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LADO AND THE NEED FOR UNIFORM PROCEDURES IN EUROPEAN ASYLUM PROCEEDINGS

ABSTRACT

Language analysis for the determination of origin (LADO) is a process whereby an individual's speech is used as evidence of his national origin. Language analysis has commonly been used when asylum applicants are lacking documentation and the receiving nation is in need of objective evidence of asylum seekers' identity, origin, and nationality. Despite the widespread use of language analysis, however, there is significant variation among the methods that are used by different agencies and government departments that carry out the analyses, leading to inconsistent results in asylum proceedings across different nations. This Comment responds to the variation and inconsistency among LADO procedures and suggests that a uniform method of analysis that ensures consistent and reliable results must be implemented, such that asylum seekers will have similar opportunities and outcomes regardless of where they choose to seek asylum. Specifically, this Comment proposes a standard LADO procedure to be used throughout the European Union (EU), where a model of uniformity in asylum proceedings has been established through the creation of the Common European Asylum System (CEAS). Through the creation of the CEAS, the European Union has acknowledged the need for a standardized method of processing asylum applications and the difficulties that may arise if such a method is not established in an area of open borders and free movement. This Comment discusses the development of LADO, the difficulties that have arisen from flawed LADO, and a proposed set of guidelines that should be followed in addressing these flaws. Although the CEAS need not require states to conduct LADO, it should incorporate a standard, regulated procedure that must be applied whenever it is used. The implementation of a common LADO procedure in the CEAS will protect the interests of the EU member states by giving them access to accurate linguistic evidence in asylum proceedings, and will respect the rights of asylum seekers by ensuring that their linguistic evidence is used properly and fairly.

INTRODUCTION

After World War II, the United Nations recognized that, because the grant of asylum placed unduly heavy burdens on some countries, the refugee problem

could not satisfactorily be solved without international cooperation.¹ Due to an increased need for a general, internationally accepted definition of refugees, the United Nations adopted the 1951 Convention Relating to the Status of Refugees.² The 1951 Convention defines a refugee as a person who can show “a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” in their country of origin.³ This definition requires asylum seekers to observe fear—a subjective frame of mind—and requires the fear to be “well founded”—supported by an objective situation.⁴ This juxtaposition of objective and subjective elements in evaluating individuals’ refugee status requires states to assess asylum seekers’ credibility where a case is not otherwise clear from the facts on record.⁵ Aspects of an applicant’s personal background are considered in determining whether the predominant motive for the application is fear, and thus whether the applicant’s story is credible.⁶

Nations often question an asylum applicant’s credibility in more detail when the applicant does not have documentation to prove his identity or place of origin.⁷ Individuals who lack documentation thus possess two types of evidence: (1) their bodies, which present medical evidence and may provide insight into individuals’ age and any history of torture or injury they may have undergone and (2) their stories, which include the interviews, recordings, and statements made by individuals throughout the Refugee Status Determination process.⁸ Because individuals’ stories often lack scientific support, many nations have attempted to provide objective evidence in support of those stories by observing asylum seekers’ language use.⁹ Language Analysis for the Determination of

¹ 1951 Convention Relating to the Status of Refugees pmbl., July 28, 1951, 189 U.N.T.S. 137.

² U.N. High Commissioner for Refugees, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees*, ¶ 5, U.N. Doc. HCR/IP/4/Eng/REV.1 (Jan. 1992) [hereinafter *Handbook*].

³ 1951 Convention Relating to the Status of Refugees, *supra* note 1, art. I.A.

⁴ *See id.*; *Handbook*, *supra* note 2, ¶ 38.

⁵ *Id.* ¶ 41.

⁶ *Id.* An applicant’s fear is considered credible if it is regarded as justified. *See id.*

⁷ Peter L. Patrick, *Language Analysis for Determination of Origin: Objective Evidence for Refugee Status Determination*, in OXFORD HANDBOOK OF LANGUAGE AND LAW 533, 533 (Peter M. Tiersma & Lawrence M. Solan eds., 2012); Monika Schmid & Peter L. Patrick, *The Trouble with Relying on How People Speak to Determine Asylum Cases*, CONVERSATION (Mar. 12, 2015, 9:07 AM), <http://theconversation.com/the-trouble-with-relying-on-how-people-speak-to-determine-asylum-cases-38562>. For a discussion of the problems refugees face when they leave personal documentation in their countries of origin, see Tania Karas, *Pssst! Need a Passport? Forgery a Lifeline for Fleeing Syrians*, REUTERS (Sept. 16, 2015), <http://blogs.reuters.com/great-debate/2015/09/16/amid-documentation-crisis-syrians-turn-to-forgeries/>.

⁸ Patrick, *supra* note 7, at 533; Schmid & Patrick, *supra* note 7.

⁹ Patrick, *supra* note 7, at 534.

Origin (LADO) has been used to confirm or deny the individuals' claims where the degree of certainty or truth in an individual's story is in question.¹⁰

Because language analysis is purported to determine asylum seekers' national origins, it is often used to isolate fraudulent asylum applications: claims by individuals who falsely allege they are from an oppressed nation.¹¹ Although language analysis has been used increasingly to determine speakers' origins, there is no standardized method for conducting the analyses¹² and this lack of a standard has led to significant variation in the methods and procedures used throughout the international community.¹³ This variation has led to inconsistent and unreliable results among nations, which may cause applicants to be wrongfully denied international protection.¹⁴ This Comment responds to the lack of uniformity and reliability of language analyses, particularly in the context of the contemporary refugee crisis, and proposes a standardized procedure to be implemented in asylum proceedings. Additionally, this Comment uses the European Union's (EU) effort to create and enforce a common asylum procedure as a model under which a standardized LADO procedure may be implemented. This Comment asserts that the Common European Asylum System (CEAS) must address the use of LADO to evaluate asylum applications throughout Europe if it hopes to reach its objectives of fairness, efficiency, and transparency.¹⁵

Part I of this Comment provides the background of these objectives and describes the process by which the CEAS has been created and developed. Part II then explains the use of LADO and illustrates occasions in which LADO has been conducted improperly or has yielded incorrect conclusions about speakers' origins. Last, Part III analyzes the first seven guidelines set forth in the Guidelines for the Use of Language Analysis in Relation to Questions of National Origin in Refugee Cases (Guidelines), a set of standards for conducting language analyses that has been suggested by the Language and National Origin

¹⁰ Chris Green, *Hundreds of Asylum-Seekers 'Wrongly Deported' on Drug Smuggler's Evidence*, INDEPENDENT (Nov. 13, 2014), <http://www.independent.co.uk/news/uk/politics/hundreds-of-asylumseekers-wrongly-deported-on-drug-smugglers-evidence-9859903.html>.

¹¹ Patrick, *supra* note 7, at 536.

¹² See Dirk Vanheule, *The Use of Language Analysis in the Belgian Asylum Procedure*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 177, 181 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹³ See *id.*

¹⁴ Sarah Craig, *The Use of Language Analysis in Asylum Decision-Making in the UK – A Discussion*, 26 J. IMMIGR. ASYLUM & NAT'LITY L. 255, 256 (2012).

¹⁵ *Commission Green Paper on the Future Common European Asylum System*, at 3, COM (2007) 301 final (June 6, 2007).

Group. Part III discusses the importance of incorporating each of these Guidelines in the CEAS. This Comment provides recommendations for the incorporation of a standard LADO procedure in the CEAS by applying linguistic scholarship to the creation of a common asylum system.

I. ASYLUM POLICY AND THE COMMON EUROPEAN ASYLUM SYSTEM

By developing the CEAS, the EU has acknowledged the need for a standardized method of processing asylum applications.¹⁶ Despite the European Commission's continued efforts to welcome refugees through a unified European asylum system, many EU Member States fear that unpredictable financial costs may arise from irregular migration and that immigration will threaten the national interest of international sovereigns.¹⁷ These concerns are widespread, but unfounded—they are not representative of the actual costs of migration and asylum.¹⁸ In fact, research has found that migration can create economic growth and the economic benefits of migration outweigh the detriments.¹⁹ Additionally, although many European nations have come to define state sovereignty by a state's ability to exclude non-citizens, "porous borders allow[] for the free circulation of goods, capital, and economically desirable migrants."²⁰ Despite these facts, concerns of instability continue to be particularly salient for EU Member States, who "are restricted in terms of what measures they can legitimately impose to restrict entry" of migrants.²¹ The ideals of open borders and free movement that define the European Union call for such restrictions and conflict directly with states' desire to act independently on issues of migration.²² This conflict between the interests of sovereign states and those of the European Union has created the need for a joint approach to migration, which would "guarantee high standards of protection for refugees."²³

¹⁶ James Kanter, *E.U. Nations Urged to Accept 160,000 Migrants*, N.Y. TIMES (Sept. 9, 2015), <http://www.nytimes.com/2015/09/10/world/europe/europe-migrant-crisis-jean-claude-juncker.html>.

