and *chips*. Words and expressions from particular ethnic dialects can also spread to other dialects – for example, *rip off* meaning "steal" and, more recently, *diss* meaning "disrespect", both from African American English.

Also, the pronunciation of words can change – for example, the word *schedule* is now more commonly pronounced in Australia with an initial "sk" sound as in American English rather than the "sh" sound (Taylor, 1989).

Some individuals can also change their dialects to a limited extent in terms of accent (pronunciation) and vocabulary. For example, in order to be understood, Australians living in the USA often change their pronunciation of *tomato* from "to-mah-toe" to the American "to-may-toe", and use words such as *elevator* instead of *lift*, and *trunk* (of a car) instead of *boot*. Use of these few American-sounding words clearly does not make these people American rather than Australian.

Consequently, linguistic research shows that a person's nationality, ethnicity and/or place of origin normally cannot be determined solely on the basis of a few words in his or her speech. However, according to the RRT cases we examined in which details of the Agency LingID are given, many determinations in these reports were made precisely on this basis. For example, on the basis of one applicant using some "typical" Pakistani words and Iranian words, it was determined that he lived some time in these countries (N20). Another applicant was deemed to come from Pakistan on the basis of his use of one Urdu word, one Iranian word, and two words (*Afghanistan* and *dollar*) spoken with an Urdu accent (N7), another because of one Urdu word and pronouncing some words with an Iranian accent and some with an Urdu accent (N2), and yet another because of one Urdu word, pronouncing several words with a Pakistani accent, and using two Pashtu words and two English words (N28). A different

analysis said that the use of the English word "camp" with a Pakistani accent was evidence that the applicant originated from Pakistan (N29). (Of course, as the member in this case pointed out, such conclusions "must be treated with caution, given the country information as to movements to and from Afghanistan in the last two decades".) Finally, one analysis (N27) referred to the use of Urdu words by the applicant and went so far as to say, incorrectly, that Urdu is not spoken in Afghanistan.

It was obvious in these cases and others that the Agencies' analysts did not take into account fluid language boundaries or language spread and linguistic change, and therefore based their decisions on insufficient or specious evidence.

2.2.2. *Pronunciation and Accent*

This section focuses specifically on pronunciation, highlighting two main problems found in the Agency reports used in the determination of nationality: first, they place too much reliance on "folk knowledge" of pronunciation differences, without sufficient critique of its validity, and secondly, the information about pronunciation upon which their opinions are based is insufficiently specified.

We can look at these problems in turn, on analogy with examples from English. Consider the following statements about English

New Zealanders say "fush and chups",
Australians say "poy" for "pie", Victorians say "castle" instead of "cahstle",
Scots trill their "r"s.

These are good example of the kinds of statements that are often accepted as obvious but which linguistic analysis shows to be a good deal more complex than is usually realised.

Firstly these are all difference of a type which linguists call "above consciousness", as opposed to "below consciousness" (Labov, 1972). Pronunciation differences above consciousness are those of which speakers are highly aware, and which have become "emblematic" of a regional identity (Ross, 2001). Differences which are below consciousness are pronunciations which may in fact characterise a regional accent, but which most speakers do not notice.

The problems with using "above consciousness" differences in tests of identity are obvious. They are usually stereotypes rather than accurate descriptions. New Zealanders do not really say "fush and chups": they use a specific vowel which Australians often find difficult to say but which they categorise as similar to their own vowel in words like "but". Some Scots sometimes trill their "r's, but so do many non-Scots, and many Scots use a light tap or even an English-like approximant "r".

The problem is that these descriptions of people's pronunciation are mere stereotypes, not scientific descriptions. They are minor components of the total accent. Simply saying "fush and chups" or trilling a few r's is not enough to make someone sound like a New Zealander or a Scot.

