HY (Medical Evidence) Turkey CG [2004] UKIAT00048

IMMIGRATION APPEAL TRIBUNAL

Heard at: Field House
On: 24 February 2004
Prepared: 26 February 2004

Determination notified
17 March 2004

Before:

Mr L V Waumsley (Chairman)
Mr F Jamieson

Between

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

For the Appellant: Mr D Saldanha of Howe & Co, solicitors
For the Respondent: Mr P Deller, Home Office Presenting Officer

1. The appellant, a citizen of Turkey, appeals with leave against the determination of an adjudicator (Mr B W Dawson), sitting at Cardiff Magistrates Court, in which he dismissed the appellant's appeal on both asylum and human rights grounds against the respondent's decision to refuse his application for asylum and to give directions for his removal from United Kingdom as an illegal entrant.

2. The appellant arrived in the United Kingdom in April 1998. He applied for asylum in May 1998. The grounds on which he did so may be stated shortly. He is of Kurdish ethnicity, and comes originally from Bingol province. However, he moved from his home village to Istanbul in 1995. He was detained by the Turkish authorities on two occasions. The first time was in December 1994 prior to his departure from his home village. He was accused by the local *jandarma* of supplying food to members of the PKK (Kurdistan Workers Party). He was detained and held for five days, during which time he was ill-treated. However, he was released without charge at the end of that period.

3. His second detention took place in March 1996 in Istanbul. He was stopped by the

police whilst leaving a building occupied by members of HADEP, the pro-Kurdish nationalist party. He was held on this occasion for either three or five days (his evidence is unclear on the point) before being released once again without charge.

4. In 1996 or 1997, he attended a May Day demonstration, and was photographed taking part in the demonstration. A copy of the photograph in question appears at page C3 of the appeal bundle. The photograph was published in a newspaper, and subsequently in a magazine. On 25 June 2003, some three weeks prior to the hearing before the adjudicator, an order was issued by a judge in Kadikoy Second Crime Court for the appellant's detention in connection with offences allegedly committed by him in 1996.

5. The appellant claimed asylum shortly following his arrival in the United Kingdom on the grounds that if he were to be returned to Turkey, he would be detained by the authorities, and would then be at risk of persecution and/or ill-treatment at their hands in breach of his human rights. He did not seek to claim that there was any other reason why he would be at risk on return.

6. In his determination, the adjudicator rejected the whole of the claimant's evidence. He concluded at paragraph 19 of his determination that the claimant had "fabricated his entire claim". He rejected the claimant's evidence that he had been arrested and ill-treated on two occasions as claimed. It was on that basis that the adjudicator dismissed the appellant's appeal on both asylum and human rights grounds.

7. In his submissions on behalf of the appellant, Mr Saldanha based his challenge to the adjudicator's determination on a number of separate grounds. We will therefore deal with each of those grounds in turn.

Assessment of medical evidence

8. It was submitted on the appellant's behalf that the adjudicator had erred in his assessment of the medical evidence which was before him. That evidence was limited to a report prepared by Dr P Steadman on 8 October 2002, following a consultation which had taken place three days earlier. In that report, Dr Steadman stated at page 17 *inter alia*:

> "These tests are important tests of concentration and reflect what was apparent clinically that this gentleman has some loss of concentration which is probably due to a combination of his anxiety and anger.
>
> Also he is not fully literate; he is disorientated in time and is lacking in numeracy.
>
> It is possible these difficulties may combine to affect his ability to present his case in a fully coherent way and you may wish to give consideration to them".

9. In his determination at paragraph 19, the adjudicator stated *inter alia*:

> "He [Dr Steadman] diagnoses some loss of concentration which he attributes to the Appellant's anxiety and anger. The Appellant did not seem unduly anxious

at the hearing and I am satisfied fully comprehended the questions being put to him and was given the time and opportunity to answer".

10. It was argued on the appellant's behalf by Mr Saldanha that in arriving at that assessment, the adjudicator had erred in failing to take proper account of the medical opinion of Dr Steadman. In support of that submission, he cited the judgment of the Court of Appeal in the case of *N-BCM (children)* [2002] 2 FLR 1059. He relied in particular on paragraphs 44, 46 and 65 of that judgment.

