YF (pre-commencement remittal – basis of reconsideration) Eritrea [2005] UKAIT 00126

ASYLUM AND IMMIGRATION TRIBUNAL

THE IMMIGRATION ACTS

Heard at Bradford
On 15 June 2005
Determination promulgated: 6th September 2005

Before:

Mr L V Waumsley (Senior Immigration Judge)
Mr F Appleyard (Immigration Judge)

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Guidance as to correct approach to findings of fact made previously when an appeal has been remitted to an adjudicator for a fresh hearing before 4 April 2005, but the rehearing has not taken place by that date

Representation:

For the appellant: Mr A Rhys-Davies of counsel, instructed by White Ryland, solicitors
For the respondent: Ms J Donnelly, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The respondent has appealed with permission against the determination of an adjudicator (now an Immigration Judge), Miss D M Lambert, sitting in Bradford, in which she dismissed the appeal of the appellant, a citizen of Eritrea, against the respondent's decision to refuse him leave to enter the United Kingdom after refusing an application for asylum made by him, but allowed his appeal against that decision on human rights grounds only. By virtue of article 5(1)(a) of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (Commencement No 5 and Transitional Provisions) Order 2005, the appeal now takes effect as a reconsideration pursuant to an order under article 5(2) of that Order.

Background

2. The appellant arrived in United Kingdom on 3 September 2002. He applied for asylum on arrival. The grounds on which he did so may be stated shortly. He said that although he had been born in Ethiopian, he was of Eritrean ethnicity. He had been deported by the Ethiopian authorities to Eritrea when he was 20 years old. He had then been recognised by the Eritrean authorities as an Eritrean citizen. He worked as a military driver in Eritrea between October 1998 and June 2000.

3. However, in June 2000, he was injured badly when the Army lorry which he was driving was hit by artillery fire. He was in hospital for three months receiving treatment for an eye injury. He then received further treatment as an outpatient for another three months. He was required to return to military service in December 2000, but refused to do so.

4. As a consequence of that refusal, he was detained by the military authorities in January 2001, and was held in detention at a camp in Sawa until August 2002. He was ill-treated during that detention. However, in August 2002, he managed to escape from military custody with one of the other detainees. They travelled together to Sudan. He managed to make contact with one of his cousins in the United States. His cousin provided the funds which were used to pay an agent to bring the appellant to the United Kingdom via Zimbabwe. He applied for asylum on arrival in the United Kingdom.

5. The respondent rejected the appellant's account. On 6 November 2002, the appellant was notified of the respondent's decision to refuse his asylum application, and five days later, the appellant was given notice of the respondent's decision to refuse him leave to enter the United Kingdom.

6. The appellant exercised his right to appeal to an adjudicator. This is the appeal which came before Miss Lambert on 15 October 2003. In her determination, which was promulgated on 30 October 2003, she dismissed the appeal on asylum grounds. However, she allowed it on human rights grounds only.

7. The respondent then applied to the former Immigration Appeal Tribunal for permission to appeal against the adjudicator's determination. That application was determined by a Vice President (Mr G Warr) on 29 March 2004. He granted permission to appeal in the following terms:

> "The appeal appears to be in time being received on the last day (17 November 2003) according to the Faxed date. The grounds of appeal appear to raise arguable issues.
>
> This application for permission to appeal is granted."

8. The respondent's appeal was heard by the Immigration Appeal Tribunal on 17 February 2005. By its determination, which was notified on 25 February 2005, the Tribunal allowed the appeal to the extent that it was remitted for a fresh hearing before an adjudicator other than Miss Lambert. This is the appeal which is now before us, albeit as a reconsideration, rather than an appeal.

Application to serve reply

9. At the start of the hearing, Mr Rhys-Davies, who appeared for the appellant, applied for permission to serve a reply under rule 30(1) of the Asylum and Immigration Tribunal (Procedure) Rules 2005 so as to enable the appellant to challenge the adjudicator's decision to dismiss his appeal on asylum grounds. We drew his attention to the provisions of rule 30(2) which read as follows:

> "The other party to the appeal [i.e. the appellant in the present instance] must file and serve a reply not later than 5 days before the earliest date appointed for any hearing of or in relation to the reconsideration of the appeal."