Secondly, people's accuracy in identifying regional accents on the basis of these types of above-consciousness differences is not nearly as good as is often believed. In many cases where people think they can identify regional origin from an accent, testing their ability to do this *purely* from the accent shows them to be often inaccurate. Australian English makes a good example. Many Australians believe that they can identify Queenslanders from their accent, but their ability to identify a tape recorded voice with neutral content is actually rather low. This shows that when they do identify a speaker, it is from other information, for example what the person says about themselves, not from accent alone (Bernard, 1981).

Of course there are many cases where speakers can identify a person's accent accurately. Here though, it is usually not the stereotypical characteristics alone that influence their identification, but rather a whole suite of global characteristics of the voice.

Despite these problems, there are cases in which pronunciation can be used to give reliable evidence about regional identity (but not about nationality, for reasons outlined in the preceding section). This is done by using accent features which are below the consciousness of the average speaker. These are the features which are most resistant to change in one's own accent, and most difficult to imitate when "putting on" another accent (Lippi-Green, 1997). Often these are subtle differences in the pronunciation of vowels and consonants, but sometimes they are quite prominent differences which are simply not usually noticed, because they are not used as social markers; they are below consciousness. An example from Australian English is whether someone pronounces the word "us" with a "z" sound or an "s" sound. This is perfectly easy to hear but usually not noticed at all.

Importantly, even in cases where linguistic analysis can be used to help identify an accent, the conclusion is rarely valid in terms of absolute identification, but rather in terms of probability, which, when used in appropriate combination, can add weight to other evidence in an identification. For example, in Australian English there is some information about subtle below-consciousness differences in pronunciation between Melbourne and Sydney (Collins & Blair, 1989), but it is certainly not the case that *all* Melbournians use one pronunciation and all Sydneysiders another.

Finally, of course, any statements about accent and pronunciation must be made in the context of points made above about the lack of absolute congruence between accent and nationality, especially in regions with disrupted social conditions.

How does all this discussion relate to the use of LingID in the determination of refugee status?

In order for accent evidence of regional identity to be valid, several criteria must be fulfilled:

- The language and region in question must be one which has been thoroughly studied and about which considerable phonetic information is available.
- The person making the analysis must be critically aware of this information.
- The analysis must involve detailed phonetic analysis, for example using transcription in the International Phonetic Alphabet.
- The conclusions must be framed with appropriate caution in relation to the statistical probabilities of a correct identification.

In the Agency reports dealing with pronunciation as made available in the RRT transcripts, none of these criteria are fulfilled:

- The border between Afghanistan and Pakistan has had very little linguistic study.
- The analysts are generally native speakers and/or translators rather than trained linguists.
- The analysis is based on very rough transcriptions using capital letters, which have no scientific status (see for example, discussions in cases N2, or N85).
- The conclusions are frequently framed in terms of unrealistically definite identification (e.g., N81).

Perhaps it is simply the case that linguistic analysis is not appropriate for use in determination of nationality in refugee applications, since it is time consuming to obtain and generally not likely to yield highly definite results especially for such a little studied language situation.

However if linguistic analysis is to be used, it is essential that it should be done by properly qualified analysts and that the methods and details of the analysis be open to scholarly critique and debate. It may be worth mentioning that the fear that such openness might lead to impostors getting through the system by learning the most important accent features to use is an unrealistic one. If the analysis is a good one it will have uncovered the features of an accent that are most difficult to imitate in sustained conversation unless by specially gifted or specially trained people. In fact

the attempt to mimic them would be itself quite obvious. Consider the result when an American mimics an Australian accent by faking all the emblematic Australianisms. A trained phonetician familiar with Australian English would have little difficulty laying out convincing evidence that this was an impostor.

2.2.3. *Linguistic Concerns Raised by Tribunal Members*

Several tribunal members have raised doubts about the validity of LingID. Some of these doubts are summarized below, with example quotes in Appendix B. We find that the first four doubts listed below show an understanding of several of the basic linguistic issues we raise in this report.

a) The LingID is based on insufficient data.
b) The qualifications of the analysts are not provided.
c) Long-term residence in an area is not the same as nationality.
d) The LingID seemed to ignore the obvious fact that languages, of both groups and individuals can change through language contact and spread.
e) The possibility of the applicant accommodating to the interpreter's dialect was not considered.
f) The use of LingID contradicted advice given by Dr William Maley, a professor of politics who is an expert on the specific Afghanistan situation (although not a linguist).