11. *N-BCM* was a case involving the custody of a three-year-old child referred to as "M". The principal issue involved was the question of the fitness of M's father to have custody of him. In his judgment, Lord Justice Thorpe stated *inter alia*:

> "44. Accordingly, the judge went on to consider, under a distinct subheading "The Personality and Capabilities of the Father", the evidence and submissions advanced. This makes up seven full pages of his judgment. He correctly cited the evidence of Dr Black to which I have already referred. However, in his citations from the evidence of Dr Asen, he seems to me to focus more on attachment considerations -- that is, M's attachments to Mr G [his paternal uncle] -- rather than on personality disabilities. Furthermore, in his citations from Dr Freedman's first report he seems to omit her clinical assessment of the father's emotionally unstable core. He does, however, centre on the passage in her second report which I have cited. But he rejects it on his differing assessment of the father's performance on practical levels since his release from prison. In that he was plainly justified. *But he went on also to reject her assessment of the father's emotional instability by relying on his own assessment of the father in the witness box*. He said at page 41, line 14:
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> > "I myself have seen the father at length, both in the courtroom throughout the hearing and during the course of his long day in the witness box. Whilst paying full weight to the assessments and opinions of the experts, I am entitled to, and indeed must, make my own assessment too. I found him to have considerable intelligence and to be thoughtful in his answers. He was not shown by cross-examination to have been untruthful or unreliable on any significant issue of fact, although I am well aware that there are numerous points, for example as to whether he was "on the game" or a "rent boy" in the early/mid-1980s, on which his answers are in conflict with statements in contemporary documents".
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> ....
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> 46. Of course the assessment of the father's credibility was primarily the judge's task. But the assessment of his core personality and the extent to which damage resulting from his early life experiences was disabling and permanent was primarily for the experts, whose professional training, qualification and clinical expertise equipped them for the task. *In my judgment, given that the experts were unanimous on this vital aspect, it was not open to the judge to reject their conclusions, either on the basis of his own impressions of the father or upon the basis of the prejudice to the father's case caused by management decisions of the local authority and prison authority during the interlocutory stages.* The assessment of the section 31 threshold could not admit of any

redress to the father for that factor, nor could the assessment of considerations relevant to M's welfare" (emphasis added).

12. In his judgment, Lord Justice Robert Walker stated *inter alia*:

> "65. Moreover the judge gave no real explanation of why his conclusion appeared so inconsistent with the views of the guardian and the experts. Whatever difficulties he had in preparing and giving his judgment (and I do not in any way underrate those), this was a very serious defect in his judgment. *It was not sufficient for the judge simply to say or imply that he took account of the views of the guardian and the experts but that he took a different view.* Even the most experienced and insightful family judge does not have the specialised training and skills of consultant psychiatrists and paediatricians who spend their lives working with damaged adults and children. Discourse between a judge and a witness in the course of a contentious hearing is very different from that which can take place in a consulting room" (emphasis added).

13. It was on the basis of those extracts from the judgment of the Court of Appeal in *N-BCM* that Mr Saldanha sought to argue before us that the adjudicator had erred in his assessment of the credibility of the appellant's evidence because he had failed to take proper account of the opinions expressed by Dr Steadman in his report in the terms set out above.

14. We disagree. It is clear from the extract from the adjudicator's determination at paragraph 19 which we have also set out above that the adjudicator was aware of Dr Steadman’s opinion that, at least on the single occasion when he saw the appellant, he displayed "some loss of concentration", that he was disorientated in time and lacking in numeracy, and, and that it was possible (sic) that those difficulties might combine to affect the appellant's ability to present his case in a fully coherent way. We see nothing in the determination to suggest that the adjudicator did not take that medical opinion properly into account when arriving at his assessment of the credibility or otherwise of the appellant's evidence.

15. However, Dr Steadman was not present on the occasion when the appellant gave his oral evidence before the adjudicator in July 2003, some ten months later. He was therefore naturally in no position to express an opinion as to whether or not the appellant's ability to present his evidence on that occasion in a "fully coherent way" was affected to any significant extent by the factors identified in the relevant section of his report.