¹⁷ HELEN O'NIONS, *ASYLUM—A RIGHT DENIED: A CRITICAL ANALYSIS OF EUROPEAN ASYLUM POLICY* 21 (2014).

¹⁸ *Id.* at 22.

¹⁹ For a brief discussion on the economic effects of migration and asylum, see *id.*

²⁰ Benjamin N. Lawrance et al., *Introduction: Law, Expertise, and Protean Ideas about African Migrants*, in *AFRICAN ASYLUM AT A CROSSROADS* 1, 25 (Iris Berger et al. eds., 2015).

²¹ O'NIONS, *supra* note 17, at 22.

²² *Common European Asylum System*, EUROPEAN COMM'N (June 23, 2015), http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm.

²³ *Id.*

Internal migration control within the European Union was initially established in the Single European Act of 1986, which required European states to “cooperate on policies involving the entry, movement and residence of third country nationals.”²⁴ The Single European Act created a platform for common migration and border policies and eventually led to the formation of the European community.²⁵ Following this Act and the Amsterdam Treaty of 1997, European nations were further obligated to consider asylum and migration under the guise of a newly established community—the European Union.²⁶ However, despite the creation of the European Union, many EU Member States continued to follow their own practices “regard[ing] migration control as primarily a matter of state sovereignty.”²⁷ A joint approach had not yet been achieved and the continued recognition of the need for “an open and secure European Union . . . able to respond to humanitarian needs on the basis of solidarity”²⁸ became the focus of the development of the CEAS.²⁹ The European Council (EC) addressed “the creation of an area of freedom, security and justice in the European Union” in October 1999 during a special meeting that spearheaded the creation of the CEAS.³⁰ Freedom and security, according to the EC, should not be denied to individuals whose circumstances lead them to seek access to European territories.³¹ Thus, nations, in honoring their commitment to international law, should do more to protect refugees.³² Europe must “develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders.”³³ This meeting, therefore, established a shared responsibility among EU Member States to welcome asylum seekers and ensure that their cases were examined under uniform standards “so that, no matter where an applicant applies, the outcome will be similar.”³⁴

By the following year, the European Commission presented a general structure and possible approach to the creation of a common asylum system through a communication that was presented to promote discussion among the

²⁴ O’NIONS, *supra* note 17, at 73.

²⁵ *Id.*

²⁶ *Id.* at 74.

²⁷ *Id.* at 75.

²⁸ Presidency Conclusions, Special Meeting of European Council in Tampere ¶ 2 (Oct. 15–16, 1999).

²⁹ *Id.* at 3.

³⁰ *Id.* at 1, 3.

³¹ *Id.* at 1.

³² O’NIONS, *supra* note 17, at 36.

³³ Presidency Conclusions, *supra* note 28, at 1.

³⁴ *Common European Asylum System*, *supra* note 22.

EC, Parliament, and other organizations concerned by the asylum policy.³⁵ Because of the need to both assess and accommodate for different situations in the various Member States, the communication proposed two steps for implementing the CEAS.³⁶ The first step of the CEAS established rules and methods to create a minimum level of harmonization within Europe, while otherwise allowing Member States to retain their national asylum systems.³⁷ At the end of the first stage, the European Commission considered whether certain aspects of the system could be improved or developed to maintain uniformity and “prevent the phenomenon of divergent interpretations of community rules.”³⁸ In the second stage, the common procedure was more strictly defined and the flexibility given to Member States was reduced.³⁹ During the second stage, “all applicants for internal protection would follow an identical procedure and receive the same treatment.”⁴⁰

The second stage of the CEAS is still under way and has been developing since 2007, when the Commission of the European Communities presented the Green Paper on the Future Common European Asylum System.⁴¹ The Green Paper identified possibilities for shaping the second stage and set forth three main goals for the CEAS: protection, equality, and solidarity among Member States.⁴² With these three goals, the Commission declared that it was essential for national asylum administrations to have the proper tools “to effectively manage asylum flows and . . . prevent fraud and abuse.”⁴³ In response to the Green Paper, the Commission received eighty-nine contributions that provided a basis for the Policy Plan on Asylum and defined a road map for the second phase of the CEAS.⁴⁴ These contributions and the resulting Policy Plan on Asylum acknowledged that, despite the minimum criteria that had been established during the first phase, there was a critical flaw in the asylum system: a significant lack of common practice among Member States, particularly in

³⁵ Communication from the Commission to the Council and the European Parliament Towards a Common Asylum Procedure and a Uniform Status, Valid Throughout the Union, For Persons Granted Asylum, EUR. PARL. DOC. (COM 755) 2 (2000).

³⁶ *Id.* at 6.

³⁷ *Id.* at 7–8.

³⁸ *Id.* at 11.

³⁹ *Id.*

⁴⁰ *Id.* at 10.

⁴¹ *Commission Green Paper on the Future Common European Asylum System*, *supra* note 15, at 2.

⁴² *Id.* at 3.

⁴³ *Id.*

⁴⁴ *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of Regions, Policy Plan on Asylum: An Integrated Approach to Protection Across the EU*, at 2, COM (2008) 360 final (June 17, 2008).

states' decisions to recognize or reject asylum requests from applicants who had originated from the same countries or regions.⁴⁵ The Policy Plan thus proposed principles that would guide the actions of EU Member States in the coming years and called for higher common standards, a higher degree of solidarity, and greater responsibility among Member States.⁴⁶ The CEAS continues to strive for equivalent conditions throughout the European Union, consistent with a standardized and efficient system for processing asylum applications.⁴⁷

Unfortunately, EU Member States have by and large ignored the European Commission's efforts to achieve uniformity and have continued to resist its efforts to implement a common asylum system.⁴⁸ On September 23, 2015, the European Commission adopted forty infringement decisions against Member States that failed to fully implement CEAS legislation.⁴⁹ The European Commission nonetheless continues to improve the management of migration and prioritize the implementation of the legislation on asylum and the European Union continues to press Member States to abide by the standards.⁵⁰ The Migration and Home Affairs Commissioner, Dimitris Avramopoulos, in response to the infringement decisions, asserted that "all participating Member States[] must process their asylum applications according to the common criteria and standards, which are used by national authorities to determine whether someone is entitled to international protection."⁵¹ Moving forward, the Commission will continue to revise legislative materials and push efforts to successfully implement and maintain the CEAS throughout the European Union.⁵² This ongoing process, and the growing need for standardized and regulated processes for evaluating and granting refugee status, has led to Union-wide implementation of the common asylum system.⁵³

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 3–11.

⁴⁷ *Commission Green Paper on the Future Common European Asylum System*, *supra* note 15, at 2.

⁴⁸ European Commission Press Release IP/15/5700, Managing the Refugee Crisis: Immediate Operational, Budgetary and Legal Measures under the European Agenda on Migration (Sept. 23, 2015).

⁴⁹ European Commission Press Release IP/15/5699, More Responsibility in Managing the Refugee Crisis: European Commission Adopts 40 Infringement Decisions to Make European Asylum System Work (Sept. 23, 2015).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ M. Apelblat, *EU Needs a Common Asylum Policy to Tackle the Refugee Crisis*, BRUSSELS TIMES (Feb. 3, 2016, 11:03 AM), <http://www.brusselstimes.com/eu-affairs/5024/eu-needs-a-common-asylum-policy-to-tackle-the-refugee-crisis>.

II. LANGUAGE ANALYSIS FOR THE DETERMINATION OF ASYLUM APPLICANTS' NATIONAL ORIGIN

The European Union responded to inconsistencies in the treatment of asylum applications by developing the CEAS, which aims to create a uniform procedure for evaluating applications for asylum.⁵⁴ The CEAS, however, is still developing, and some techniques used in evaluating asylum applications have not yet been addressed under the current system.⁵⁵ One of the techniques that suffers greatly as it is applied inconsistently across the Union is the use of LADO. LADO, like the asylum system in Europe, is less reliable when applied inconsistently and must be used according to an established and trusted standard, especially when it is applied to evaluate asylum applicants' credibility. This Part provides a background of LADO and the problems that arise when it is used incorrectly. Part III then provides recommendations for a standard LADO procedure and places those recommendations in the context of the CEAS.

