

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76540

AT AUCKLAND

Before: B A Dingle (Member)

Counsel for the Appellant: J Vikrant

Appearing for the Department of Labour: No Appearance

Date of Hearing: 22 & 23 July 2010

Date of Decision: 31 August 2010

DECISION

INTRODUCTION

[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of Bolivia.

[2] The appellant is a single woman in her mid-20s of Qechua ethnicity. She claims that she is at risk of being persecuted on return to Bolivia because of her family's community political involvement in the issues of water and land distribution in her home province. One of the appellant's brothers, BB, is a citizen of New Zealand, having been granted recognition as a refugee by the Authority (differently constituted) in 2002 on the basis of his involvement in community political issues.

[3] The issue to be determined in this case is whether or not the appellant's account is credible.

THE APPELLANT'S CASE

[4] The appellant is one of six children born to Qechuan parents who lived and worked in Z village in Bolivia. At the time of the appeal hearing, the appellant had had no contact with her family (other than BB) since December 2000 and has no knowledge of their whereabouts.

[5] From the time of her birth until December 2000, the appellant lived with her parents and her siblings in a house in Z village. Her father worked as a farm labourer and her mother was a housewife. As far as the appellant is aware, her parents did not own any farmland or any other houses other than the one they lived in in Z village.

[6] The appellant's maternal grandparents lived in Y village, a small distance north of Z village. The grandparents had a house and a small plot of land where they grew food and raised animals. The appellant did not know of, or meet any other extended family members, such as her paternal grandparents, aunts, uncles or cousins.

[7] The appellant began attending primary school in Z village when she was approximately seven years of age. She spent five years at primary school and then attended a secondary school in Z village for seven years.

[8] Throughout her childhood, the appellant became aware that her father was involved in community political matters, in particular land and water allocation issues. The appellant's father helped to represent the community's views on such issues and attended regular meetings and protests. Because the father spoke Spanish, he also facilitated dialogue between his Qechua community and others, including government officials. The appellant was aware of this because it was generally known in the community and people would seek the father's help in relation to such matters.

[9] The appellant also became aware that there were protests and blockades in relation to water resources in the year or years leading up to December 2000. Her father and maternal grandfather may have been involved in these although the appellant does not know the details of their participation.

[10] In approximately mid-2000, the appellant's second eldest brother, BB, left home permanently. The appellant was not aware of the circumstances surrounding his departure or where he was living.

[11] In December 2000, the appellant's oldest brother, AA, died. He worked as a tractor or truck driver outside of Z village and would return home periodically

between jobs. One day his body was returned to the family home and the appellant is not aware of any explanation having been given for his death. The family noticed that there were signs of physical mistreatment on his body, such as a broken leg, bruising on one side of his body and blood on his face. The family were shocked and traumatised by AA's death and held a funeral in Z village the day after his body was returned.

[12] Soon after AA's death, the appellant was sent to live with her maternal grandfather in Y village. By this time, her grandmother had died. No other members of her immediate family were sent with her. The appellant was not told why she was being sent to live with her grandfather or where her family were going and what they were to do. She was simply told that her parents would be back to collect her at some stage. While living at her grandfather's, the appellant continued to attend secondary school in Z village, travelling there each day. After completing school in 2003, she assisted her grandfather with his land and animals.

[13] In mid-2004, there was a protest being held in Y village relating to provincial administration and water issues. The appellant's grandfather attended the protest because he was threatened that if he did not, he would be denied access to water. Some hours later, the appellant was told that her grandfather had been injured. She ran to the site of the protest and found her grandfather, seriously injured. She found help to carry him home but by the time they arrived at home, the grandfather had died. Because she was alone, the appellant prepared his body for the funeral and buried him the next day.

[14] As he lay dying, her grandfather told the appellant to run away from Y village and that she must contact BB in New Zealand whose number he had given her some time before. As soon as she had buried her grandfather, the appellant decided to abandon the home and search for work in the nearby town of X. The appellant remained in X town for approximately four months, taking lodgings in a house while she searched for work. She was unable to secure a permanent job. In November 2004, in search of better employment, the appellant moved to Santa Cruz, the largest city in Bolivia. Through an agency, she found a job as a cleaner in ABC Hotel in the central city. She worked there from January 2005 until January 2008. For the entire time that she lived in Santa Cruz (from November 2004 to March 2008), the appellant rented a room in a house from a family. Although she had BB's telephone number from 2004, the appellant did not call him because she did not know how to make an international telephone call.

[15] For the entire duration of her stay in Santa Cruz, the appellant was fearful

for her safety, specifically that she may be targeted for harm on account of her father's and grandfather's political activities.