10. Mr Rhys-Davies acknowledged that the appellant was unable to comply with that time-limit. He also confirmed that there was no provision in the Procedure Rules to which he could direct us which would enable us to extend the appellant's time for a filing and serving his proposed reply. In the circumstances, he conceded that it was no longer open to the appellant to challenge the adjudicator's decision in relation to his asylum appeal. He was right to do so. The reconsideration before us is therefore confined to the issue of the adjudicator's decision to allow the appeal on human rights grounds only.

Basis of reconsideration

11. Both representatives invited us to make a ruling as to the basis on which the reconsideration would take place. Ms Donnelly, who appeared for the respondent, submitted that the adjudicator's findings of fact should stand, and that the reconsideration should be conducted on the basis of those findings. Mr Rhys-Davies submitted that the contrary should apply, and that it would be incumbent upon us to arrive at fresh findings of fact on the basis of the evidence to be adduced before us.

12. The adjudicator's findings of fact are set out at paragraphs 9.1 to 9.5 (inclusive) of her determination. For present purposes, it suffices to set out the findings which appear at paragraph 9.5 in the following terms:

> "My findings above lead me to reject as credible the appellant's account of his detention, ill-treatment in and escape from Sawa camp and the means by which he arranged to travel to the United Kingdom."

In essence, the adjudicator rejected the appellant's evidence in relation to the core elements of his account.

Respondent's submissions

13. We heard submissions first from Ms Donnelly in support of her submission that those adverse credibility findings should stand. She stated that she was relying principally on the reported determination (now no longer reported) of this Tribunal in *SA (old-style remittal -- reconsideration -- approach) Burundi* [2005] UKIAT 00102, which relied in turn on the judgment of Sir Michael Harrison sitting in the High Court of Justice, Queen's Bench Division, Administrative Court, in *R v Immigration Appeal*

Tribunal, ex parte Ghanbarpar [2005] EWHC 123 (Admin). She argued that *ex parte Ghanbarpar* was authority for the proposition set out at paragraph 29 of that judgment in the following terms:

> "I have already mentioned the passage in Symes and Jorro on Asylum Law and Practice, to which I was referred, to the effect that the benefit of positive findings on credibility is not something of which an asylum seeker should be lightly deprived. Whilst the case quoted in the footnote to that passage does not appear to be direct authority for the proposition, it is nevertheless a proposition with which I agree. In this case the claimant is not, strictly speaking, being deprived of the benefit of the adjudicator's positive credibility findings, but the benefit of those positive credibility findings is being put at risk and that, in my view, is not something that should be done lightly, especially bearing in mind that the adjudicator heard and saw the claimant giving oral evidence and being cross-examined."

14. Ms Donnelly submitted that it was a question of fairness that the principle referred to by Sir Michael Harrison should cut both ways. He had held that an appellant should not lightly be deprived of the benefit of positive credibility findings reached by an adjudicator who had heard him give oral evidence. In like manner, the respondent should not lightly be deprived of the benefit of adverse credibility findings reached by an adjudicator who had heard oral evidence.

15. She referred us to paragraphs 7 and 8 of the determination of the Immigration Appeal Tribunal remitting the appeal in the following terms:

> "7. We are satisfied that there are errors of law in the determination. In particular the adjudicator assessed the risk on return incorrectly. She should have asked herself whether there was a reasonable likelihood or real risk that the appellant would be subjected to article 3 ill-treatment on return rather than the test she used in paragraph 9.8.
>
> 8. Accordingly we allow the appeal to the extent it be remitted for a fresh hearing before an adjudicator other than Miss D M Lambert."

16. She argued that it was clear from the Tribunal's determination that the problems with the adjudicator's determination did not relate to her findings of fact. They related to her assessment of the risk on return. Her findings of fact should therefore be adopted as the basis of our reconsideration. We did not find it necessary to invite Mr Rhys-Davies to respond on behalf of the appellant.

Conclusions

17. In arriving at our conclusions on this issue, we have not found the determination in *SA* of any real assistance. The Tribunal was dealing in that case with a different situation from the one which is before us. This is clear from a number of the passages which appear in the determination. In particular, at paragraph 5, the Tribunal stated:

> "However, in exercising this jurisdiction that, I have to bear in mind the terms in which Vice President Mr Lane granted permission to appeal and then remitted the case. Despite ordering a fresh hearing, he plainly indicated that this should focus on just one issue, namely, whether in view of her generally positive credibility findings, the Adjudicator had given legally sustainable reasons for not accepting the arrest warrants."