A. Introduction to LADO

LADO is a process wherein analysts use linguistic evidence to gain additional information about an asylum seeker's national origin.⁵⁶ LADO came into common use after the 1990s in response to governments' need for objective evidence of asylum-seekers' identity, origin, and nationality.⁵⁷ LADO was based on the assumption that the country or location where an individual is born or spends much of his life determines the way that individual speaks.⁵⁸ When receiving countries are confronted with asylum seekers who cannot provide documentation to support their stories, they exercise this assumption in reverse—individuals' speech is used to determine where they spent most of their lives.⁵⁹ Asylum seekers' linguistic characteristics are thereby used in place of documentation to provide evidence of the speakers' membership in a specific community.⁶⁰ If these linguistic characteristics vary from those of the language variety spoken in the speaker's alleged place of origin, the analysis may be used

⁵⁴ *Commission Green Paper on the Future Common European Asylum System*, *supra* note 15, at 2.

⁵⁵ *See supra* Part I.

⁵⁶ Diana Eades et al., *Linguistic Identification in the Determination of Nationality: A Preliminary Report*, 2 LANGUAGE POL'Y 179, 179 (2003).

⁵⁷ Patrick, *supra* note 7, at 534.

⁵⁸ Anna de Graaf & Carolien van den Hazelkamp, *Language Analysis as a Method to Determine National Origin in Asylum Cases*, 76 TOEGEPASTE TAALWETENSCHAP IN ARTIKELEN 101, 101 (2006).

⁵⁹ *Id.*

⁶⁰ *Id.*

as evidence in favor of denying the asylum application.⁶¹ This Comment asserts that such use of linguistic features as evidence of nationality is disfavored “in the context of a decision making process which requires binary ‘yes’ or ‘no’ answers to the question whether protection should be given.”⁶²

Where a linguistic analysis is given sufficient weight to affect a person’s opportunity for asylum, it should be established to such a degree that those who rely on its results are confident that their methods are being effected properly. It is difficult, however, to ascertain the reliability of a linguistic analysis without an accurate and consistent method of conducting the analysis. Unfortunately, many analysts who conduct LADO use different methods and procedures that lack a scientific foundation;⁶³ thus, LADO lacks a common process that ensures its reliability. The most common method of conducting LADO includes a recorded interview wherein an interviewer asks the asylum seeker questions about his cultural and personal background.⁶⁴ Once the interview is completed, the interviewer replays the recording and creates a “language analysis report,” which illustrates the analyst’s findings about the asylum seeker’s cultural knowledge and language competence.⁶⁵ This method varies greatly, however, depending on two factors: first, whether the analysis is being conducted by a privately owned company or a government department; and second, whether the analysis is used as a final determination of origin, or merely as an additional piece of evidence to be considered alongside the rest of the application.⁶⁶

B. Government Department Case Study: Belgium

Many nations, including Germany, Switzerland, and Belgium, have established government offices that directly engage in LADO and develop their own procedures for conducting the analyses.⁶⁷ In Belgium, for example, LADO is completed by an impartial language analysis desk at the Belgian Documentation and Research Center, a Belgian government organization.⁶⁸ Although Belgian asylum legislation does not contain any provisions regarding

⁶¹ *Id.*

⁶² Craig, *supra* note 14, at 255.

⁶³ Michael Erard, *Immigration by Shibboleth*, LEGAL AFF. (Nov.–Dec. 2003), http://www.legalaffairs.org/issues/November-December-2003/story_erad_novdec03.msp.

⁶⁴ de Graaf & van den Hazelkamp, *supra* note 58, at 111.

⁶⁵ *Id.*

⁶⁶ Anne Reath, *Language Analysis in the Context of the Asylum Process: Procedures, Validity, and Consequences?*, 1 LANGUAGE ASSESSMENT Q. 209, 209 (2004); Craig, *supra* note 14, at 255.

⁶⁷ Eades et al., *supra* note 56, at 179.

⁶⁸ Vanheule, *supra* note 12, at 179.

language analysis, the Commissioner General for Refugees and Stateless Persons has developed internal guidelines,⁶⁹ which unfold in three stages.⁷⁰ First, applicants' files are examined to determine which applications should be selected for further investigation.⁷¹ These files are selected based on each individual's migration history, linguistic identity, and the relationship between national and linguistic boundaries in the applicant's alleged area of origin.⁷² The Belgian government generally only carries out language analyses if a case officer has serious concerns about a claimant's credibility.⁷³ If the file qualifies for linguistic analysis, the applicant is invited to a conversational interview, which lasts at least forty-five minutes.⁷⁴ The applicant is advised to refrain from speaking about his motivation for seeking asylum during this interview, in order to protect the applicant from any additional pressure or stress that may affect his language use.⁷⁵ The conversational interview, however, is then followed by a brief "metalinguistic interview," in which the applicant is asked to speak directly about his language use, including his speech patterns and linguistic repertoire.⁷⁶ Both interviews are recorded, and once completed, a tape of each interview is sent to an external analyst who reports to the Commissioner General's linguistic office.⁷⁷

Upon receiving the recording, the external analyst observes the applicant's speech and records his observations in a formal report, organized in terms of linguistic categories, including phonology, lexicon, syntax, and "other features."⁷⁸ After the analyst has organized the data, he is asked to formulate his decision and indicate his level of certainty about the applicant's country of origin.⁷⁹ If the analyst is unable to reach a conclusion, he must state his uncertainty in the report.⁸⁰ Once the analysis has been completed, the Commissioner General's linguistic officer formalizes the analysis, submits the

⁶⁹ *Id.*

⁷⁰ Katrijn Maryns, *Identifying the Asylum Speaker: Reflections on the Pitfalls of Language Analysis in the Determination of National Origin*, 11 INT'L J. SPEECH LANGUAGE & L. 240, 250 (2004).

⁷¹ *Id.* at 242.

⁷² *Id.* at 250.

⁷³ Vanheule, *supra* note 12, at 180.

⁷⁴ Maryns, *supra* note 70, at 250–51.

⁷⁵ *Id.*

⁷⁶ *Id.* at 252.

⁷⁷ Vanheule, *supra* note 12, at 181.

⁷⁸ Maryns, *supra* note 70, at 251–52. These "other features" include idiomatic expressions and interjections. *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

report to the case file, and provides his advice.⁸¹ The linguistic officer's advice will be considered alongside any other evidence that has been submitted to the case file during the asylum seeker's application process.⁸² The internal guidelines used in Belgium provide that the linguistic report may not be used as the sole argument for the outcome of an asylum application.⁸³ The Belgian government uses the language analysis as only one of many factors considered in evaluating an application for asylum.⁸⁴

C. *Private Companies*

Unlike Belgium, which has established a government department to conduct LADO, many countries, including Australia, Austria, Denmark, Finland, and the Netherlands, hire privately held companies to conduct linguistic analyses.⁸⁵ The methods used by these privately held companies are not as well known as those used by the Belgian language desk.⁸⁶ For example, one of the most widely used companies, Sprakab, does not disclose the identity, qualifications, or processes of their analysts in particular asylum proceedings.⁸⁷ Despite its lack of transparency, Sprakab does provide some insight into its LADO procedure in the description of its services on its website.⁸⁸ Sprakab conducts LADO based on recorded telephone interviews, which consist of a twenty-minute conversation between the asylum seeker and a Sprakab analyst.⁸⁹ After the analyst completes the recorded interview, he listens to the audio recording, draws a conclusion, and provides his recommendations in a report, wherein he documents aspects of the individual's speech that he believes are determinative of the applicant's origin.⁹⁰ Throughout this process, the Sprakab analyst is only informed of the applicant's gender, age, alleged origin, and prior residencies—the applicant's identity is not otherwise disclosed to the analyst.⁹¹ In the past sixteen years, “Sprakab has conducted more than forty thousand linguistic

⁸¹ Vanheule, *supra* note 12, at 180–81.

⁸² *Id.*

⁸³ *Id.* at 181.

⁸⁴ *See id.*

⁸⁵ *Id.*

⁸⁶ Reath, *supra* note 66, at 209–11.

⁸⁷ Erard, *supra* note 63.

⁸⁸ *See Language Analysis*, SPRAKAB, http://www.sprakab.se/Language_analysis.html (last visited Jan. 30, 2017).

⁸⁹ Green, *supra* note 10.

⁹⁰ *Questions and Answers Regarding LADO, Linguistic Analysis for Determination of Origin*, SPRAKAB, <http://www.sprakab.se/Q%26A.html> (last visited Jan. 30, 2017) [hereinafter *Questions and Answers Regarding LADO*].

