

Author Statement: “I am submitting the final research paper, which allowed me the opportunity to deeply explore a linguistics related topic of interest and how it affects current society. From a sociolinguistics perspective, I argued that the significant linguistic barriers faced by asylum seekers in the most essential processes of claiming asylum – proof of nationality and the credible fear interview – reveal profound discrepancies in the current asylum determination procedure. This topic was chosen from personal interest in the relationship between language and law.”

**Critical analysis of the defensive asylum seeking process from a linguistic
perspective**

At the end of 2019, there are an estimated 79.5 million people displaced worldwide (*Figures at a Glance*, 2020). The gravity of the refugee crisis is only exacerbated by language barriers (Wallace & Hernández, 2017, p. 143). Language is a deeply important, and often invisible, medium to the asylum determination process, as people must fight for their livelihoods through only their voice. This paper will analyze the substantial linguistic barriers faced by asylum seekers in the most essential processes of claiming asylum – proof of nationality and the credible fear interview – to reveal inequities in the current asylum determination procedure.

Asylum seekers are defined as those who are endangered in their native country and seek refugee status in another. Only once application for asylum has been accepted can one be legally termed a "refugee" (Eades, 2005, p. 505). A 'real' refugee must, under the 1951 Refugee Convention, have "a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion (*The 1951*, 2020)." Generally, asylum seekers can submit an application through two means: affirmatively or defensively (Wallace & Hernández, 2017, p. 147). Affirmative applications are filed by those legally in the country and subsequently claim refugee status. The more politically controversial means of entering the country is without a visa, often suffering a traumatic journey to be smuggled in. Refugees who enter this way likely have no documented proof of nationality (Eades, 2005, p. 505). This situation leads to defensive applications, which are filed once an asylum seeker is at risk of deportation because they have entered the country without proper documentation (Wallace & Hernández, 2017, p. 147). This paper will focus on the discrepancies within the defensive asylum application process from a linguistic perspective. For numerous countries, in order to qualify as a 'refugee' through defensive applications, asylum seekers must

prove they are from the country they claim to be from, as well as demonstrate "well-founded fear" under the 1951 Refugee Convention definition (*The 1951*, 2020).

Governments worldwide use the method of 'language analysis' to test nationality claims (Eades, 2005, p. 505). The language analysis process begins once a legal decision-maker suspects an asylum seeker is falsely claiming their national origin, and subsequently interviews them for the purpose of analyzing their language (the asylum seeker is not notified of the purpose). The interview is tape-recorded and subsequently sent to language analysts, who make determinations about the speaker's nationality based solely on the linguistic components of the speech in the tape-recording. The determination is then filed as a one to two page report sent to the immigrant department, and plays a decisive role in the official application decision (Eades, 2005, p. 506).

Linguists, however, are increasingly concerned about the erroneous assumptions practiced in the overgeneralization of linguistic identification for asylum seekers (Eades, 2005, p. 513). Issues can arise from all levels of the language analysis process. Firstly, if the interview is conducted in the asylum seeker's first language, the interpreter may have a different dialect from them. Due to power dynamics, asylum seekers may try to change the way they speak to better accommodate the interpreter's dialect, which subsequently would not align with the claimed language variety (Eades, 2005, p. 507). Secondly, analysts hired for linguistic identification are often not qualified to determine a person's nationality based solely on their speech, as they neither have the credentials to be a professional linguist nor grasp basic linguistic relationships fundamental to language (Eades, 2005, 508). Regulations for language analysts are vague, with no explicit requirement of professional training. Lack of linguistic expertise is especially prominent in two major paper works resultant from the language interview: transcriptions and

reports. In transcriptions, linguistic conventions are typically not used (like IPA) which causes major accuracy problems. As asylum seekers and their lawyers are not provided the original recorded tape of the interview, they only have the transcript to reference when trying to appeal for a reconsideration of their case. From the transcript, language analysts write a report which determines nationality (Eades, 2005, p. 510). However, reasoning used in reports often indicate lack of understanding of the natural variation of language, diffusion, language change, and bilingual speech practices (like code-switching). The language analysis procedure perpetuates the widespread ideology of 'homogeneity', which manifests in the assumption that people speak only one language variety, with no linguistic influence in phonology or grammar from another language (Eades, 2005, p. 511). This often ignores the effect of movement between countries on the speech of asylum seekers, as well as natural linguistic diffusion during time spent in refugee camps. If there is any variation in the asylum seeker's speech, it can be used as proof to claim they are lying about their country of origin, which has become the most common means of invalidating one's nationality claim. In conclusion, the current 'language analysis' process to determine claim to nationality is neither reliable nor valid, and it is unjust to make political decisions dependent on the social matter of language (Eades, 2005, p. 507).