16. On the other hand, the adjudicator was present whilst the appellant was giving his oral evidence. As an experienced member of the judiciary, the adjudicator was as well placed as anyone else to assess the truthfulness or otherwise of the appellant's evidence. Indeed, that is one of the primary duties of an adjudicator hearing an appeal of this nature. He had before him the evidence of his own ears and eyes that "the appellant did not seem unduly anxious at the hearing and I am satisfied fully comprehended the questions being put to him and was given the time and opportunity to answer". He was entitled to take the evidence of his own ears and eyes into account in arriving at his assessment of the appellant's evidence. He was not bound to follow blindly the opinion of a medical practitioner expressed some ten

months previously following a single consultation with his patient.

17. Assessment of medical issues is a matter on which an adjudicator should of course pay due deference to (but not necessarily follow blindly) the opinions expressed by a competent medical practitioner. However, the assessment of the credibility or otherwise of the evidence given before him is, and must necessarily, remain a matter for the adjudicator alone. In arriving at that assessment, he must take all relevant evidence (including expert evidence) into account. Nevertheless, the assessment of credibility is a matter for him alone.

18. In the present instance, we see nothing in the determination read as a whole to suggest that the adjudicator did not take proper regard of the opinion expressed by Dr Steadman as to the appellant's ability to present his evidence in a "fully coherent way". We see no arguable grounds for interfering with the adjudicator's conclusions in that regard.

Rejection of court document

19. The next ground raised by Mr Saldanha was that the adjudicator had erred in rejecting the court document referred to at paragraph 18 of his determination. The document in question purports to be an order issued by a judge of the Kadikoy Second Crime Court on 26 June 2003 for the appellant's detention in connection with offences allegedly committed in 1996. A copy of that document and a translation of it appear at pages 36 and 37 respectively of the appellant's bundle.

20. The adjudicator's conclusions in relation to that document appear at paragraph 18 of his determination in the following terms:

> "I reject the note from the Judge as highly implausible. I do not see why such a document would be prepared in 2003 in respect of activities by someone back in 1996 who remained in the country until 1998".

21. In support of his submission that the adjudicator had erred in rejecting the authenticity of that document, Mr Saldanha referred us to paragraph 4.5.4 of a document entitled "Report of fact-finding mission to Turkey" prepared by the Home Office Country Information and Policy Unit in relation to a mission carried out between 17 and 23 March 2001 (page 62 of the appellant's bundle). The paragraph in question reads as follows:

> "As regards the length of time such intelligence material is held, a well-known human rights activist showed us a copy of an indictment with which he had been served and in which he had been charged (amongst other things) with an alleged offence under Article 312 of the Criminal Code *[incitement to racial, ethnic or religious enmity]* alleged to have been committed ten years ago. This, he felt, clearly demonstrated the extent to which intelligence material is both recorded, retained and used against someone even after an extended period of time. He also mentioned another example of a charge being brought against a particular individual some 22 years after the alleged event".

22. He argued that this extract from a document prepared by the Home Office itself

shows that the adjudicator had erred in rejecting the authenticity of the judge's order. We disagree. There is a clear distinction to be drawn between the Turkish authorities resurrecting stale offences or charges in order to deal with a perceived troublemaker who is *currently* causing problems to them and the situation in which the appellant found himself. The resurrection of stale offences or charges is clearly a convenient way for an oppressive regime to bring pressure to bear on, or otherwise deal with, someone who is currently causing problems from their point of view.

23. However, the appellant's situation is entirely different. By his own account, he had left Turkey some five years previously in April 1998. He had last been detained by the Turkish authorities in March 1996, more than seven years prior to the date of the alleged court order. He had remained at his own home in Istanbul for a further two years until April 1998, and had, according to his own evidence, been "kept under observation by the authorities outside his house until he left in 1998".

24. Whilst the adjudicator rejected those aspects of the appellant's evidence (indeed, as stated above, he rejected the appellant's evidence in its entirety), nevertheless even if those aspects of the appellant's evidence were true, the adjudicator was plainly entitled to regard it as utterly implausible that if the Turkish authorities genuinely wanted the appellant for offences committed in 1996 they would fail to arrest him during the period of two years during which he remained under observation in his own home following his last release in March 1996, or that they would then wait a further five years, during which period he was not even in the country, before issuing an order for his arrest. It is beyond belief that this could have happened. The adjudicator was manifestly entitled to reject the court order as a fabrication.