18. At paragraph 6, the Tribunal stated *inter alia*:

> "With this in mind I sought the views of the parties as to the basis on which the fresh hearing should proceed. Both agreed with me that it was appropriate in this case to confine the issue to that concerning the arrest warrant."

At paragraph 7, the Tribunal stated *inter alia*:

> "The Tribunal who remitted this case clearly intended that the issue should be confined."

Finally, the Tribunal recorded at paragraph 10 *inter alia*:

> "Since it is agreed between the parties that we should proceed on the basis of Mrs Bird's positive credibility findings, it is useful to remind ourselves what these amounted to and in what way she qualified them."

19. There was no such agreement between the parties to the reconsideration now before us. In addition, we can see no indication, either in the terms in which the Vice President granted permission to appeal or in the determination remitting the appeal for a fresh hearing that it was intended, either by the Vice President who granted permission or by the Immigration Appeal Tribunal when remitting the appeal, that the reconsideration now before us should be confined to a particular issue or issues, or that it should be conducted on the basis of the findings of fact made by the adjudicator.

20. Turning now to the judgment in *ex parte Ghanbarpar*, it is clear from paragraph 1 that it was a judgment made on an application for judicial review to quash the determination of the Immigration Appeal Tribunal remitting the appeal for a new hearing. As such, the judgment is not one which is strictly binding on us. Although the judge endorsed the proposition referred to at paragraph 29 of his judgment that "the benefit of positive findings on credibility is not something of which an asylum seeker should be lightly deprived", it is to be noted that he was not purporting to lay down any binding principle of general application. In particular, he was not seeking to assert that the contrary proposition should also apply, namely that the Secretary of State should not lightly be deprived of the benefit of adverse credibility findings made by an adjudicator or immigration judge who has heard oral evidence.

21. In principle, we can see no logical reason why the converse proposition should not apply equally. Fairness requires that both parties should be faced with a level playing field. If an appellant whose evidence has been believed by an adjudicator or immigration judge is not lightly to be deprived of the benefit of positive findings of fact, we see no reason why the respondent should be deprived any more readily of the benefit of a finding rejecting an appellant's evidence in similar circumstances.

However, in the absence of any binding authority on the point, it is necessary for us to arrive at our own conclusion on this issue.

Statutory provisions

22. Our starting point for so doing is the statutory provisions which appear in section 103A of the Nationality, Immigration and Asylum Act 2002 as amended. However, they are of little assistance in deciding the issue which is before us. For present purposes, it will suffice to set out section 103A(1), which reads as follows:

> "A party to an appeal under section 82 or 83 may apply to the appropriate court, on the grounds that the Tribunal made an error of law, for an order requiring the Tribunal to reconsider its decision on the appeal."

Those provisions give no guidance as to the basis on which such a reconsideration, if ordered, should then take place.

Procedure Rules

23. The Asylum and Immigration Tribunal (Procedure) Rules 2005 are likewise of limited assistance. The only provisions which are arguably of any relevance are those which appear in rules 27(2), 31(4) and 45(4)(f)(iv) in the following terms:

> "27(2) Where an immigration judge makes an order for reconsideration --
> (a) his notice of decision must state the grounds on which the Tribunal is ordered to reconsider its decision on the appeal; and
> (b) he may give directions for the reconsideration of the decision on the appeal which may --
> (i) provide for any of the matters set out in rule 45(4) which he considers appropriate to such reconsideration; and
> (ii) specify the number or class of members of the Tribunal to whom the reconsideration shall be allocated.
>
> 31(4) In carrying out the reconsideration, the Tribunal --
> (a) may limit submissions or evidence to one or more specified issues; and
> (b) must have regard to any directions given by the immigration judge or court which ordered the reconsideration.
>
> 45(4) Directions of the Tribunal may, in particular --
> ….
> (f) limit –
> ….
> (iv) the issues which are to be addressed at the hearing…"

Once again, those provisions are of limited assistance to the issue which is before us.