⁹¹ *Id.*

analyses for immigration agencies . . . all over the world” and it carries out around 4,000 such analyses each year.⁹²

On its website, Sprakab states that the results of its language analyses are reliable and “provide a clear picture of an individual’s language background.”⁹³ The analysts are purported to be capable of pinpointing a speaker’s language to a specific country or region “with highly-tuned accuracy.”⁹⁴ Contrary to this statement, the United Kingdom’s Home Affairs Select Committee heard evidence in April 2013 (when the United Kingdom was still a member state of the EU),⁹⁵ showing that Sprakab’s integrity and methodology were deeply flawed.⁹⁶ Analyses conducted by Sprakab analysts were deemed unreliable because of analysts’ failure to document their observations in an accurate and scientific manner.⁹⁷ Sprakab analysts have also been criticized for their tendencies to go beyond the scope of the language analyses, commenting on issues such as applicants’ demeanor and knowledge of their country of origin.⁹⁸ Sprakab claimed, in defense of its reputation, that “criticism of LADO tends to originate from asylum applicants (and their lawyers) who have been unsuccessful in getting their claimed native dialect confirmed,”⁹⁹ and “these individual [sic] will do what they can to discredit LADO in terms of both its principles and practice.”¹⁰⁰ Contrary to this statement, many scholars have critiqued LADO, and Sprakab in particular. Professor Peter Patrick, an expert in sociolinguistics, has commented that he does not have confidence in the quality of Sprakab’s language analysis reports, which he believes have led to a number of wrong decisions that were based off evidence provided by Sprakab analysts.¹⁰¹ Flaws have also been detected in analyses by other commercial agencies. Egvator, for example, was criticized because its language tests did not contain any scientifically recorded data for pronunciation or grammatical features used by the applicants, nor did they contain an adequate description of

⁹² Green, *supra* note 10.

⁹³ *Language Analysis*, *supra* note 88.

⁹⁴ *Language Analysis - Our Services*, SPRAKAB, http://www.sprakab.se/Language_analysis_services.html (last visited Jan. 30, 2017).

⁹⁵ On June 23, 2016, following a referendum vote, the United Kingdom voted to leave the EU. Brian Wheeler & Alex Hunt, *Brexit: All You Need to Know About the UK Leaving the EU*, BBC (Aug. 10, 2016), <http://www.bbc.com/news/uk-politics-32810887>.

⁹⁶ Erard, *supra* note 63.

⁹⁷ *Id.*

⁹⁸ Victoria Weldon, *Hundreds of Asylum Cases Set for Appeal*, HERALD SCOT. (May 21, 2014), http://www.heraldsotland.com/news/13161689.Hundreds_of_asylum_cases_set_for_appeal/.

⁹⁹ *Questions and Answers Regarding LADO*, *supra* note 90.

¹⁰⁰ *Id.*

¹⁰¹ Green, *supra* note 10.

the language situation in the speaker's alleged country of origin.¹⁰² Unlike Sprakab, who has denied critics' claims and credibility,¹⁰³ the head of Eqvator has warned that its reports are not perfect and stressed that they should be weighed in light of other evidence.¹⁰⁴

D. Next Steps

Scholars and governments have criticized and detected flaws in analyses by both public and private entities that conduct LADO.¹⁰⁵ Despite this widespread criticism, language analysis has been used to identify speakers since biblical times¹⁰⁶ and scholars have acknowledged that language use can provide insight into individuals' socialization and linguistic origin.¹⁰⁷ In fact, even nations that do not use LADO have used other language analysis techniques when examiners suspect an individual is not from his alleged country of origin.¹⁰⁸ The longstanding use of language as evidence of origin thus suggests that abandoning the use of formal language analyses would be ineffective and difficult to enforce. Language will continue to be used, in one form or another, to provide evidence of nationality. The process used in conducting LADO should thus be carefully established and its purpose should be limited. LADO should be developed and utilized, rather than ignored or abolished, and it should be considered only in conjunction with other relevant evidence. Although linguistic data can have a reinforcing effect on other evidence, it should not be considered in isolation—particularly when the outcome may determine whether a person will be granted or denied international protection.¹⁰⁹

Because of LADO's limited scope and the consequences that may result from relying on it too heavily, critics have suggested that there should be a

¹⁰² Tim McNamara, *What's Wrong with Using Language Tests to Establish the Claims of Asylum-Seekers?*, 12 HUM. RTS. DEFENDER 23, 23 (2003).

¹⁰³ *Questions and Answers Regarding LADO*, *supra* note 90. "Criticism of LADO tends to originate from asylum applicants (and their lawyers) who have been unsuccessful in getting their claimed native dialect confirmed. It is hardly surprising that these individuals will do what they can to discredit LADO in terms of both its principles and practice." *Id.*

¹⁰⁴ Erard, *supra* note 63.

¹⁰⁵ See Vanheule, *supra* note 12, at 185.

¹⁰⁶ For background information on the story of shibboleth, see Erard, *supra* note 63.

¹⁰⁷ Vanheule, *supra* note 12, at 185.

¹⁰⁸ For a discussion of the informal methods of language analysis that have been used in Spain, see Silvia Morgades, *The Asylum Procedure in Spain: The Role of Language in Determining the Origin of Asylum Seekers*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 158, 158 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹⁰⁹ Vanheule, *supra* note 12, at 185.

uniform standard for evaluating the analyses that are conducted and used as evidence in asylum proceedings.¹¹⁰ There is currently considerable variation among LADO processes that are used to evaluate the credibility of asylum seekers.¹¹¹ If the variation is controlled by a uniform procedure composed of reliable standards and conducted by properly trained and qualified analysts, it will be easier to ensure that LADO is being used appropriately and effectively in all instances, regardless of where an individual is seeking asylum and where he claims to originate.

III. LADO AND THE CEAS: USING THE GUIDELINES TO CREATE A COMMON LADO PROCEDURE

Professionals in the field of linguistics have identified a number of flaws in the processes used by governments and companies that conduct LADO,¹¹² leading to conferences that focus on the concerns that arise from LADO's widespread use.¹¹³ One such conference took place in June 2004 when scholars throughout the international linguistics community came together to create a reliable standard for analyzing asylum seekers' language use.¹¹⁴ This standard was set forth in the Guidelines for the Use of Language Analysis in Relation to Questions of National Origin in Refugee Cases (the Guidelines),¹¹⁵ which, like the EU's introduction to a common asylum procedure,¹¹⁶ were intended to introduce a reliable and uniform perspective for the international community.¹¹⁷ The Guidelines acknowledge that the identification of particular linguistic cues does reveal significant information about a speaker's socialization, environment, and spatial trajectories across communities; however, they warn that analysts should be aware of LADO's limitations.¹¹⁸ Although LADO may be a useful tool in assessing asylum applications, it should nonetheless be considered in light of the challenges it presents.¹¹⁹

¹¹⁰ Erard, *supra* note 63.

¹¹¹ See generally LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Language & Nat'l Origin Grp., *Guidelines for the Use of Language Analysis in Relation to Questions of National Origin in Refugee Cases*, 11 INT'L J. SPEECH LANGUAGE & L. 261, 261 (2004).

¹¹⁵ de Graaf & van den Hazelkamp, *supra* note 58, at 3.

¹¹⁶ *Commission Green Paper on the Future Common European Asylum System*, *supra* note 15.

¹¹⁷ Language & Nat'l Origin Grp., *supra* note 114.

¹¹⁸ Maryns, *supra* note 70, at 256.