Photograph of demonstration

25. The third ground raised by Mr Saldanha was that the adjudicator had erred in his assessment of the evidence adduced on the appellant's behalf in the form of a photograph showing his attendance at a May Day demonstration which took place in either 1996 or 1997 (the appellant's evidence was inconsistent as to the date). This is the photograph, a copy of which appears at page C3 of the appeal bundle.

26. The appellant's case was that he was wanted by the Turkish authorities because that photograph appeared in both a newspaper and a magazine. The adjudicator's conclusions in relation to the photograph appear at paragraph 15 of his determination in the following terms:

> "I think it significant that the Appellant was unable to produce either Article. The photograph reveals that the appellant was involved in a protest but not having had the opportunity of inspecting the origin [this is clearly a misprint for "original"] in the light of the conclusions which I reach below. I am not satisfied that this alone was enough for me to accept the Appellant's story".

27. At the hearing before us, Mr Saldanha confirmed that he was unable to identify either the newspaper or the magazine in which the photograph in question was allegedly published. He did not know whether there was any text with the photograph when it was handed by the appellant to a representative of the respondent at the time of his asylum interview. He could say no more than that he believed that the original

photograph had been handed by the appellant to the respondent's representative at that time.

28. In the absence of any evidence as to the identity of the newspaper and the magazine in which the photograph had allegedly been published, or any evidence to indicate that the Turkish authorities had identified the appellant as having participated in the demonstration in question, or that they were looking for the appellant as a consequence (his own evidence, albeit rejected by the adjudicator, that he was kept under observation by the authorities outside his house until he left Turkey in April 1998 is cogent evidence that this was *not* the case), the adjudicator was properly entitled to conclude that the photograph alone was not enough to persuade him to accept the appellant's story. We see no arguable grounds for interfering with that conclusion.

29. However, even if we were persuaded that the adjudicator was wrong in his conclusion, the photograph, taken at its highest, shows no more than that the appellant attended a public demonstration which took place *at least* 6¾ years ago. There is no *evidence* of any kind that the Turkish authorities identified the appellant as one of the participants in that demonstration, or that they have ever sought to detain him as a consequence. This ground clearly discloses no arguable basis for interfering with the adjudicator's determination.

Suicide risk

30. The final ground raised by Mr Saldanha was that the adjudicator erred in failing to deal with the risk that the appellant would commit suicide if he were to be returned to Turkey. In this regard, the appellant is on stronger ground. It is unfortunate that, in what is otherwise a careful and commendable determination, this experienced adjudicator has not dealt with that particular issue. However, that is an omission which we ourselves are in a position to remedy.

31. The claimed risk that the appellant would, or might, commit suicide on return to Turkey is based solely on the medical report of Dr Steadman referred to above, i.e. the report prepared on 8 October 2002. That report is now some 17 months out of date. However, in the absence of any subsequent medical evidence, we proceed *de bene esse* on the basis that it still remains Dr Steadman's assessment of the suicide risk so far as the appellant is concerned.

32. Dr Steadman's conclusions in relation to the suicide risk appear at page 14 of his report in the following terms:

> "It is difficult to give a prognosis with regard to suicide in any given individual but one can look at risk factors and the following would appear to be risk factors in this case;
>
> A. His past psychological difficulties.
> B. His current psychological difficulties (see below).
> C. His physical difficulties (physical difficulties predispose to mental health difficulties).
> D. His statement that he fears his life would be in danger were he to

return to Turkey.

E. His statement that he would kill himself were he to return to Turkey.

In my view these factors would be likely to combine to place such a person at significant risk of suicide".

33. In addition, at page 20 of his Report, Dr Steadman has stated:

> "I have already commented upon what I see as a significantly increased risk of suicide in this gentleman were he to be ordered back to his country".

34. It was Mr Saldanha's submission, based on the extracts from the judgment of the Court of Appeal in *N-BCM* (above), that the adjudicator was bound to accept the accuracy of the opinions expressed in Dr Steadman's report that there would be a "significant risk" that the appellant would commit suicide if he were to be returned to Turkey. By implication, this Tribunal was bound to do likewise. We reject that submission.