Practice Directions

24. Of more assistance are the Practice Directions made by the President of this Tribunal on 4 April 2005. Those Directions were made pursuant to the power conferred on him by section 107 of the 2002 Act and paragraphs 7 of Schedule 4 to that Act. At paragraph 13 is the section dealing with reviews. The only part of it which is relevant for present purposes is paragraph 13.9 which reads as follows:

> " The immigration judge who has decided to make an order for reconsideration:
>
> (a) must state the grounds on which the Tribunal is ordered to reconsider its decision (rule 27(2)(a)); and
> (b) will (amongst other things) decide under rule 27(2)(b) whether to direct that a CMR [case management review] hearing be held before the reconsideration hearing takes place and whether to make a direction as to the evidence to be adduced at the hearing initially fixed for the reconsideration (as to which, see paragraph 14)."

25. Paragraph 14 deals with the procedure to be followed on the reconsideration. It is necessary to set out the whole of this paragraph as follows:

> "14.1 Subject to paragraph 14.12, where an appeal has been ordered under section 103A to be reconsidered, then, unless and to the extent that they are directed otherwise, the parties to the appeal should assume that the issues to be considered at the hearing fixed for the reconsideration will be whether the original Tribunal made a material error of law (see rule 31(2)) and, if so, whether, on the basis of the original Tribunal's findings of fact, the appeal should be allowed or dismissed.
>
> 14.2 Where the Tribunal decides that the original Tribunal made a material error of law but that the Tribunal cannot proceed under rule 31(3) to substitute a fresh decision to allow or dismiss the appeal because findings of fact are needed which the Tribunal is not in a position to make, the Tribunal will make arrangements for the adjournment of the hearing or for the transfer of the proceedings under paragraph 12.3 so as to enable evidence to be adduced for that purpose.
>
> 14.3 Where the Tribunal acting under paragraph 14.2 adjourns the hearing, its determination, produced after the adjourned hearing has taken place, will contain the Tribunal's reasons for finding that the original Tribunal made a material error of law.
>
> 14.4 Where the Tribunal acting under paragraph 14.2 transfers the proceedings, it shall prepare written reasons for its finding that the original Tribunal made a material error of law and those written reasons shall be attached to, and form part of, the determination of the Tribunal which substitutes a fresh decision to allow or dismiss the appeal.
>
> 14.5 The references in paragraph 14.1 to 14.4 to the original Tribunal include references to an adjudicator in any case where, by virtue of article 6 of the Commencement Order, the order under section 103A is made in respect of the decision of an adjudicator.

14.6 Under article 5 of the Commencement Order, any appeal that was pending before the IAT immediately before 4 April 2005 shall on and after that date be dealt with in the same manner as if the Tribunal had originally decided the appeal and was reconsidering its decision.

14.7 Rule 62(7) provides that, in the case of an appeal described in paragraph 14.6, the reconsideration shall be limited to the grounds upon which the IAT granted permission to appeal. In most cases, those grounds will require the Tribunal to decide whether the adjudicator made a material error of law.

14.8 Subject to paragraph 14.12, on and after 4 April 2005, and in the absence of any direction to the contrary, the parties to any appeal that falls to be dealt with as described in paragraph 14.6 should assume that the issues to be considered at the hearing will be whether the adjudicator made a material error of law and, if so, whether, on the basis of that adjudicator's findings of fact, the appeal should be allowed or dismissed.

14.9 Where the Tribunal decides that the adjudicator made a material error of law but that the Tribunal cannot proceed under rule 31(3) to substitute a fresh decision to allow or dismiss the appeal because findings of fact are needed which the Tribunal is not in a position to make, the Tribunal will make arrangements for the adjournment of the hearing or for the transfer of the proceedings under paragraph 12.3 so as to enable evidence to be adduced for that purpose.

14.10 The provisions of paragraph 14.3 and 14.4 shall apply in relation to paragraph 14.9 as they apply in relation to paragraph 14.2 but with the modification that the references to the original Tribunal shall be interpreted as referring to the adjudicator.

14.11 Where, immediately before 4 April 2005, an appeal was pending before an adjudicator, having been remitted to an adjudicator by a court or the IAT, it will already have been decided that the original adjudicator's determination cannot stand. The Tribunal will accordingly proceed to re-hear the appeal.