¹¹⁹ *Id.*

A. *Incorrect Uses*

The implementation of LADO has been deemed incorrect and has had grave consequences for asylum seekers in a number of instances. Governments have relied on incorrect language analyses and have wrongfully deported asylum seekers who they believed were fraudulently seeking asylum.¹²⁰ In light of the incorrect language analyses and the resulting consequences, such as wrongful deportation, linguists have begun to study the procedures used by LADO analysts and have questioned the validity of LADO where it appears to be used in isolation as decisive evidence of an individual's nationality.¹²¹

Linguists who have reviewed LADO procedures have noted that analysts often make inferences about asylum seekers' geographic origins based on their language use,¹²² despite the fact that "neither languages nor their speakers can be mapped in such a static manner."¹²³ One analyst, for example, concluded that an asylum applicant was not from Sierra Leone because the applicant did not display enough familiarity with the Krio dialect.¹²⁴ In reaching this conclusion, the analyst failed to consider the complexity of Sierra Leone's linguistic landscape where, "although Krio has come to gain unofficial recognition as a national language, it does not occupy an equally important place in the linguistic repertoire of every Sierra Leonean citizen."¹²⁵ It was later discovered that, consistent with the complexity of the region, the applicant was from a region of Sierra Leone where Krio was not widely spoken.¹²⁶

A similar analysis was conducted on an asylum seeker who claimed to have been born in eastern Turkey and fled his country to northern Iraq before seeking asylum in Belgium.¹²⁷ An analyst from northern Iraq conducted the analysis at

¹²⁰ Schmid & Patrick, *supra* note 7. A number of incorrect language analyses were discovered when hundreds of asylum seekers from Somalia were wrongfully deported to Kenya or Tanzania because of the government's reliance on incorrect language analyses, which were conducted by analysts at Sprakab who did not recognize the speakers' Bujani dialect. *Id.*

¹²¹ See Jens Vedsted-Hansen, *The Use of Language Analysis in the Danish Asylum Procedure*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 199, 203 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹²² Vanheule, *supra* note 12, at 180.

¹²³ Vincent A. de Rooij, *Language Analysis for the Determination of Origin (LADO): A Look into Problems Presented by East and Central African Cases*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹²⁴ Green, *supra* note 10.

¹²⁵ Maryns, *supra* note 70, at 249.

¹²⁶ *Id.*

¹²⁷ *Id.*

the Belgian language analysis desk.¹²⁸ The analyst followed the Belgian LADO procedure and determined that the applicant's speech lacked Arabic influence and the applicant expressed a tendency to use particular words that the analyst contended were not used in northern Iraq.¹²⁹ The analyst concluded that the applicant was therefore not from the region and language community that he had alleged.¹³⁰ Contrary to this analysis, however, linguist Katrijn Maryns later reviewed the applicant's speech and concluded that the individual's origin was unclear based on the speech sample that was used in the analysis and the applicant's alleged origin could not be excluded with certainty.¹³¹ The analyst, Maryns asserted, should have pointed to the "striking absence in the applicant's speech of any of the features that distinguish North Iraq Kurmanji from Turkish Kurmanji."¹³² Instead, the report improperly led to a definitive conclusion about the applicant's nationality despite unclear evidence.

Such reports, which present minimal data and few interpretative analytic comments, are widespread, in spite of relevant evidence that the speaker may be from his alleged country of origin.¹³³ Linguists who have reviewed these decisions have observed that much of the data contained in the LADO reports is not conclusive and cannot properly rule out a country of origin without more detailed data and explanations.¹³⁴ Linguists have therefore suggested that "[LADO] reports should provide the line of argumentation that link the conclusion to the data."¹³⁵ Without this argumentation, the reports appear to be unfounded, and inaccurate reports could lead to a number of vulnerable people being refused asylum.¹³⁶

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.* at 254.

¹³¹ *Id.* at 255.

¹³² *Id.*

¹³³ de Rooij, *supra* note 123, at 130. A similar report, which contained an analysis of a Swahili speaker who claimed to originate from Burundi, was completed by the Dutch Office for Country Information and Language Analysis and was found to be improper. *Id.* The analyst who created the report concluded that the applicant spoke Swahili "with an accent that places him outside Burundi" and "the applicant definitely [does not] belong to the speech and cultural community of Burundi." *Id.* Contrary to this analysis, however, the applicant's speech did contain sufficient evidence to conclude an origin in Burundi was possible; the speaker's pronunciation of particular phonemes and his accent could be attributed to influence from another Central African language, Kirundi, and the applicant's speech demonstrated a number of features from Standard and non-Standard Swahili varieties. *Id.* at 140.

¹³⁴ *Id.* The data did not rule out Burundi as a country of origin; without more detailed data and explanations, the analyst's claims should not have been upheld. *Id.*

¹³⁵ *Id.*

¹³⁶ Green, *supra* note 10.

B. *The Guidelines as a Model of a Common LADO Procedure*

Although language can provide some insight into an individual's origin, language analysis has a necessarily limited scope,¹³⁷ causing a number of critics to question the methodology used in conducting language analyses, the sufficiency of the information provided in LADO reports, and the validity of the resulting opinions.¹³⁸ In studying the procedural flaws inherent in LADO, some linguists have proposed techniques to prevent these flaws and have acknowledged the potential value of LADO if it is used appropriately and effectively.¹³⁹ Many of these propositions emphasize the need for a more carefully regulated and standardized method of analysis and set forth the importance of creating LADO procedures that are rooted in the field of Linguistics—"if language analysis is to be used, then the method should comply with the experts' consensus about how it should be used."¹⁴⁰ A group of linguists set forth one of the most influential suggestions in the Guidelines.¹⁴¹

The Guidelines¹⁴² introduce the potential for a more standardized LADO procedure that conforms to the scientific principles of linguistics by providing recommendations for governments and private agencies to consider when conducting LADO and deciding "whether and to what degree language analysis is reliable in particular cases."¹⁴³ The implementation of the Guidelines by states who use LADO would likely allow those states to conduct asylum proceedings in a more efficient and controlled manner, thereby increasing LADO's reliability. Similarly, unified standards governing analysts' qualifications would provide greater consistency in the competent implementation of LADO. The use of a common LADO procedure will both protect the interests of European states by giving them access to linguistic evidence in asylum proceedings and respect the rights of asylum seekers by ensuring that their linguistic evidence is used properly and fairly.¹⁴⁴ For the latter to be true, each of the steps in the common procedure should conform to the recommendations set forth in the Guidelines,

¹³⁷ Vanheule, *supra* note 12, at 182.

¹³⁸ See generally LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹³⁹ Craig, *supra* note 14, at 266.

¹⁴⁰ *Id.*

¹⁴¹ See *infra* Part III.

¹⁴² Language & Nat'l Origin Grp., *supra* note 114.

¹⁴³ See *id.*

¹⁴⁴ Tim McNamara et al., *LADO, Validity and Language Testing*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 61, 68 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

which would help define the minimum criteria to ensure that each asylum application is held to the same standard of analysis.¹⁴⁵

The recommendations contained in the Guidelines are not designed with the objective of modifying any particular asylum process; instead, they are recommendations to be used universally by anyone conducting LADO. Because LADO is used by many EU Member States, and the CEAS is currently undergoing a process of change and unification, the CEAS should include a standard LADO procedure and the procedure should be modeled after the principles set forth in the Guidelines. If the CEAS is to achieve its goals of freedom, efficiency, and transparency, the use of language analysis in the evaluation of asylum applications must be addressed within the common asylum system. If LADO is not addressed by such a system, states throughout the EU will continue implementing varied LADO procedures and the CEAS will continue to exhibit inconsistencies. Furthermore, if there is no established standard for states to follow, even states that do not formally implement LADO may occasionally use language analysis techniques in informal ways.¹⁴⁶ A uniform asylum procedure, therefore, need not require states to conduct LADO but must regulate the procedure whenever it is used. The Guidelines discussed below provide an outline of regulations that may be imposed through this uniform procedure.

1. “*Linguists Advise, Governments Make Nationality Determinations*”¹⁴⁷

In its first general guideline, the Language and National Origin Group simply states that linguists should not be asked to make determinations about national origin, nationality, or citizenship directly; they should merely be sought to assist governments in making those determinations.¹⁴⁸ This guideline does not indicate that the government should have discretion in using language to determine origin; rather, it asserts that, like any other form of evidence that is introduced by a technical expert, there should not be any discretion at all to use linguistic evidence in isolation.¹⁴⁹ It is generally understood that a legal decision should not be based solely on the outcome of expert evidence, “as that would *de facto*

¹⁴⁵ *Id.* at 70.

¹⁴⁶ Morgades, *supra* note 108, at 158.

¹⁴⁷ Language & Nat'l Origin Grp., *supra* note 114.