35. The situation of the appellant is entirely different from that of the father in *N-BCM*. The quality and reliability of the medical evidence in the two cases is also entirely different. In the case of *N-BCM*, there was medical evidence from three separate doctors. As recorded at paragraph 46 of the judgment of the Court of Appeal, they were unanimous in their assessment of the father's core personality and the extent to which damage resulting from his early life experiences was disabling and permanent. The Court of Appeal held that, given that the experts were unanimous, it was not open to the judge to reject those conclusions based, at least in part, on his own impressions of the father. We see nothing in the judgment of the Court of Appeal to suggest that there were thought to be any unsatisfactory aspects of the medical evidence provided by the three doctors in question.

36. Regrettably, the same cannot be said in relation to Dr Steadman's report. At page 14 of that report, he has identified in terms the five risk factors which, in his opinion, combined to place the appellant at "significant risk of suicide". The first two factors (A and B) were the appellant's past and current psychological difficulties. With respect to Dr Steadman, it is difficult to see what these "psychological difficulties" were, or could have been. At page 19 of his report, he has stated *inter alia*:

> "Fortunately, so far, this gentleman appears to have *avoided developing* a syndrome of either post traumatic stress disorder or depression although does (sic) appear angry and anxious" (emphasis added).

37. In light of Dr Steadman's diagnosis that the appellant was *not* suffering from either of those conditions, and his failure to indicate anywhere else in his lengthy report that the appellant was suffering from any other identifiable mental condition (apart possibly from anger and anxiety), the "psychological difficulties" referred to by him at factors A and B remain elusive, to put it at its lowest.

38. Factor C is identified as the appellant's "physical difficulties". Once again, it is difficult (if not impossible) to ascertain from Dr Steadman's report the nature of these "difficulties". He has identified at page 10 of his report a number of scars which were

allegedly caused by the ill-treatment which the appellant received at the hands of the Turkish police. They comprise a small area of missing hair (sic) under his chin, a small scar approximately 2 cm long on his left middle finger, and an attenuation in the length of that finger of about ½ cm allegedly caused when electric shocks were administered to him. At paragraph 11 of his report, Dr Steadman has identified a number of other scars which the appellant did not claim to have been caused by ill-treatment. They included such scars as a small abrasion on his left shin sustained whilst playing football, a small scar on his left wrist caused whilst he was a child, abrasions on both kneecaps also dating back to his childhood, and the like.

39. At page 12 of his report, Dr Steadman has referred to the appellant's statement to him that he suffered continuing discomfort in his left jaw at the joint, and that this tended to ache if he laid on his side or if he chewed anything hard. Apart from these matters, Dr Steadman has recorded at page 13 of his report that the appellant had told him that, apart from those problems, he was currently physically well. With respect to Dr Steadman, the appellant's "physical difficulties" as identified by him in his report are, even when viewed cumulatively, of a minor, indeed trivial, nature.

40. Factor D is no more than an assertion made by the appellant himself at a time when he was attending upon Dr Steadman, not for the purposes of receiving *bona fide* medical attention, but for the *sole* purpose of obtaining a favourable medical report in support of his asylum application. His assertion as recorded by Dr Steadman that he feared that his life would be in danger on return to Turkey was, taken at its highest, one which Dr Steadman ought to have approached with caution. He should have been alive to the possibility that it was no more than a self-serving assertion made by an asylum seeker who had been brought to see him for the sole purpose of obtaining a favourable medical report.

41. In light of the adjudicator's conclusion that the claimant's account was a fabrication in its entirety, the appellant's assertion made to Dr Steadman that he feared that his life would be in danger on return to Turkey provides an uncertain basis for Dr Steadman's conclusion that the claimed fear (even if true) would give rise to an increased risk of suicide on return.

42. Factor E falls into the same category. Once again, it was an assertion which Dr Steadman should have approached with caution. It is one with which most (if not all) adjudicators will be familiar.