The second crucial step in defensive applications is the credible fear interview (CFI) (Wallace & Hernández, 2017, p.143). Upon apprehension by Customs and Border Protection, asylum seekers are transferred to a detention facility where they are either subjected to expedited removal without trial or must claim asylum through passing the CFI. It is during the CFI that asylum seekers face significant linguistic barriers that depend on the accuracy and quality of language access (Wallace & Hernández, 2017, p. 143). Unlike federal crime cases, which are given free and certified legal counsel, asylum detainees have no right to a government-funded

attorney and can gain assistance from a lawyer only if they can find a volunteer or afford one, which is less than 30%. Studies have shown that legal counsel is vital for the success of asylum applications as they are involved in every step of the process in constructing a successful story for court. A 2015 study found that detained migrants with legal representation were 10.5 times more likely to win their cases than those without (Benevento, 2017). Interpreters and legal agents fundamentally shape the asylum seeker's rendition of their story, as the gaze, prosody, tone, and posture of these interviewers set the level of safety an asylum seeker feels during the interview. There are instances where a high level of connectedness with an engaging and proactive interpreter can enable the interviewee to express traumatic memories and give crucial information for the case (Määttä et al., 2020, p. 14). Not all interpreters are proactive, and interviewees have also expressed fear in correcting their critical translation errors. Thus, asylum seekers are prone to highly volatile linguistic vulnerability, in which communication issues through language interpretation and transcription critically affect the end result of the case (Määttä et al., 2020, p. 2). The CFI interview is a setting in which the refugee narrative is constructed by the interpreter and other legal assistants, mediating communication between asylum seekers and immigration judges (Määttä et al., 2020, p. 10). However, inadequate language services and subsequently inaccuracies in the final report can be detrimental during the final court hearing as any inconsistencies between the report and the asylum seeker's in-court testimony could result in wrongful deportation (Wallace & Hernández, 2017, p. 149).

The main purpose of the Credible Fear Interview is to determine one's classification of "refugee" - proving fear of persecution is based on race, religion, nationality, political opinion, and membership of a particular social group (PSG) (Ibe, 2020). The last criteria, PSG, is the most difficult to define, and it is often easier to argue asylum on the basis of protected grounds

like religion or political opinion. Cases like domestic abuse, homosexuality, and gang violence aren't enough to warrant protection, and are often vulnerable to the linguistic politics of the judge (Myslinska, 2020). Members in a PSG often must share an innate characteristic that is identifiable to meet the definition. This is extremely problematic in cases like gender persecution, in which abused women seeking asylum must claim membership to a PSG not only verbally but also by showing evidence of female genital mutilation or intense battering. This is extremely unethical for those who do not have such proof at the time of the trial (Bhargava & Mukhopadhyay, 2020). Additionally, the language of PSG is commonly manipulated by the government to increase restriction on asylum seekers and limit accepted applications. This is the case with the Trump administration, which changed the eligibility requirements of PSG by stating that "family" and victims of domestic/gang violence no longer qualify for asylum in the U.S. (Ibe, 2020). This decision disproportionately affects asylum seekers from Central America because they often flee from their home country for these listed reasons, as well as thousands of displaced people at the borders of the 'freedom nation' (Jordan & Romero).

The asylum seeking process is riddled with linguistic obstacles, and given the importance of language access to the success of refugee applications, complimentary language interpreters and legal counsel should be a human right. In our current climate, refugees are often dehumanized by the media, and language is manipulated by politicians constantly. I urge for the critical reflection of our understanding of the term "alien" and the utilization of the power of rhetoric, whether that be in legal policy or on Twitter.

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