¹⁴⁸ *Id.*

¹⁴⁹ Blanche Tax, *The Use of Expert Evidence in Asylum Procedures by EU Member States: The Case for Harmonized Procedural Safeguards*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 225, 227 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

shift the responsibility for decision making from the designated authority to the expert.”¹⁵⁰ The Guidelines emphasize this understanding and provide that language analysis has a limited scope and can provide information that relates only to a speaker’s linguistic background; it cannot give any further evidence as to the speaker’s nationality or identity.¹⁵¹ Language analysis, therefore, can only possess a marginal evidentiary value.¹⁵²

A determination of national origin should only occur when a wide range of data allows the government to make a determination based on the totality of the evidence.¹⁵³ Linguists are charged only with the task of supporting other government experts by bringing in the forensic linguistic perspective;¹⁵⁴ information obtained in the course of a language analysis should not be used in isolation.¹⁵⁵ Although linguistic evidence may provide insight into a speaker’s linguistic background, the linguistic background does not directly correlate to national origin; thus, information about an individual’s possible linguistic community must be considered alongside all other evidence pertaining to the individual’s application and should not be used as evidence of geographic background or national origin.¹⁵⁶

2. “Socialization Rather Than Origin”¹⁵⁷

The second guideline, which calls for “socialization rather than origin,” sets forth the proposition that a person’s speech is not determined exclusively by where she was born or where she has lived.¹⁵⁸ It also states that LADO should not be used to determine an individual’s nationality, which is a “political or bureaucratic characteristic” with no direct connection to language.¹⁵⁹ Language is a product of socialization; it is often acquired in communities that use various

¹⁵⁰ *Id.*

¹⁵¹ Vanheule, *supra* note 12, at 182.

¹⁵² Gregor Noll, *The 2007 Rejection of Anonymous Language Analysis by the Swedish Migration Court of Appeal: A Precedent?*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 211 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹⁵³ Vanheule, *supra* note 12, at 182.

¹⁵⁴ Eric Baltisberger & Priska Hubbuch, *LADO with Specialized Linguists—The Development of LINGUA’s Working Method*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 9, 17 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹⁵⁵ *Id.*

¹⁵⁶ Vanheule, *supra* note 12, at 182.

¹⁵⁷ Language & Nat’l Origin Grp., *supra* note 114, at 1–2.

¹⁵⁸ Patrick, *supra* note 7, at 537.

¹⁵⁹ Language & Nat’l Origin Grp., *supra* note 114.

language forms and individuals' language use inevitably shifts over time.¹⁶⁰ Linguistic analyses admittedly reveal pertinent information about the features of an individual's speech, which can be used to draw reasonable conclusions about the speaker's socialization and may aid in assessing the applicant's credibility.¹⁶¹ Despite this correlation, linguistic analysis cannot directly determine an individual's national origin.¹⁶² "There is no one-to-one correspondence between nationality and language;" national borders do not always coincide with linguistic borders.¹⁶³

"Sociolinguistic repertoires . . . index full histories of people and of places, not just institutionally generated 'origins.'"¹⁶⁴ Accordingly, language is properly viewed as a product of socialization by the Swiss governmental department, LINGUA, whose conclusions never aim to determine a person's nationality.¹⁶⁵ Instead, LINGUA uses its conclusions to determine "the country[,] region or . . . (linguistic) community which ha[s] had the biggest influence on the subject's process of socialization."¹⁶⁶ By focusing on socialization rather than nationality, LINGUA is able to consider the presence of features from more than one linguistic community and thereby conduct a more holistic and objective analysis.

Language may provide useful insight into an individual's potential origin, as language is a product of socialization and socialization is often a product of national origin. However, because socialization may be, and often is, influenced by more than one's nationality, an individual's origin cannot be revealed with certainty through LADO alone—LADO must be considered alongside the personal histories that precede the language analysis.¹⁶⁷ Because LADO is conducted on refugees, "people with migration histories that are mirrored in complex relations between speech and spatial trajectories,"¹⁶⁸ applicants may exhibit speech patterns that are unique to their personal stories.¹⁶⁹ An applicant may speak a language variety that is not typically associated with his country of origin or may mix features of a national language with other language varieties

¹⁶⁰ Patrick, *supra* note 7, at 536.

¹⁶¹ McNamara et al., *supra* note 144, at 67.

¹⁶² Language & Nat'l Origin Grp., *supra* note 114, at 1–2.

¹⁶³ Eades et al., *supra* note 56, at 183.

¹⁶⁴ Jan Blommaert, *Language, Asylum, and the National Order*, 50 CURRENT ANTHROPOLOGY 415, 416 (2009).

¹⁶⁵ Baltisberger & Hubbuch, *supra* note 154, at 9.

¹⁶⁶ *Id.*

¹⁶⁷ Craig, *supra* note 14, at 263.

¹⁶⁸ Maryns, *supra* note 70, at 257.

¹⁶⁹ *Id.*; Reath, *supra* note 66, at 220–21.

used in surrounding linguistic communities.¹⁷⁰ Asylum seekers tend to be exposed to different varieties of a language that are spoken by “people [they have] met while in transit, [by] other asylum seeker[s], or [by] migration/police authorities.”¹⁷¹ Furthermore, “[m]any refugees have suffered years of displacement from their home regions, often in refugee camps with mixed and shifting populations.”¹⁷² A number of factors, including asylum seekers’ migration patterns and surrounding linguistic communities, may affect the individuals’ speech.¹⁷³ LADO analysts must therefore consider these factors in their evaluations.¹⁷⁴ LADO analysts must not trace a person to a single country, but rather to a region or ethnic group, which may cross national boundaries.¹⁷⁵

The second guideline acknowledges the inconsistency between what LADO actually reveals and what it is often used to infer. This guideline rebuts the presumption that LADO should aim to determine an asylum seeker’s nationality, asserting that the analysis should be viewed in the context of the speaker’s socialization, rather than as an indication of a fixed nationality. In accordance with this guideline, the creation of a standard LADO procedure should emphasize that analysts’ results show only the linguistic communities that have had the greatest influence on an applicant’s linguistic repertoire,¹⁷⁶ and that influence is a question of socialization, not one of nationality.¹⁷⁷

3. “*Language Analysis Must Be Done by Qualified Linguists*”¹⁷⁸ and “*The Expertise of Native Speakers is Not the Same as the Expertise of Linguists*”¹⁷⁹

The third and seventh guidelines address the inconsistencies between the expertise of trained linguists and that of native speakers. The third guideline

¹⁷⁰ Blommaert, *supra* note 164, at 422.

¹⁷¹ Reath, *supra* note 66, at 220–21; *see also* Patrick, *supra* note 7, at 537.

¹⁷² Patrick, *supra* note 7, at 537.

¹⁷³ Blommaert, *supra* note 164, at 422. Political factors within the asylum applicant’s country of origin may also affect the individual’s speech patterns and language use. For example, when a state is in crisis, symbols of the state and its power can be heavily contested and speaking a language variety can be construed as an expression of political allegiance that individuals should avoid or deny for their own safety. *Id.*

¹⁷⁴ Maryns, *supra* note 70, at 257.

¹⁷⁵ Patrick, *supra* note 7, at 537.

¹⁷⁶ Baltisberger & Hubbuch, *supra* note 154, at 9.

¹⁷⁷ Judith Rosenhouse, *LADO and Arabic: The Case of Iraqi Arabic as an Introduction to the Middle East*, in *LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES* 145, 153 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

¹⁷⁸ *Language & Nat’l Origin Grp.*, *supra* note 114, at 2.

¹⁷⁹ *Id.* at 3.

provides, “[j]udgments about the relationship between language and regional identity should be made only by qualified linguists with recognized and up-to-date expertise, both in linguistics and in the language in question.”¹⁸⁰ The seventh guideline furthers this statement by adding, “skill in speaking a language is not the same as the ability to analyze a language and compare it to neighboring language varieties.”¹⁸¹

Sometimes, native speakers of the language variety in question execute LADO, and they are asked to observe individuals’ speech patterns to determine whether they are also native speakers.¹⁸² Although many native speakers believe they are experts of their native language, they are often unaware of the limitations of their expertise.¹⁸³ As indicated in the Guidelines, native speakers do not have the ability to make some of the distinctions that are necessary for an accurate language analysis.¹⁸⁴ Furthermore, native speakers who do not have any formal linguistic training often have folk views about the language varieties in their speech communities, which are shaped by social, political, and cultural beliefs that are inconsistent with the facts that have been documented by trained linguists.¹⁸⁵ Therefore, although native speakers may be familiar with some characteristics used by speakers “from their own or similar speech communities,” native speakers who lack expertise in sociolinguistics are often incapable of properly identifying those characteristics.¹⁸⁶

Native speakers are also limited in their ability to effectively conduct LADO because individuals who originate in the same country or region may not engage with the same peoples and communities. Linguistic boundaries are not always consistent with state boundaries and speakers of different dialects or language varieties may originate from the same country or region.¹⁸⁷ “No two individuals belong to exactly the same social networks, share exactly the same experiences, and therefore draw from exactly the same discursive repertoires.”¹⁸⁸ As

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Tina Cambier-Langevald, *The Validity of Language Analysis in the Netherlands*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 21, 31 (Karin Zwaan, Maaïke Verrrips, Pieter Muysten eds., 2010).