2.2.4. *Concerns Raised by Linguists in Other Countries*

The concerns expressed in this report are echoed by linguists in other countries. In particular, the work of the very companies used by DIMIA has been the subject of sharp criticism by linguists in Sweden and Norway.

Professor Ruth Schmidt, a linguist from the Dept of Eastern European and Oriental Studies at the University of Oslo, pointed to a number of problems with the two Eqvator 'language tests' which she examined in 1997. She found that neither of them contained any scientifically recorded data for pronunciation, morphological traits or syntax, nor did they contain an adequate description of the language situation in the country from which the speaker claimed to come.

These criticisms are echoed strongly in a letter dated 5 January 1998 from two Swedish linguists, Professor Kenneth Hyltenstam, Professor of Research on Bilingualism at Stockholm University, and Professor Tore Janson, Professor of African Languages at Göteborg University, to the Director-General of the Swedish Aliens Appeals Board and the Director-General of the Swedish Migration Board. After considering cases in which

linguistic identification procedures used by the company Eqvator had been instrumental in determining claims for residency in Sweden, the authors conclude: "We maintain that these 'analyses' lack any value whatsoever, inter alia because of the complex linguistic situation that exists in the linguistic regions in question. In addition, it is obvious that those who have done the work do not have sufficient qualifications to conduct a reliable linguistic analysis." In the cases considered, unlike the Australian cases, identification was not through the analysis of native language features, but the presence or (notably) the absence of a particular accent in a second language (a similar issue arises in Spain).[1] The Swedish linguists point out the technical difficulties this presents, and go on to discuss exactly the same issues as those raised in our report, which was written before we became aware of theirs. Specifically, the linguists criticise the validity of the procedure on the grounds that it relies on folk-linguistic knowledge, not technical analysis, and question the qualifications of the analyst.

3. THE ROLE OF LINGID IN RRT DECISIONS

In Section 3.1 we make four main points about the role of LingID in RRT decisions, and in Section 3.2 we summarise the specific details about the way that LingID has functioned in the 58 cases we examined. The full details are provided in Appendices C and D.

3.1. *Main Points about the Role of LingID in RRT Decisions*

3.1.1. There is considerable variability in the extent to which different tribunal members accept LingID: ranging from finding the LingID to be "an important investigative tool" (N63, May 2002) and to "have some evidentiary value" (N106, May 2002), to finding "that linguistic analyses

[1] Immigrants from sub-Saharan Africa have illegally entered Spain in small boats. The immigrants arrive with no papers, and often claim to be from Sierra Leone, further south. As Sierra Leone is officially at war, its citizens cannot be deported from Spain. The Spanish authorities use linguistic identification methods to authenticate such claims. In this case the procedure involves an interview conducted in Krio (also known as Creole), which is used as a second language by 95% of the people of Sierra Leone. Some 23 languages are spoken in Sierra Leone (with many dialects); Krio with a number of accents is also spoken in neighbouring countries. The interview is conducted by a criminologist who speaks Krio. Those who are found not to speak Krio with a Sierra Leone accent face deportation. In this case identification is not through the analysis of native language features, but the presence or (notably) the absence of a particular accent in a second language. Features of this context are the use of speakers untrained in linguistic analysis, and the fact that second language rather than native speaker features are the subject of analysis. The practices here have not been formally studied by linguists, but have attracted public criticism (Pico, 2001).

are not in themselves determinative of an Applicant's country of origin" (N68, May 2002). This means that the weight to be attached to LingID in determining nationality is dependent on the particular RRT member deciding the case.

3.1.2. It is important to also point out that even in cases where the RRT member has given some weight to the LingID, the fact that an opposing expert has given a different opinion on the issue of the linguistic identification of nationality, has caused the Member to conclude that "the two opposing reports make it difficult to rely on language analysis as a determining factor by itself" (N59, April 2002).