Return to Y village

[16] In April 2007, the appellant returned to Y village to pay respects at her grandfather's grave. When she saw that his house was empty she went inside. Almost immediately there was a knock on the door and when she answered, two men put guns to her head. They asked her where her family was and when she was unable to tell them, they accused her of lying and began beating her. She does not recall how the incident ended because she lost consciousness and woke to find herself in a neighbour's house. After staying the night, the neighbour assisted the appellant to travel back to X town from where she left for Santa Cruz.

[17] Approximately two months later, the appellant discovered she was pregnant. Pregnancy termination is not legally available in Bolivia and so the appellant let the pregnancy continue. However, she felt traumatised by her predicament and so in October 2007, she rang BB in New Zealand. She explained her circumstances and he counselled her to try and organise travel to New Zealand as soon as possible after she had given birth. The appellant continued to work until January 2008.

[18] In January 2008 the baby was born but died approximately six weeks later due to medical problems. Almost immediately the appellant decided to make arrangements for her travel to New Zealand.

[19] In early 2008 BB sent a completed sponsorship form to the appellant so that she could make her visitor visa application. The appellant knew where the DHL office in X town was so she chose to have the package sent there. She then relied on a travel agent in X town to help her complete arrangements. The agent accompanied her to La Paz to the embassy to submit her visa application. The appellant then returned to Santa Cruz for two or three weeks before travelling back to X where she boarded an airline flight which would eventually bring her to New Zealand, arriving here on 22 March 2008.

[20] When the appellant first arrived here, she felt traumatised and fearful and did not want to talk in detail about her experiences in Bolivia. In October 2008 she applied unsuccessfully for a New Zealand work permit.

[21] On 19 October 2009, the appellant lodged her claim for recognition as a

refugee with the RSB. On 20 November 2009, she was interviewed by a refugee status officer. A decision declining her claim for refugee status was delivered on 18 May 2010 and it is from that decision that the appellant now appeals.

[22] The appellant says that she cannot return to Bolivia because she will be at risk of being targeted for serious harm by people who opposed her family's political activities, including those of her father, grandfather and BB. She claims that this risk exists throughout Bolivia. She also claims that she is at risk of harm because she is a single woman without protection from her family.

BB's evidence

[23] BB gave oral evidence on the second day of the appellant's appeal hearing. At the outset it is pertinent to note that BB's evidence, particularly in relation to the location of the family home in X village and the number of years they lived there, was characterised by vagueness and a discernible lack of willingness to answer the questions put to him. At several points he either refused to answer questions or did not address the question asked in his response, repeatedly asserting that the Authority needed to ask more specific questions. Because of this evasiveness the Authority has used its best endeavours to summarise what it understands BB's final version of evidence to have been.

[24] BB confirmed that his family, including parents and all siblings, had lived in the family house in X village from the time that he was born until he left in mid-2000. He also confirmed that, as far as he knew, his parents and siblings remained in the house in Z village once he was in New Zealand.

[25] BB believes that all of his own difficulties and those of the appellant are related to their father's profile as a representative of farmers' interests in political disputes about land and water.

[26] As to contact with the appellant, BB confirmed the appellant's evidence that he did not have contact with her until 2007 when she rang him from Bolivia. He encouraged her to travel to New Zealand once her baby was born.

[27] BB said that when the appellant arrived in New Zealand she was not in good physical or mental health and therefore they did not discuss her experiences in Bolivia or whether she should apply for refugee status.

[28] As to his parents and other siblings, BB said he had not made any specific efforts to try and locate them although he reads parts of a Bolivian newspaper to

see if he can see their names.

[29] BB believes that the appellant will be at risk of being persecuted should she now return to Bolivia because of the father's political activities.

Documents and submissions

[30] Counsel provided opening written submissions and a bundle of documents on 16 July 2010. Counsel also made oral submissions at the hearing.

[31] During the appeal hearing the Authority disclosed to the appellant a publication copy of BB's refugee appeal decision and a copy of BB's written statement (dated 13 September 2001) in support of his refugee appeal.

[32] On request of counsel, leave was granted for the submission of DNA evidence to prove that the appellant and BB are siblings. This issue was not raised by the Authority but had been raised by the RSB in the appellant's interview and counsel wished to address it. On 4 August 2010 counsel advised by way of letter that the appellant no longer wished to provide the evidence because it was too costly to obtain.

THE ISSUES

[33] The Inclusion Clause in Article 1A(2) of the Refugee Convention provides that a refugee is a person who:

... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

[34] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

[35] Prior to determining the framed issues, it is necessary to make an assessment of the appellant's credibility and that of the witness, her brother BB.

