

071959605 [2008] RRTA 256 (27 June 2008)

DECISION RECORD

RRT CASE NUMBER: 071959605

COUNTRY OF REFERENCE: Colombia

TRIBUNAL MEMBER: Ms Philippa McIntosh

DATE DECISION SIGNED: 27 June 2008

PLACE OF DECISION: Sydney

DECISION: The Tribunal remits the matter for reconsideration with the following directions:

- (i) that the second and third named applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention; and
- (ii) that the first named applicant satisfies cl.785.222(a) and 866.222(a) of Schedule 2 to the Migration Regulations, being a member of the same family unit as the second and third named applicants.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

This is an application for review of decisions made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).

The applicants, who claim to be citizens of Colombia, arrived in Australia and applied to the Department of Immigration and Citizenship for Protection (Class XA) visas. The delegate decided to refuse to grant the visas and notified the applicants of the decision and their review rights.

The delegate refused the visa application on the basis that the first named applicant was not a person to whom Australia had protection obligations under the Refugees Convention.

The matter is now before the Tribunal.

RELEVANT LAW

Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.

Section 36(2)(a) of the Act provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom the Minister is satisfied Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).

Section 36(2)(b) provides as an alternative criterion that the applicant is a non-citizen in Australia who is the spouse or a dependant of a non-citizen (i) to whom Australia has protection obligations under the Convention and (ii) who holds a protection visa.

Further criteria for the grant of a Protection (Class XA) visa are set out in Parts 785 and 866 of Schedule 2 to the Migration Regulations 1994.

Definition of ‘refugee’

Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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, is unable or, owing to such fear, is unwilling to return to it.

The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.

Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.

There are four key elements to the Convention definition. First, an applicant must be outside his or her country.

Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.

Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.

Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.

Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if

stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.

Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

CLAIMS AND EVIDENCE

The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.

The applicants appeared before the Tribunal to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Spanish and English languages. The applicants were represented in relation to the review by their registered migration agent.

Material before the Department

The first named applicant claimed to be from City A in Colombia. She was the mother of the two other applicants.

The first named applicant claimed that in early [year] she discovered that her husband was a member of Political Party A. Since [year], he had been covertly supporting the guerrilla force, FARC-EP. He and two colleagues were passing information about liberal politicians. The colleagues were killed on [dates] respectively. The first named applicant was terrified that members of FARC and/or paramilitary forces would look for her husband and family, so they left Colombia on [date]. She claimed that "Colombian civil society has collapsed under 35 years of civil war". She did not know which group was persecuting her family but claimed that the authorities, the paramilitaries and the guerrilla groups all committed human rights violations. She also claimed that children were forcibly recruited into paramilitary and guerrilla groups. She feared for the safety of her two children if they had to go back to Colombia.

Evidence

The first named applicant gave oral evidence on [date], as did her husband in the capacity of witness and the following is a summary of that evidence.

The first named applicant and her husband had lodged a protection visa application after arriving in Australia in [year]. The first named applicant made no claims of her own in [year], but was allowed to lodge another protection visa application (the one now being reviewed by the Tribunal).

As to what the first named applicant feared about returning to Colombia after over a decade away, she said that her husband had been giving information to FARC. If they returned to Colombia, they would not have any support from the authorities (the government or the police). If the family returned, they would be killed. Just before they left Colombia, two of her husband's colleagues were killed.

As to who might kill them, she said she was not sure who killed his colleagues - it could have been FARC or paramilitaries. She did not think it could have been criminals, unconnected with politics, reiterating that it was more likely that it was FARC or paramilitaries.

She said that she had only found out in [date] that her husband was involved in any political activity, even though she had been married to him since [year] and had subsequently been told by him that he had been involved in covert political activity for that whole period. The Tribunal put to her that her husband's activities must have been very low-key if she had not noticed them during many years of marriage. She said that she assumed anything he did outside the home was business-related. She reiterated that she first knew of his involvement in anything political in [date] when he told her that he had heard something was going to happen. He had not been more specific. Then, on [date], his two colleagues were separately killed. The first named applicant claimed that she had been terrified her husband would be next and had insisted they leave Colombia

She said that she had already obtained visas on [date]. She claimed she had taken the precaution of getting the visas after her husband told her in [month] that "something might happen". Hence when the second colleague was killed, she could insist that the family leave Colombia, and the travel documents were ready. They departed on [date], transiting through Country A.

She said she did not know what happened to the families of the two former colleagues of her husband after she and her family left Colombia. She said that nothing had ever happened to the members of her own family, or her husband's family, who had remained in Colombia.

The Tribunal put it to her that there had been a number of changes in Colombia since her departure. On the basis of information about a decline of guerrilla activity in cities, and changes in the City A, the Tribunal put to the first named applicant that the chance of her being targeted by unspecified guerrillas or paramilitaries if she returned home because of something her husband did many years ago was remote. She responded that she still feared something might happen to her and her family if they were to return. Her fear was always there. She did not believe the government would help them, no matter whether the threat came from FARC or the right-wing paramilitaries.