3.1.3. DIMIA is using LingID in a large number of cases. In 48 of the 58 cases we examined, this LingID contradicted the applicants' claims to (Afghanistan or Iraq) nationality. Our study indicates that on appeal to the RRT, 35 out of these 48 cases resulted with the RRT reversing DIMIA's decision. While LingID was not necessarily the sole issue being considered by the RRT in each of these cases, it is still clear that a large number of RRT decisions have the effect of overriding the nationality assertion being made by LingID – in this sense, in 72% of the relevant cases we examined, LingID is clearly NOT determinative of nationality.

3.1.4. The likelihood of the RRT reversing DIMIA's decision increases greatly when an applicant engages their own expert to assess their language and respond to the LingID. In 10 of the 14 cases where an applicant engaged their own linguistic expert or interpreter to provide counter-evidence to the LingID, the application was successful: in 9 of these 10 cases, this opposing expertise appeared to play at least some role in countering the argument of the original LingID (in four of these cases, it appeared to play an *important* role). Thus in 64% of the relevant cases we examined, part of the applicant's success in having RRT reverse the DIMIA decision can be attributed to presenting opposing linguistic expertise.

3.2. *Summary of the Role of LingID in the 58 Cases Examined*

We have examined 58 cases before the RRT (between August 2000 and August 2002) in which LingID provided by an overseas Agency had been part of the basis for DIMIA's denial of an application for refugee status. In all but five of these cases, the applicant claimed to come from Afghanistan, and to speak the Hazaragi dialect of the Dari language. (In the remaining five cases, the applicant claimed to be a national of Iraq.)

In all but (a different) 10 of these 58 cases, the initial LingID had decided that the applicant was not from Afghanistan. In these 10 cases,

the LingID agreed with the applicant's claims to be from Afghanistan, but DIMIA had rejected the application on other grounds. Thus, when the applicant appealed to the RRT, the initial LingID was taken into account again. (Of these ten cases, five were successful applications to RRT (P10, N8, N81, N82, N108), and five were unsuccessful, that is, rejected on other grounds (N41, N43, N56, N104, N110)).

In 40 of these 58 cases, the RRT reversed DIMIA's decision, "remit[ting] the matter for reconsideration with the direction that the applicant is a person to whom Australia has protection obligations under the Refugees Convention"; and in 18 of the 58 cases, the RRT affirmed DIMIA's decision not to grant a protection visa.

In Appendix C we examine the 18 cases (of the total of 58) in which the RRT affirmed DIMIA's decision not to grant a protection visa. We ask the question: what was the role of LingID in this decision? In summary, the LingID appears to have played an important role in the decision in two of these cases, and it appears to have been just one of the factors used in the decision in two of these cases. In eight of these cases, the RRT placed little weight on the original LingID in making its decision. In five of these cases, there had been no disputing of nationality, as the LingID had agreed with the applicant's claim to Afghanistan nationality (that is, in these cases nationality claims were not involved in the dispute over refugee status). In the final case, the RRT found the evidentiary value of LingID to be high, but rejected its adverse finding on the applicant's nationality (again, this case was decided not on language-nationality issues, but on the issue of reasonable fear of persecution). Thus it can be seen that despite widespread use of LingID to dispute nationality claims of refugee claimants, its usefulness, at the level of RRT appeals at least, is very limited.

In Appendix D we examine what happened in the 14 cases (of the total of 58) when the applicant provided their own expert to counter the LingID presented by DIMIA. We look at the outcome of the RRT hearing, at who the experts were, and at the influence of the applicant's expert on the outcome of the case. There were three cases in which the RRT decision upheld the DIMIA decision, which were decided on grounds other than language issues. The most significant finding is that there was only one case in which the original LingID played a significant role in the RRT decision to affirm DIMIA's decision, regardless of the opposing linguistic expertise (in that case, it was provided by an interpreter). That is, applicants who provided their own linguistic expertise were successful in having RRT decide in their favor, (whether that expertise was provided by an interpreter, a linguist, or Dr Mousavi, the Oxford University specialist on the Hazaras).