14.12 In the case of a reconsideration of a fast track appeal, the Tribunal reconsidering the appeal is required by rule 23 of the Fast Track Rules to reconsider its decision on the appeal at the reconsideration hearing, subject to the qualifications described in rule 23(1) of those Rules. The Tribunal's power to adjourn a fast track appeal that remains as such is governed by rule 28 of those Rules.

14.13 The parties to any fast track appeal which is being reconsidered by the Tribunal on or after 4 April 2005 will be expected to attend with all necessary witnesses and evidence that may be required if the Tribunal should decide that it is necessary to re-hear the appeal. It will be unusual for the Tribunal to adjourn the reconsideration hearing but, if it does so, paragraph 14.4 will, so far as appropriate, apply.

14.14 The preceding provisions of this paragraph and paragraph 13 are subject to article 9 of the Commencement Order in the case of certain “old” appeals, where the issue is not restricted to whether the adjudicator made an error of law.”

26. The reconsideration before us is one which falls within the ambit of paragraph 14.11. As will be seen, that paragraph states baldly, "The Tribunal will accordingly proceed to re-hear the appeal." It gives no express indication as to the basis on which that should be done. In particular, there is no indication as to whether the previous findings of fact are to be taken into account, and (if so) to what extent and in what circumstances.

27. However, paragraph 14.1 sets out the general provision which is to apply when a reconsideration had been ordered under section 103A. It states in terms that "unless and to the extent that they are directed otherwise", the parties should assume that the reconsideration is to be conducted "on the basis of the original Tribunal's findings of fact". The default position is therefore that, unless otherwise directed, the previous findings of fact are to stand.

28. Paragraph 14.2 covers the position when the previous findings of fact are not sufficient to enable the Tribunal to arrive at a fresh decision on reconsideration. This would apply, for example, where findings of fact are material issues had not been made at all, or where those findings cannot be regarded as reliable.

29. Paragraph 14.8 contains provisions dealing with the position when an outstanding appeal before the Immigration Appeal Tribunal immediately prior to the commencement date on which the Asylum and Immigration Tribunal came into existence (i.e. 4 April 2005) is to be deemed to constitute an order for reconsideration. Once again, it is stipulated in terms in this paragraph that "in the absence of any direction to the contrary", the parties are to assume that the reconsideration will be carried out "on the basis of the adjudicator's findings of fact".

30. Paragraph 14.9 contains provisions similar to those in paragraph 14.2 dealing with the position when fresh findings of fact are necessary because those reached previously are inadequate or defective for one reason or another.

31. However, paragraph 14.11 contains no provision in terms similar to those contained in paragraphs 14.1 and 14.8. It merely stipulates that "The Tribunal will accordingly proceed to re-hear the appeal." There is no express indication in paragraph 14.11 as to the basis on which that re-hearing is to take place.

32. Paragraph 14.13 provides some assistance in this regard, albeit only of an indirect nature. It deals with the position when the Tribunal, on reconsideration of a fast track appeal, has decided that "it is necessary to re-hear the appeal." It states that in those circumstances, the parties "will be expected to attend with all necessary witnesses and evidence". It is therefore clearly contemplated that a “re-hearing” will normally entail the hearing of witnesses and evidence. In those circumstances, the Tribunal would clearly substitute its own findings of fact based on those witnesses and that evidence. There would plainly be no purpose to be served by hearing fresh evidence if the previous findings of fact were to stand.

33. In light of the assistance to be derived from paragraph 14.13, and applying the established principle of construction enshrined in the Latin tag, "*Inclusio unius est exclusio alterius*", we regarded the omission of any reference in paragraph 14.11 along the lines "on the basis of the original Tribunal's findings of fact" as a significant one. The President has stipulated in terms that, unless otherwise directed, that is the basis on which reconsiderations are to be conducted in the circumstances covered by paragraphs 14.1 and 14.8. If he had intended that the same should apply in the circumstances covered by paragraph 14.11, he would have said so. He did not. The conclusion is therefore that that was not his intention.

34. We see nothing in terms in which the Vice President granted permission to appeal to the Immigration Appeal Tribunal or in which that Tribunal remitted the appeal for rehearing to indicate that it was the intention of either of them that the reconsideration now before us should be carried out on the basis of the adjudicator's original findings of fact. We see no grounds for inferring any such intention on the part of either of them. Accordingly, we conclude that the reconsideration is to be carried out on the basis referred to in paragraph 14.11, namely that we are to "proceed to re-hear the appeal", and arrive at our own findings of fact on the basis on the evidence adduced before us. We therefore ruled against the respondent on this issue.