[36] The Authority does not find the appellant or BB to have given credible evidence. The appellant's account was mobile and inconsistent to the extent that no part of her account is believed, except that she is a Bolivian national, is the sister of BB and was born and lived in Z village. Similarly, BB's evidence is rejected because it cannot be reconciled with the evidence he gave in support of his own refugee appeal in 2001 and is inconsistent in significant aspects with the evidence of the appellant. The specific reasons and findings follow.

Places of residence

[37] The appellant's evidence as to her places of residence was inconsistent. She told the RSB that she lived with her family in Z village from the time of her birth until she was approximately six years of age. She then moved, with her parents and siblings, to live with her maternal grandfather in Y village. The family lived there together until 2000, at which point her parents and three of her siblings departed to an unknown location and the appellant remained living with her grandfather in Y village.

[38] In contrast, the appellant told the Authority that she lived with her parents and siblings in Z village from the time of her birth until 2000, when she was 15 years of age. She said that she had never lived at her grandfather's house together with her parents or siblings and the first time she lived with her grandfather was in 2000. When asked to explain the discrepancy, the appellant told the Authority that at the RSB interview, she did not understand some questions and she had to think about all the things that had happened to her. The Authority does not accept this explanation because the interview transcript from the RSB hearing indicates that the appellant gave clear and unequivocal answers about when she had moved to live at her grandfather's house in Y village. The appellant was also given an opportunity to comment on the RSB interview report which clearly recorded her interview evidence that she had moved with her family to the grandfather's house in 1991. Despite making other comments in response to the interview report, neither the appellant nor her representative sought to correct the record as to her moving to Y village when she was six years old.

[39] The appellant's evidence as to her family residence was also inconsistent with the evidence provided by BB in support of his refugee appeal in 2001. BB's written statement, submitted in support of his appeal hearing, records the

following:

My family and I are from Arampampa, which is a very small village in the mountains above Z village. In our village, we are farmers. There is no electricity or telephone in our village. Z village is a small town/suburb near to X town. ...

When I was a child, I attended school near our village in the mountains. When I was nine or 10 years old I went to Z village to school. My father brought a very small place in Z village for my brother and I to live in so that we could attend school.

[40] BB gave the same account in his oral evidence to the Authority in his 2001 appeal hearing, asserting that his family lived in Arampampa village but that he himself had lived in Z village from the age of nine or 10 so that he could attend school. During his Authority hearing, BB said that as far as he was aware, his parents and siblings were still living in Arampampa village in 2001.

[41] When the appellant was asked to explain the inconsistency between BB's 2001 written statement and her evidence, she said that her evidence was what she remembers from age seven, and that BB's evidence is probably from earlier. When asked by the Authority whether she could recall any discussions in the family about Arampampa village or the family having lived there, she said that she had heard of it and that it was somewhere outside of Z village. She could not recall having been told that the family ever lived there. When the Authority told the appellant that BB had said his family were still living in Arampampa at the time of his Authority hearing in 2001, the appellant then suggested that perhaps Arampampa and Z village are right next door to each other and flow into each other. When examined by her representative later in the hearing, the appellant then asserted that Arampampa and Z village are one and the same place, Arampampa being the Qechua language name for Z village.

[42] BB was also unable to provide a sensible explanation for the inconsistent evidence. When the Authority asked him to explain the apparent inconsistency between his written statement of 2001 (in which he said that he had lived in Arampampa village until he was nine or ten and that his family were still living there in 2001) and his sister's evidence that the family had lived in Z village from the time of her birth until 2000, he could not give a sensible explanation. Initially, he claimed that Arampampa and Y village were the same place. When then asked to state where the first house that he had lived in was, BB stated that when he was born, his family lived in Z village and they continued to live there until 2000. When asked again to explain why, in his own refugee appeal, he had referred to living in Arampampa with his family, and going to school there, BB said that the Authority in his panel (differently constituted) "asked me [about living and

going to school] but never mentioned the specific time period” impliedly asserting that the vagueness about when he lived in Arampampa and attended school there explained his inconsistent evidence.

[43] BB then confirmed that he attended school in Z village and began at approximately four years of age. When the Authority asked him to explain his evidence in his own appeal, that he had not started at primary school in Z village until he was nine or ten years of age, BB said that perhaps there had been interpretation difficulties. When reminded that the information about him starting Z village school when he was nine or ten years of age was in his own written statement, BB was unable to give a sensible explanation.