APPENDIX A: CASES EXAMINED

This appendix lists the cases examined in this report, giving for each case our shorthand reference number, followed by the full RRT reference number. The published decisions are available online at the austlii website: www.austlii.edu.au. Choose Refugee Review Tribunal, and type in the RRT reference number given below.

P5	N00/34959	(24 October 2000)
P10	V01/12830	(14 June 2001)
P11	V01/12477	(20 April 2001)
P12	V00/11724	(31 January 2001)
P29	N01/37329	(31 May 2001)
P31	N00/36103	(7 December 2000)
P32	N00/35743	(6 March 2001)
P33	N00/35523	(23 November 2000)
N2	N00/34478	(28 August 2000)
N3	N00/35094	(12 December 2000)
N4	N00/35096	(8 December 2000)
N5	N00/35239	(20 December 2000)
N7	N01/36786	(30 March 2001)
N8	N01/36815	(19 February 2001)
N9	N01/37385	(28 June 2001)
N10	N01/37590	(18 June 2001)
N19	N01/38956	(19 July 2001)
N20	N01/39019	(15 August 2001)
N21	N01/39226	(15 August 2001)
N22	N01/39358	(31 July 2001)
N23	N01/39363	(24 October 2001)
N24	N01/39483	(18 September 2001)
N25	N01/39519	(11 October 2001)
N27	N01/39520	(17 October 2001)
N28	N01/39522	(13 November 2001)
N29	N01/39524	(28 August 2001)
N30	N01/39600	(3 September 2001)
N31	N01/39602	(12 September 2001)
N41	N01/39916	(11 January 2002)
N43	N01/39918	(18 January 2002)
N45	N01/39933	(16 January 2002)
N55	N01/40491	(29 January 2002)
N56	N01/40766	(30 January 2002)
N58	N01/40919	(18 January 2002)
N59	N01/40924	(4 April 2002)
N60	N01/40926	(23 January 2002)

N61	N01/40970	(18 February 2002)
N62	N01/41054	(16 April 2002)
N63	N01/41078	(2 May 2002)
N64	N01/41166	(11 February 2002)
N65	N01/41207	(13 March 2002)
N66	N01/41211	(19 February 2002)
N67	N01/41212	(22 January 2002)
N68	N02/41887	(21 May 2002)
N69	N02/42054	(11 April 2002)
N70	N02/42055	(9 May 2002)
N81	N02/42876	(28 August 2002)
N82	N02/43025	(13 August 2002)
N83	N02/43081	(9 August 2002)
N85	V00/11643	(9 October 2000)
N93	V01/12953	(14 February 2002)
N102	V01/13273	(10 January 2002)
N104	V01/13565	(29 January 2002)
N106	V02/13629	(13 May 2002)
N107	V02/13677	(20 February 2002)
N108	V02/13902	(7 June 2002)
N109	V02/13958	(26 June 2002)
N110	V02/14088	(22 July 2002)

APPENDIX B: EXAMPLES OF CONCERNS RAISED BY RRT MEMBERS ABOUT LINGID

a) An RRT member is concerned about insufficient data:

The Tribunal notes that the sole basis of the language analysis appears to have been a tape supplied to the analyst, and not for example, an interview between the analyst and the applicant specifically conducted in order to analyse the applicant's language characteristics. (N20, August 2001)

b) An RRT member is concerned about the qualifications of the analysts:

. . . there is no indication of the qualifications or experience of the person who provided the linguistic analysis. In order to place weight on such an analysis I would need to be satisfied that the person providing the analysis was professionally qualified to do so. The person would also need to demonstrate the basis upon which they claimed to be familiar with the accent and dialect used in both the named province in Afghanistan and in Quetta in Pakistan. (N2, August 2000)

c-i) An RRT member points out that long-term residence in an area is not the same as nationality – example 1:

Whereas I acknowledge the linguistic conclusion made in the language analysis as to the apparent Pakistani and Iranian influences in his speech, this does not greatly assist me in

determining the applicant's nationality, which is the crucial issue . . .. Even if the applicant had lived in Pakistan for a long time, this does not lead inevitably to a conclusion that he is not an Afghan national. (N27, October 2001)

c-ii) An RRT member points out that long-term residence in an area is not the same as nationality – example 2:

[The] issue, as I have said, is whether the Applicant is a national of Afghanistan. This is not a case where it can be said that, because a person speaks a particular language or combination of languages, or because they speak a particular dialect, or speak with a particular accent, it can safely be concluded that they are, or are not, nationals of a particular country. As referred to above under 'Background', there are apparently a significant number of Hazaras living in Pakistan, some of whom are nationals of Pakistan (DFAT Country Information Report No. 97/00, dated 10 May 2000, CX41933). As observed in the linguistic analysis obtained by the Department, the Hazaras living in Pakistan apparently speak the characteristic Hazaragi dialect of Dari likewise spoken by Hazaras in Afghanistan and Iran. Even if I considered that the person who provided the linguistic analysis obtained by the Department had appropriate professional qualifications and experience to provide it, therefore, I consider that the most that I could conclude would be that the Applicant has spent far longer in Pakistan than he claims. (e.g., N2, August 2000)

d-i) An RRT member notes that the LingID seemed to ignore the obvious fact that languages, of both groups and individuals, can change through language contact and spread – example 1:

[The] Tribunal notes that the issue of how the Hazaraghi language is spoken today in Afghanistan appears to be complicated since the country information above ("Afghanistan", Country Reports on Human Rights Practices – 2000, released by the Bureau of Democracy, Human Rights, and Labor, February 2001, Introduction; "Afghanistan", CIA Factbook: http://www.odci.gov/cia/publications/factbook/geos/af.html, accessed 14 August 2001; "The state of the Afghan economy", www.afghanweb.com/economy/econstate.html, accessed 20 April 2001) indicates that there has been movement to and from Afghanistan in the last two decades of its troubled history, which could have influenced the languages used in Afghanistan. Indeed, the applicant's evidence in the hearing was that his language has been influenced by factors such as his relative's use of words learnt in the relative's travels to Country A, Pakistan and Iran (N20, August 2001)

d-ii) An RRT member notes that the LingID seemed to ignore the obvious fact that languages, of both groups and individuals, can change through language contact and spread – example 2:

[In] the analysis provided in this case by the agency there is no discussion of why the analyst concluded the applicant spoke with a "slight' Pakistani accent and how this is different to the Afghani accent. Though the analysis states that the applicant uses "some typical Pakistani words", there is no indication of whether these words are also used in Afghanistan, and there is no indication of the extent of the Pakistani words used by the applicant, that is, it is relative[ly uncl]ear whether the two examples cited constituted the extent of his use of Pakistani words, or whether the applicant used many Pakistani words and only two examples are given. Similarly, the analysis states that the applicant uses "some typical Iranian words" but there is no indication of whether these words are also used in Afghanistan, and there is no indication of the extent of the Iranian words used by

the applicant other than the two examples cited. As well, there is no indication of why the applicant's use of some Pakistan and Iranian words is so cogent an indicator of whether or not the applicant has recently lived in Afghanistan, and this point is relevant given the past two decades of movement between Afghanistan and surrounding countries could reasonably be assumed to have introduced, to an extent, Pakistani and Iranian words into Hazaraghi as it is currently spoken in Afghanistan. (N20, August 2001)

e) An RRT member notes that the possibility of the applicant accommodating to the interpreter's dialect was not considered:

In particular, I am disinclined to place great weight on this analysis because the interpreter used for that sample was not speaking the applicant's dialect. This may account for the applicant occasionally altering his own pronunciation and choice of words in order to be understood by the Farsi-speaking interpreter. (N27, October 2001)

f) An RRT member notes that the use of LingID contradicted advice given by Dr William Maley, an expert on the specific Afghanistan situation:

Dr William Maley at the Afghanistan information seminar for refugee status determination authorities on 24 February 2000 in Sydney (CX41122) commented on this issue: "The fact that [certain] Afghans were in Pakistan as refugees for such a long time with many of them having gone back but some coming out again creates difficulties again in using these [language] criteria in a hard and fast fashion". (N9, June 2001)

APPENDIX C: THE ROLE OF LINGID IN THE RRT'S DECISION NOT TO GRANT A PROTECTION VISA

We examined 58 cases before the RRT (between August 2000 and August 2002) in which LingID provided by an overseas agency had been part of the basis for DIMIA's denial of an application for refugee status. This Appendix examines the 18 cases in which the RRT affirmed DIMIA's decision not to grant a protection visa.

a) In two cases the LingID appears to have been an important part of decision to reject the applicant's nationality claim: P5, N63 (October 2000, May 2002).

b) In two cases the LingID appears to have been just one of the factors used in the decision to reject applicant's nationality claim: N7, P12 (March 2001, January 2001).

c) In eight cases, the RRT placed little weight on the original LingID in making the final decision: N3, N4, N5, N31, N58, N59, N61, N62 (ranging from December 2000 to April 2002).

That is, other issues were more important in the decision about nationality, e.g., applicant's knowledge of Afghanistan culture and geography e.g., N61, or RRT found that the applicant does not have a well-founded fear of persecution, e.g., N62.

It should be pointed out that in some of these cases the LingID was quite positively evaluated by RRT, even though it was considered not relevant to the ultimate issue, e.g., reasonable fear of persecution e.g., N3.

But, in at least one of these cases, the RRT mentioned that the evidence provided by the Afghan linguist in the US was "more compelling in its argumentation" than that provided by Eqvator (N62). In this case the RRT also pointed out that it was "satisfied" with this linguist's qualifications for such analysis, "whereas it has no information about the qualifications of the Eqvator analyst".

And in one case, RRT stated that the two opposing LingID reports made it difficult to rely on LingID as a determining factor by itself: N59.

In other cases, the RRT made no criticism of LingID, although it did not agree with its conclusion. However, the RRT rejected the applicant's claim of a reasonable fear of persecution e.g., N4, N5.

d) In five cases, there had been no disputing of nationality, as the LingID agreed with applicant's claim to Afghanistan nationality, In these cases, the applicant's case was rejected because RRT decided that recent changes in Afghanistan make it safe to return (N104), or because his fear of persecution for a Convention reason in Afghanistan is not well-founded (N110), or because the RRT questioned other claims made by applicant (N56): N41, N43, N56, N104, N110 ranging from January 2002 to July 2002.

In at least two cases where the RRT affirmed the decision not to provide a protection visa, the Member "urge[d] the relevant authorities to consider the applicant's plight in the context of these humanitarian concerns": N41, N43.

e) In one case, the RRT found the evidentiary value of LingID to be high, but rejected its adverse finding on the applicant's nationality, finding that "the evidentiary value of that report was outweighed by the calibre of the applicant's evidence at hearing". However, the applicant's case was rejected because RRT decided that the applicant does not have a well-founded fear of being persecuted: N106 (May 2002).

Appendix D: What Happens When Applicants Provide Their Own Expert to Counter the LingID Presented by DIMIA?

In 14 of the 58 cases, the applicant provided his own linguistic expert to the Tribunal, to counter the DIMIA commissioned LingID that had disputed the applicant's nationality claims.

In four cases the RRT affirmed the decision not to grant a protection visa: P5, P12, N59, N62. (Note that in N59 and N62, this decision involved issues other than language, and in P5, P12 and N62, the original DIMIA LingID was given more weight than the applicant's expert's evidence. In P12, language was only one of the factors used.)

This means that there is only one case of the total 58 we examined in which there was an expert opposing the original LI, but this original LingID remained conclusive in the RRT's conclusion to affirm the decision not to grant a protection visa: P5 (October 2000).