Documentary evidence

35. There is a substantial amount of documentary evidence before us, filed on behalf of both parties. For reasons which will become apparent, we do not find it necessary to itemise that evidence, or to refer to it in any further detail.

Oral evidence

36. The only evidence adduced before us was that given by the appellant himself. He gave his evidence in Tigrinya via an official interpreter. It was clear to us that the appellant and the interpreter understood each other without difficulty, and this was confirmed to us by the appellant at the start of his evidence.

37. The appellant's evidence in chief was relatively brief. He adopted the evidence contained in his original undated statement (pages A1 to A5 of the appeal bundle) made at the time of his asylum application, the replies given by him during his asylum interview (pages B1 to B19) and his recent witness statement dated 23 May 2005. It will suffice for present purposes to record that the appellant's evidence in chief was substantially in the terms in which it is summarised in paragraphs 2 to 4 (inclusive) of this determination.

38. The appellant was cross-examined at considerable length and in great detail by Ms Donnelly. We mean no disrespect to her when we say that her cross-examination revealed the dangers inherent in adopting what may perhaps fairly be described as the “Micawber approach” to cross-examination, namely challenging a witness on each and every aspect of his evidence in the hope that, eventually, "something will turn up". Whilst Ms Donnelly’s cross-examination disclosed certain minor discrepancies in the appellant's account, e.g. that the medical notes adduced by him in evidence suggested that the injury to his eye had occurred during the middle of or at the end of 2001, rather than in June 2000 as claimed by him, and that the place

where he said that his injury had occurred was rather further from the border between Ethiopia and Eritrea than might be expected, nevertheless the longer that his cross-examination continued without disclosing any significant discrepancies in his evidence, the more firmly we became persuaded that his evidence was in fact true.

39. In arriving at our assessment as to the credibility or otherwise of the appellant's account, we have of course applied the appropriate burden and standard of proof applicable to appeals of this nature. For the avoidance of doubt on the point, we now record formally the burden and standard which we applied in so doing in the following terms.

Burden and standard of proof

40. As regards the appeal on human rights grounds, it is for the appellant to show that his removal from the United Kingdom would constitute an infringement of his rights under the European Convention on Human Rights and Fundamental Freedoms ("Human Rights Convention"). Where the right is not absolute but is subject to exceptions, it is for the respondent to show that there is a justification for any *prima facie* breach. In relation to Article 3, it is for the appellant to show that there are substantial grounds for believing that he would face a real risk of being subjected to treatment prohibited by that Article if he were to be removed from the United Kingdom.

Findings and conclusions

41. For the reasons stated above, by the time that the appellant's cross-examination had been completed, we were left in no real doubt that his account was true in all material respects. After hearing closing submissions from both representatives, we informed them to that effect. In particular, we informed them that we accepted the appellant's account of his detention following his refusal to undertake further military service, the ill-treatment which he received during that detention, and manner in which he and one of the other detainees had escaped from military custody and made their way to Sudan. We than invited Ms Donnelly to indicate whether she would still oppose the appellant's human rights claim in light of those findings of fact.

42. At that point, Ms Donnelly stated that, having regard to the country guidance determination of the Immigration Appeal Tribunal in *IN (draft evaders -- evidence of risk) Eritrea CG* [2005] UKIAT 00106, she would no longer seek to do so. She was plainly right to adopt that position. In light of the Tribunal's conclusions as summarised at paragraph 44 of that determination, it was clear there was no realistic basis on which Ms Donnelly would have been able to persuade us to the contrary. In the circumstances, the adjudicator's decision in relation to the human rights claim was plainly right, albeit that the route by which she arrived at that conclusion was not.

Reporting

43. It is intended this determination should be reported for what we have to say in relation to the basis on which a reconsideration should be carried out when an appeal

has been remitted to an adjudicator for a fresh hearing prior to 4 April 2005, but the rehearing has not taken place by that date.

Decision

44. The appeal on asylum grounds is dismissed. The appeal on human rights grounds is allowed.

Signed Dated: 5 September 2005

L V Waumsley
Senior Immigration Judge

Approved for electronic distribution