[44] The discrepancies outlined above between BB’s 2001 evidence, the appellant’s RSB evidence and the evidence provided to this Authority by the appellant and BB, have not been adequately explained. The assertion that Arampampa is the same place as either Z village or Y village or both cannot be sensibly reconciled with BB’s written and oral evidence in his 2001 refugee appeal hearing that he moved from Arampampa to Z village when he was nine or ten years of age and his family remained in Arampampa in 2001. As noted above, the Authority found his responses to questions were intentionally evasive because he knew that the appellant had given evidence contradictory to evidence he presented in support of his own appeal in 2001. Also unexplained is the appellant’s claim to the RSB that she moved with her parents and siblings into her grandfather’s house in Y village when she and BB now claim that the family have lived continuously, at least since BB’s birth date in 1974, in the same house in Z village.

Paternal grandmother

[45] Also surprising was the revelation during the appeal hearing that the appellant had a paternal grandmother living in the Z village province that she had never known about.

[46] When the Authority asked the appellant to name those of her grandparents who were alive during her lifetime, she said she had two maternal grandparents, her grandmother who died in 1997 and her grandfather with whom she lived until 2004. When asked to comment on the fact that BB claimed in his refugee appeal to have been in hiding for three to four months at the house of his paternal grandmother in Arampampa village, the appellant was unable to explain why she had never known about that grandmother. She was asked three times by the

Authority to explain the apparent inconsistency. Her first two answers did not address the question. Her third response was that she did not have an answer and that she “did not know with what eyes BB was looking at them in” but that she (the appellant) knew that the grandparents were very good.

[47] When the Authority asked BB to explain the same apparent inconsistency, he suggested that his maternal and paternal grandparents had disagreed about his parents’ marriage and that only his maternal grandmother had come to visit the family home. He further asserted that the appellant may have been too young to remember her paternal grandparents.

Father’s community involvement

[48] The appellant told the RSB that her father was not involved in the community and was not a community leader or anything of that nature. When asked by the RSB whether her father had strong political opinions, or involvement or specific things that he did relating thereto, she said “No, I never heard”. This point was raised in the RSB interview report because her responses appeared to be inconsistent with BB’s claim in his refugee appeal that the father was a leader who mobilised local villagers to protest about water distribution issues. In her response to the interview report, the appellant (via her representative) asserted that because she was a girl and was not involved in political discussions, she was unaware of her father’s position.

[49] In contrast, to the Authority the appellant said that her father was a representative of the community and attended meetings relating to land and water issues. She also said that because her father spoke Qechua and Spanish, he acted as a facilitator in discussions about such issues. She confirmed that her father was well-known in the community for his representation and involvement and that she (the appellant) was aware of his profile throughout her childhood because it was generally talked about in the community and people came to the family home looking for her father for assistance with such matters.

[50] When asked by the Authority to explain why she told the RSB that her father was not involved in the community at all, she said that it was because her father was not the mayor of Z village, impliedly asserting that because he did not have a high profile formal political office, she did not mention his other community involvement to the RSB. When the Authority reminded her of the specific questions and answers recorded in the RSB transcript, which indicate that she was simply asked whether her parents had any community involvement, she

replied that her brother has told her that the father was a community representative since she has been in New Zealand, impliedly asserting that she did not know of it when she lived in Z village. When reminded that she had, during the previous day's evidence, told the Authority that she was aware of her father's community representation at the time she lived in Z village, she asked "Do I have to answer?"

[51] The Authority also pointed out that given her claim to fear for her safety for the three years that she lived in Santa Cruz and to have that fear because of her father's political activities, it is implausible that she would not have recalled those activities at the RSB interview. She said that she had mentioned some of the activities but some of the others, she had not known about - an assertion plainly contradicted by the RSB transcript.

Life in Santa Cruz

[52] The appellant claims to have worked as a cleaner at ABC Hotel in Santa Cruz from January 2005 to January 2008. When asked by the Authority to describe the hotel in terms of size and facilities, she said that the hotel has 40 rooms and four people worked there. In terms of other facilities, she said the hotel has a swimming pool and a big room where people could wait, like a lobby. She said there were no conference facilities, no restaurants and no other sports or recreational facilities. However, internet information available about the ABC Hotel at the same address contradicts the appellant's evidence in significant ways. In summary, the hotel is described as comprising 185 rooms, four restaurants and a convention centre with capacity for 3,600 persons. The hotel complex also includes: a health club, jogging track, soccer field, outdoor tennis court, volleyball court, fitness centre, beauty salon and children's playground. When the Authority outlined this information and asked the appellant to comment on the apparent discrepancies she initially asked whether or not she had to comment. Encouraged by the Authority to provide an explanation, the appellant suggested that she had mentioned a few of the facilities and had only described what she had seen, impliedly asserting that her description of 40 rooms and four workers described that part of the hotel which she had worked in. The Authority rejects the appellant's response. It is implausible that she could have worked at the hotel for four years as a cleaner and not been aware of approximately how many rooms there were or the extent of the facilities. The Authority finds that the appellant has

never worked at ABC Hotel.