¹⁸³ *Id.*

¹⁸⁴ Eades et al., *supra* note 56, at 182.

¹⁸⁵ Peter L. Patrick, *Language Variation and LADO*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 73, 77 (Karin Zwaan, Maaïke Verrrips, Pieter Muysten eds., 2010) [hereinafter Patrick, *Language Variation and LADO*].

¹⁸⁶ *Id.*

¹⁸⁷ Maryns, *supra* note 70, at 249.

¹⁸⁸ *Id.* at 256.

individuals interact with diverse groups, they acquire unique, independent repertoires that likely do not exist in other individuals.¹⁸⁹ An analyst who is merely a native speaker of the regional language and does not have further training or expertise in the linguistic region may be unable to recognize features of other dialects within the region or may be exposed to sociocultural biases regarding the surrounding speech patterns.¹⁹⁰ If the analyst is not trained in the varieties spoken by the diverse linguistic communities of the region, he may consider a speaker's language use to be inconsistent with his purported country of origin where the difference or inconsistency is caused not by the area in which the language is spoken, but rather by the socio-economic or political circumstances in which the speaker engaged within the region.¹⁹¹ For example, Krio (spoken in Sierra Leone) and Nigerian Pidgin English are different languages that contain a number of similarities.¹⁹² The differences between the languages, however, "are reported to be of such a subtle nature that it is essential that only linguists specializing in the language should [analyze] them."¹⁹³ An analyst who is not familiar with the subtle differences in linguistic features will not be able to accurately distinguish between language varieties.¹⁹⁴ Thus, linguists who specialize in these discrepancies are far more qualified and better suited to engage in LADO.

In addition to being unable to identify subtle differences among language varieties, native speakers may be unable to identify individual variations in speech patterns, some of which may occur in the same speaker as his circumstances change.¹⁹⁵ Linguists, on the other hand, are trained to be more aware of the different factors that may influence an individual's linguistic behavior and will therefore have a more complete grasp of a given speaker's situation.¹⁹⁶

There are a number of phenomena that, though widely accepted by trained linguists, are not intuitive to native speakers.¹⁹⁷ For example, "[i]n face to face interaction, speakers [often] accommodate to each other linguistically by reducing the dissimilarities between their speech patterns and adopting features

¹⁸⁹ *Id.*

¹⁹⁰ See Reath, *supra* note 66, at 215.

¹⁹¹ *Id.* at 220.

¹⁹² *Id.* at 219.

¹⁹³ *Id.*

¹⁹⁴ See Maryns, *supra* note 70, at 249.

¹⁹⁵ Reath, *supra* note 66, at 220.

¹⁹⁶ Baltisberger & Hubbuch, *supra* note 154, at 16–17.

¹⁹⁷ *Id.*

from each other's speech."¹⁹⁸ Before a linguistic interview takes place, the applicant is often notified of the purpose of the interview and of the scrutiny that will take place.¹⁹⁹ This notice, although arguably necessary, can affect the applicant's language use, which may affect the outcome of the analysis.²⁰⁰ If an applicant is aware of the scrutiny under which his speech will be placed and the effect it may have on the outcome of her application, she may approach the interview with more caution.²⁰¹ The applicant may feel nervous or ill at ease, "which may affect the individual's speech."²⁰² Speakers often accommodate others' speech patterns; thus, if an applicant begins to accommodate to the interviewer's speech patterns,²⁰³ the analyst must be able to recognize and accept the presence of uncertainty and consider only features that are below the speaker's consciousness—those linguistic features that are most resistant to conscious change by the speaker.²⁰⁴ Linguists are not only trained to recognize these linguistic processes, but they are also accustomed to describing them and characterizing the precise changes they observe.²⁰⁵ In addition to being more accurate, therefore, a report by a linguist will be more developed and coherent than one by a native speaker.²⁰⁶

4. "*Linguist's Degree of Certainty*"²⁰⁷

Analysts are not always able to draw accurate conclusions about a speaker's origin based on the language sample they are given and the analysis they have performed.²⁰⁸ Accordingly, the fourth guideline provides that linguists should be able to qualify their assertions when their analyses do not yield clear results.²⁰⁹ There are many circumstances that may lead to uncertainty in analysis,

¹⁹⁸ de Graaf & van den Hazelkamp, *supra* note 58, at 5 (quoting PETER TRUDGILL, *DIALECTS IN CONTACT* 39 (1st ed. 1986)).

¹⁹⁹ Reath, *supra* note 66, at 220.

²⁰⁰ Maryns, *supra* note 70, at 257. "According to the situation, speakers select the appropriate language forms from their repertoire. Institutional pressures and uncertainty about what might strengthen or weaken their application may cause the applicant to accommodate his/her speech to that of the official carrying out the interview." *Id.*

²⁰¹ Reath, *supra* note 66, at 220.

²⁰² *Id.*

²⁰³ *See id.* at 217. "The interviewer spoke a different dialect of Farsi and the applicant may well have adjusted his speech to be understood." *Id.*

²⁰⁴ Eades et al., *supra* note 56, at 186.

²⁰⁵ Baltisberger & Hubbuch, *supra* note 154, at 16.

²⁰⁶ *See id.* The authors explain that reports by linguists are more often supported by research data, "which sometimes consists of data gathered by the linguist experts themselves during their field trips." *Id.*

²⁰⁷ Language & Nat'l Origin Grp., *supra* note 114, at 2.

²⁰⁸ *See supra* Section III.B.

²⁰⁹ *Id.*

including language change and speaker accommodation. Language varieties change quickly and consistently and linguists need up-to-date sociolinguistic information in order to conduct accurate analyses.²¹⁰ Access to updated information, however, may be limited because of war or political instability in the area where the language is spoken.²¹¹ An analyst may therefore be required to reach a conclusion about an applicant's speech based on outdated research.

Analysts must also consider that not all the linguistic details of all language varieties are known. Experts may not have any available information to rely on, and it may be difficult to determine which features are original and which have been acquired from neighboring dialects.²¹² Under these circumstances, analysts should be given the opportunity to qualify their conclusions and indicate their level of certainty—particularly if knowledge of the language varieties is no longer accurate or is otherwise limited by circumstances beyond the analyst's control.

The fourth guideline is important because it recognizes that even a qualified linguist may be presented with circumstances that cause uncertain analyses.²¹³ A faulty analysis in an asylum proceeding may result in assigning the speaker to a wrong region or a wrong ethnic group²¹⁴ and can have serious implications for the individual's future and safety; an analyst should therefore be able to assert any reservations that she may have about the certainty of her conclusions.

5. “*Language Analysis Requires Useful and Reliable Data*”²¹⁵

The fifth guideline provides that linguists should be able to specify the kind of data they need to successfully complete a language analysis.²¹⁶ Data should be gathered in a way that “provides information about the speaker's phonology, morphology, and syntax.”²¹⁷ Thus, the analyst may need to request an extended

²¹⁰ See McNamara et al., *supra* note 144, at 67. “The need for up-to-date sociolinguistic information is made more urgent by the rapid changes in the sociolinguistics of many areas, for example in urban vernaculars in African cities.” *Id.*

²¹¹ *Id.* at 67.

²¹² Rosenhouse, *supra* note 177, at 150.

²¹³ Eades et al., *supra* note 56, at 185. “Pronunciation differences above consciousness are those of which speakers are highly aware, and which have become ‘emblematic’ of a regional identity. Differences which are below consciousness are pronunciations which may in fact characterize a regional accent, but which most speakers do not notice.” *Id.*

²¹⁴ Patrick, *Language Variation and LADO*, *supra* note 185, at 82.

²¹⁵ Language & Nat'l Origin Grp., *supra* note 114, at 2.