43. In light of Dr Steadman's conclusion as recorded at page 19 of his report that the appellant had *not* developed either post-traumatic stress disorder or depression, we are bound to say, with respect to him, that we find it difficult (if not impossible) to see how he could properly have concluded, as he did, at page 14 that the appellant would be at "significant risk of suicide" or, at page 20, that there would be a "significantly increased risk of suicide" if the appellant were to be ordered back to Turkey. This Tribunal is slow to reject medical opinions expressed by properly qualified medical practitioners. However, in the present instance, we have little (if any) hesitation in so doing. On the contrary, we are satisfied that Dr Steadman's conclusions in relation to the risk of suicide in the case of this particular appellant are manifestly unsound and unsustainable. Having determined that the appellant was not suffering from depression, Dr Steadman’s assessment without further explanation that he was

nevertheless still at a “significant risk of suicide” may fairly be characterized as perverse.

44. In arriving at that conclusion, we have taken account of the fact that, as disclosed by Dr Steadman at page 1 of his report, he saw the appellant on only a single occasion. In addition, there is no indication that he had access to the appellant's clinical records. There is no indication that Dr Steadman had any communication with the appellant's own general practitioner (if any). Despite the absence of that essential background material, Dr Steadman has nevertheless arrived at his diagnosis of a "significant risk of suicide" in the appellant's case based on but a single consultation. With respect to Dr Steadman, we would respectfully question whether it is possible for *any* psychiatrist, however well qualified and experienced, to arrive at such a definite diagnosis on the basis of a single consultation and without any access to the patient’s previous medical records. As Dr Steadman himself commented at page 14 of his report, “It is difficult to give a prognosis with regard to suicide in any given individual”. In the circumstances, it is all the more surprising that he saw fit to express a diagnosis in the terms in which he did.

45. On a more general note, we observe from the preface to Dr Steadman's report at page 4 that he stated that he had carried out in excess of 5,000 medical assessments on behalf of the Benefits Agency Medical Services. On the following page of his report, he disclosed that he has carried out over 1,500 medico-legal assessments for solicitors in relation to people claiming physical injuries resulting from road traffic accidents, assaults and other causes. On the same page, he stated that during the preceding five years, he had produced over 2,000 medical assessments on asylum seekers. On the usual basis of 250 working days per year, this discloses that during that period of five years, Dr Steadman had been producing medical assessments on asylum seekers alone (disregarding for the moment any assessments carried out on behalf of the Benefits Agency Medical Services and claimants pursuing physical injuries claims) at the rate of approximately 1.6 assessments *per day*.

46. Whilst that rate of output of medical assessments is impressive, to be sure, we are bound to say that it must inevitably give rise to justifiable concerns as to the reliability of those assessments. When a medical practitioner is engaged for such a substantial proportion of his professional practice in producing medical reports in support of the claims of asylum seekers and appellants, his ability to maintain the impartiality required of an expert witness must inevitably become increasingly difficult, however hard he may attempt to do so.

47. In light of the unfavourable view which we have formed in relation to Dr Steadman's report in the present instance, particularly in relation to his assessment of the claimed suicide risk in the appellant's case, we are bound to say that adjudicators before whom his reports are placed in future would be advised to approach their reliability with due caution. In particular, it should not be assumed that merely because a qualified medical practitioner has expressed an opinion, that opinion must necessarily be correct or reliable.

48. Reverting to the case of the appeal before us, we note from page 15 of Dr Steadman's report that he has recorded that, at least at the time when the appellant

came to see him in October 2002, he had "never been on any psychological medication and has never received any counselling". In light of the fact that Dr Steadman concluded that the appellant was at "significant risk of suicide", it may be thought surprising, to put it at its lowest, that he did not see fit to suggest that psychological intervention and/or counselling should be sought as a matter of some urgency. There is no indication in the evidence before us that such intervention or counselling has been sought by the appellant during the period of some 17 months which has elapsed since that time.

49. Whilst it is unfortunate that the adjudicator did not deal with the issue of the claimed suicide risk in his determination, nevertheless it is clear to us that, if he had done so, he could not properly have arrived at any conclusion other than that the evidence was manifestly insufficient to show, even to the lower standard of proof applicable to asylum and human rights appeals, that was a real risk that the appellant would commit suicide either before or after his return to Turkey. On the evidence before us, we certainly have no hesitation in arriving at that conclusion.

50. Despite the submissions made on the appellant's behalf by Mr Saldanha, we are satisfied that there is no arguable basis for interfering with the adjudicator's findings and conclusions. They are findings and conclusions which were properly open to him on the evidence.

51. This appeal is dismissed.

Signed Dated

L V Waumsley
Vice President