[53] Further underscoring this finding, in her initial 2008 application form for a visitor visa the appellant listed two places of employment between May 2004 and 2008, both of which were in X town. When asked to explain those addresses, the appellant made no comment.

Arrangements for travel to New Zealand

[54] The appellant says that she made her arrangements to travel to New Zealand through a travel office in X town rather than Santa Cruz where she was living. She also had her brother send her the sponsorship form for her visitor's visa application to New Zealand to X town. Further, she departed Bolivia on a series of flights starting in X town.

[55] No sensible explanation was given for the fact that all of the appellant's travel arrangements and flights could have been made in the larger city of Santa Cruz, where she claims to have been living. When the Authority asked her why she had not arranged for the sponsorship form to be sent to Santa Cruz, the appellant said that she was familiar with the location of the DHL office in X town and so she chose to have it sent there. She went on to explain that because the sponsorship form was sent there, she also used a travel agent based there. As to departing from X town when she travelled to New Zealand, she said that the travel agent told her that that was where the flight started and so she travelled from Santa Cruz to X town there to catch it, despite the fact that the flight then made a transit stop through Santa Cruz.

[56] When asked to explain why the appellant would return to X town when, on her own evidence, she feared for her safety there, the appellant made no response.

[57] The evidence about returning to X town on two occasions after the incident in April 2007 was also inconsistent with her evidence to the Authority on the first day of the appeal hearing. After evidence about the incident in April 2007, the Authority asked the appellant whether, once she had returned to Santa Cruz in April 2007, she ever returned to X town again. She answered "No". The Authority then asked her whether, after her return to Santa Cruz in April 2007, she ever left Santa Cruz to visit any other place and again her answer was "No". When asked to explain the apparent discrepancy between this evidence and her later claim to have returned to X town twice in 2008, the appellant simply maintained her second

version of events that she went to X town to pick up the documents and to catch her flight. She asserted that because she had not stayed there for any length of time, she had earlier told the Authority she did not return.

Residential address given in visitor visa and work permit applications

[58] In the application for visiting New Zealand form, completed by the appellant in Bolivia and dated 11 March 2008, the appellant gave her address as being the street address of the family home in Z village. At A15, the applicant is asked to give the name and address for correspondence for this application. That section contains the appellant's name and the street address of the family home in Z village. It also contains two telephone numbers. Further down the same page, the applicant gave the street address of the family home in Z village as her residential address.

[59] When asked by the Authority to explain why she had listed her street address in Z village as being the address for correspondence about the application, she said that she continued to use the address of the family home even though she did not live there. When asked to explain whose telephone numbers appeared in A15, the appellant said that one of the telephone numbers was for the travel office in X town and the telephone number indicated to be a night-time telephone number was the home number of the travel agent who assisted her with the form. When the Authority then pointed out that the same "home" telephone number was included in the appellant's work permit application where she was asked to provide her residential address and telephone number in her home country (section B1) which she completed while in New Zealand, the appellant said that she used the travel agent's home number because the agent had told her that if she needed any assistance, she could call her. This explanation is fanciful. There is no indication on the visitor visa application form that any travel agent is acting on behalf of the applicant in her application. Furthermore, it is implausible that once in New Zealand and being asked to fill out her residential address and telephone number in her home country, the appellant would use the home number of a travel agent in Bolivia with whom she has had no ongoing contact. The evidence is rejected.

Conclusions on credibility

[60] For all the reasons outlined above, the Authority finds that the appellant's account of her difficulties relating to her family's political profile and activities since 2000 is wholly untrue.

[61] On that basis, the Authority finds that the appellant is a Bolivian national of Qechua ethnicity with a genuine passport, valid until October 2013. She has had no difficulties in relation to her family's political profile or activities at any time in Bolivia and there is no credible evidence that establishes that she will have any difficulties on return for any other reason. The appellant does not have a well-founded fear of being persecuted in Bolivia.

[62] The first framed issue having been answered in the negative, the second does not arise for consideration.

CONCLUSION

[63] For the reason outlined above, the Authority finds that the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"B A Dingle"
B A Dingle
Member