²¹⁶ *Id.*

²¹⁷ de Rooij, *supra* note 123, at 140.

narrative or interview so that he will have access to a broader range of the speaker's linguistic features.²¹⁸

The analyst may also need to control for data that arises from the applicant's perceptions and attitudes toward language.²¹⁹ Analysts must be aware of a speaker's self-identification and his preconceptions about the language varieties in question and the neighboring language varieties.²²⁰ This information is important because an asylum seeker may claim to speak a language without recognizing its emergent varieties and dialects, or may not know that there are neighboring dialects with different linguistic features that carry the same label.²²¹ What the applicant identifies as a particular language variety may not be the variety that is recognized by the analyst and vice versa.²²² The possibility of miscommunication between the analyst and the applicant may lead to inaccurate results where both individuals may be using the same label to refer to different varieties or dialects.²²³

If the analyst is not given access to information about the applicant's linguistic self-identification and the surrounding dialects or language varieties, he might conduct the interview in a language or dialect that the applicant does not speak natively. If the analyst has access to the appropriate information and linguistic data, however, he will be able to better identify the differences in the applicant's speech and will be capable of performing a more objective analysis.²²⁴ Therefore, as per this guideline, "[i]t is preferable for linguists to collect the language sample(s) for analysis, or to advise on their collection."²²⁵ It is the analyst's responsibility to recognize that language varieties are not individual, concrete units, but rather variations along a continuum—the boundaries are fuzzy and often unclear, even to speakers of the differing varieties.²²⁶ An expert analyst will likely have more knowledge about the formal labels that are assigned to languages and dialects in the region in question, and should not expect the applicant to readily acknowledge and understand the

²¹⁸ *Id.*

²¹⁹ Maryns, *supra* note 70, at 257.

²²⁰ *Id.*

²²¹ *Id.* at 256.

²²² *Id.* at 275.

²²³ *Id.* at 257.

²²⁴ Language & Nat'l Origin Grp., *supra* note 114, at 2.

²²⁵ *Id.*

²²⁶ Maryns, *supra* note 70, at 257.

distinction between “language” and “dialect” or between “pidgin” and “creole.”²²⁷

6. “*Linguists Should Provide Specific Evidence of . . . Professional Training and Expertise*”²²⁸

The sixth guideline states, “[l]inguists should provide specific evidence of their professional training and expertise . . . so that a court may have the opportunity to assess these matters.”²²⁹ This guideline contends that analysts should provide evidence of their qualifications, particularly where the identification of the analysts is kept confidential. If analysts’ identification and qualifications are both unknown to a court, it will be difficult to confirm that the results are reliable and adequate.²³⁰ Without this guideline, governments will be “buying and actively using untested products . . . whose validity and reliability are in question.”²³¹ If analysts provide specific evidence of their qualifications, then their analyses (and LADO generally) will become more credible and widely accepted.²³²

Critics of LADO have observed that analysts’ qualifications are not always genuine, and the identity of these alleged experts is not publicly available. In fact, recent reports have stated that Sprakab, one of the largest providers of LADO, has given misleading and inaccurate information about the qualifications of its analysts.²³³ One particular Sprakab analyst was reported to have lied about his qualifications to help the UK’s Home Office determine sensitive asylum cases.²³⁴ The analyst specialized in the Somali dialect and was one of Sprakab’s top language analysts.²³⁵ He had worked for the company for eight years, producing almost 5,000 reports on asylum-seekers in that time.²³⁶ The reports and conclusions set forth by the analyst, however, “generally failed to make a case that the proper methods were being used,” or that the analyst had

²²⁷ *Id.*

²²⁸ Language & Nat’l Origin Grp., *supra* note 114, at 2.

²²⁹ *Id.*

²³⁰ Reath, *supra* note 66, at 210.

²³¹ *Id.*

²³² *Id.*

²³³ Schmid & Patrick, *supra* note 7.

²³⁴ Green, *supra* note 10. The analyst claimed that he had studied statistics and other language courses for four years at Stockholm University; however, documents obtained from the University indicate that he did not complete the first term and received only twenty-five of the required 180 points towards his degree. *Id.*

²³⁵ *Id.*

²³⁶ *Id.*

the proper qualifications to conduct the analysis.²³⁷ This incident has raised concerns that language analyses are being carried out by underqualified or dishonest analysts.²³⁸ In this particular case, if the reports completed by the unqualified Sprakab analyst have been consistently inaccurate, as is suspected, hundreds of Somalis may have been wrongly deported.²³⁹

In response to these allegations, Sprakab has conceded that its analysts “possess no academic qualifications in linguistics, only unspecified ‘internal education at Sprakab.’”²⁴⁰ Sprakab also explained that it has a policy of keeping the names and personal details of its analysts secret because their safety may be endangered as they are carrying out analyses that often contribute to the denial of individuals’ refugee status.²⁴¹ Quality control of an analysis, however, is impossible without information about the analyst or the analyst’s qualifications and capabilities.²⁴² Because the possibility that a language analysis will be performed incorrectly by an unqualified analyst carries such great risks, expert advice may be used as evidence in asylum cases only when the “qualifications and experience of the experts are genuine and publicly available, and [the] caseworkers . . . check that this information is correct.”²⁴³

CONCLUSION: IMPLEMENTING THE GUIDELINES IN THE COMMON EUROPEAN ASYLUM SYSTEM

Currently, there is considerable variation among the agencies—both public and private—that carry out language analyses for asylum proceedings.²⁴⁴ This variation spans from how the speech sample for the analysis is collected to the structure and content of the interviews and the resulting amount of usable data.²⁴⁵ This variation is considered a harmful characteristic of the international use of LADO and the Guidelines were created in an attempt to provide standard principles that should be considered whenever LADO is conducted. Although the Guidelines contain information that is only at an introductory level of linguistics, they provide generally uncontroversial recommendations for a more

²³⁷ *Id.*

²³⁸ *Id.*

²³⁹ *Id.*

²⁴⁰ Schmid & Patrick, *supra* note 7.

²⁴¹ Green, *supra* note 10.

²⁴² Noll, *supra* note 152, at 212.

²⁴³ Reath, *supra* note 66, at 210.

²⁴⁴ McNamara et al., *supra* note 144, at 63.

²⁴⁵ *Id.*

reliable LADO process.²⁴⁶ The Guidelines, therefore, could function as a reliable basis for a structured and scientific process of LADO that is aimed at establishing uniformity among the nations that use it and providing direction for nations that plan to implement it. To construct a “scientifically responsible LADO,” the variation between methods must be limited and certain conditions should be satisfied.²⁴⁷

Despite the scientific backing for the principles that are set forth in the Guidelines, it is unlikely that nations will voluntarily submit themselves to the implementation of a common LADO process that would further limit nations’ discretion in creating asylum procedures. The process may be upheld throughout the EU, however, if the LADO guidelines are implemented in the CEAS. The EU takes in a significant percentage of the world’s refugees, and through the CEAS it is already in the process of creating and promoting uniformity in its asylum systems.²⁴⁸ Although the CEAS provides standards for EU Member States to use when evaluating applications for asylum, it does not currently acknowledge the use of language analysis in asylum proceedings. Several European governments, however, use LADO as a tool for testing the validity of asylum seekers’ claims and origins, and many of these nations use different procedures.²⁴⁹ Thus, if the EU intends to establish a narrow asylum system that abides by a uniform process, the system must incorporate a common LADO procedure.

Like the first stage of the CEAS,²⁵⁰ a set of minimal criteria may be established in the early stages of common LADO procedure. This will guarantee certain quality standards for LADO reports while allowing for a gradual process of change that will permit resistant nations to ease into the procedure. The Guidelines, which set forth basic principles rather than bright-line methods of analysis, provide a starting point for the initial stage of a uniform LADO procedure.

Although the Guidelines may not create a flawless approach to language analysis, they provide a baseline solution that fits within the current context of

²⁴⁶ Diana Eades, *Guidelines from Linguists for LADO*, in LANGUAGE AND ORIGIN: THE ROLE OF LANGUAGE IN EUROPEAN ASYLUM PROCEDURES 35, 39 (Karin Zwaan, Maaïke Verrips, Pieter Muysten eds., 2010).

²⁴⁷ de Rooij, *supra* note 123, at 140.

²⁴⁸ Christopher Booker, *Of All the EU Failures, Its Policy on Asylum Seekers is the Worst*, TELEGRAPH (Jan. 10, 2015, 7:56 PM), <http://www.telegraph.co.uk/comment/11337315/Of-all-the-EU-failures-its-policy-on-asylum-seekers-is-the-worst.html>.

²⁴⁹ Maryns, *supra* note 70, at 255.

²⁵⁰ Baltisberger & Hubbuch, *supra* note 154, at 14.

the CEAS and can be updated as the procedure evolves and asylum conditions change.²⁵¹ The basic work begun in the Guidelines can be developed alongside the CEAS while research projects continue to be conducted, shedding more light on some of the central and complex questions about the relationship between language and origin.²⁵² As the principles are used and implemented into a common LADO procedure, the methods and details of the resulting analyses should be open to scholarly critique and debate to ensure that they are proper and effective means of analysis.²⁵³

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²⁵¹ *Id.* at 18.

²⁵² Eades, *supra* note 246, at 39.

²⁵³ Eades et al., *supra* note 56, at 187.

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