In the remaining 10 of the 14 cases where the applicant provided their own expert to counter the LingID presented by DIMIA, the RRT decision supported the applicant's claim to a protection visa.

• Who were the experts?

a) In 7 of these 14 cases, the applicant's expert was a NAATI-accredited interpreter: P5, P12, P31, P33, N2, N9, N85 (ranging from August 2000 to June 2001). These interpreters were generally considered by the RRT to have less expertise than the overseas agency who provided the initial LingID.

b) In one of these 14 cases (P29, May 2001), the applicant's expert was an Oxford University specialist on the Hazaras (S.A. Mousavi[2]).

c) In 5 of these 14 cases, the applicant's expert was an Afghan linguist from the US: N59, N60, N64, N68, N83 (ranging from January 2002 to August 2002), and

d) in the remaining case the applicant's expert was "a linguist who speaks Dari" (N62, April 2002) (note: this might be the same Afghan linguist from the US).

• What was the influence of the applicant's expert on the outcome of the case?

in the cases in which the RRT concluded in the applicant's favour (to direct . . .)

a) In the one case in which the opposing analysis was presented by S.A. Mousavi (the Oxford University specialist on the Hazaras) this seems to have been important in the RRT decision to direct: P29 (May 2001).

b) In three of the cases, where the opposing analysis was provided by an Afghan linguist in the US, this seems to have been important in the RRT decision to direct: N60, N68, N83 (January 2002, May 2002, August 2002).

For example, the RRT concluded on this point in N68

> In the light of these conflicting advices and my recognition that linguistic analyses are not in themselves determinative of an Applicant's country of origin, I am prepared to give the Applicant the benefit of the doubt and accept that his linguistic origins lie in Afghanistan rather than in Pakistan.

c) In three of the cases where opposing analysis was provided by an interpreter, it seems to have played some role in countering the force of the original LingID: P33, N2, N9 (November 2000, August 2000, June 2001).

d) In one case, it is not clear what if any role was played by the opposing analysis provided by an interpreter: P31 (December 2000).

e) In one case, the opposing analysis, by an interpreter, appeared to play some role in casting doubt on the reliability of the original LingID (even though the Member pointed out that the skills of an interpreter/translator are not the same as that of a language analyst). In this case, the Member expressed serious concerns about the probative value of LingID: N85 (October 2000).

[2] S.A. Mousavi (1998) *The Hazaras of Afghanistan* (Richmond, UK: Curzon Press), is the authoritative text cited in several of the RRT decisions in relation to culture and history of the Hazaras.

f) In one case, where the opposing analysis was provided by an Afghan linguist in the US, it did not appear to have a major influence on the decision, but it appears to have raised sufficient doubt over the original LingID, as to lead the Member to give the applicant the benefit of the doubt: N64 (February 2002).

in the cases in which the RRT concluded against the applicant's favour (to affirm . . .)

a) In only one case did the original LingID play a significant role in the RRT decision to affirm DIMIA's decision, regardless of the opposing analysis (provided by an interpreter): P5 (October 2000).

b) The remaining three cases were decided against the applicant, on grounds other than language issues: P12, N59, N62, from January 2001 to April 2002. (In P12 the applicant's expert was an interpreter, in N59 an Afghani linguist from the US, N62, a linguist who speaks Dari.) In N62, the RRT mentioned that the evidence provided by the linguist was "more compelling in its argumentation" than that provided by Eqvator. In this case the RRT also pointed out that it was "satisfied" with this linguist's qualifications for such analysis, "whereas it has no information about the qualifications of the Eqvator analyst". In P12, the RRT considered the interpreter to be less qualified than the overseas Agency, but decided that the language issues were not conclusive.

NOTE: what we don't know:

We do not know how significant the original LingID was in the initial decision (by DIMIA) to reject the application for a protection visa. Even if LingID was used, the application was rejected, and the applicant appealed to the RRT, we can not be sure that it was the LingID that was the deciding factor in the initial rejection.

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