She also said that she feared FARC or a paramilitary forcibly recruiting her children. She said it was a well-known fact that this sort of thing happened frequently. She added that her husband used to work for "these groups" and "knew the system inside out". He knew what they were capable of doing, and how they violated human rights.

The first named applicant agreed with the Tribunal's summary of her claims as follows: that she feared harm at the hands of either FARC and/or a paramilitary group for reason of activities undertaken by her husband (unbeknown to her) many years earlier; and she feared that either FARC and/or a paramilitary force could forcibly recruit her two teenage children. She still had these fears despite the passage of time since she had left Colombia and despite the fact that (according to the Tribunal's sources) there had been substantial changes in the country generally and in the city where she lived and to which she would presumably return, given that her family was still there. The first named applicant also stated that her family was still in City A.

The first named applicant's adviser noted the sources of information cited by the Tribunal (and set out below). In a post-hearing submission the adviser referred to recent material from

Amnesty International, the US State Department and UNHCR, all of which noted that FARC, the right-wing paramilitary AUC and, to a lesser extent, the ELN (another leftist guerrilla group) continued to be responsible for “widespread breaches of international humanitarian law”, including attacking civilians. The US State Department report, prepared after the re-election of President Uribe, noted that “the government’s respect for human rights continued to improve”; and that “According to authorities, the number of homicides was the lowest in 18 years”.

Dr A, a consultant psychiatrist, provided a report about the first named applicant to the tribunal, in which she said that the first named applicant had developed symptoms of a cat major Depression with marked anxiety following the rejection of her visa application. She believed Colombia to be the most dangerous country in the world and that it was not safe for her children. Dr A stated that "In [year] when her husband confided in her his fears for his life, she initiated the visa application immediately for the family to leave Colombia. The passports were sent to [country B] and returned a month later, the family living [number] weeks after that. At the time, she was a [number]-year-old mother of 2 [children] who stayed at home but was also doing some courses at the equivalent of TAFE". She had had to reverse roles with her husband to present the case for the family to the tribunal, and to be supportive of him as he was suffering symptoms of acute stress manifesting as irritability, anxiety and insomnia. Her [children] were unable to study at present and their opportunities to travel to play soccer could not be taken up. Her mental state had been very fragile, but she had major strengths which Dr A was sure she would harness to do her best for what she believed at the tribunal hearing.

Evidence of the applicant’s husband to the Tribunal

The first named applicant’s husband’s claims for a protection visa were set out in written submissions to the Department and to the Tribunal and in oral evidence given to the Tribunal. According to the information they provided in the protection visa application form, the family lived at one address in city A from year until year; The first named applicant’s and her husband were well educated and both worked together. In year a translated statement was received from him together with a brief certificate (and translation) from a government office dated year stating that an investigation was underway into the attempted homicide of the first named applicant’s husband and that the events under investigation occurred in [year]. A “political party identity card” and translation were also received, issued by the Political Party A and containing the husband’s photograph. The card was undated. It contained an address different to that listed on the protection visa form. The card referred to a certain committee and electoral zone.

In the statement, the first named applicant’s husband claimed that he had been politically active since childhood; he distributed national strike propaganda at school and participated in a protest. In his teens he knew many militant Communist youth and although he distributed propaganda for them he did not join that group. In [year] he met a guerrilla who was establishing clandestine support cells for FARC-EP. The first named applicant’s husband and two others, Mr A and B (the cell), became contacts and co-ordinated jobs; they passed on information they had gathered about Liberal politicians. The cell did this work until [date] when they took over the job of transporting food and clothing as the people who had done this work before were being followed. The first named applicant’s husband and Mr A were stopped once by the military at a roadblock on date but allowed to proceed after the paperwork for the consignment was checked. In [date] Mr A and B were searched by the military at the same place, accused of assisting the guerrillas, assaulted, threatened and

released - although they thought they were followed. Her husband told the first named applicant about his participation in the group. This surprised her very much, and she accused him of not being concerned about their children. He suggested they leave the country, so they sought visas to visit Australia. He continued his political activities cautiously. On [date] he was chased, shots were fired and some armed men asked him about Mr A and whether he had assisted the guerrillas, which he denied. He told them that he had been at the Liberal Party Office because he had been working with them for several years. The men stopped hitting him and he was released with a warning that if he were a guerrilla informant he and his family would pay. He claimed that at the first named applicant's request he lodged a formal complaint at the Prosecutor's Office. He said he was ill and did not return to work. On [date] he learned in an anonymous call that Mr A had been assassinated in City B. He was told that "they" had killed him. On [date] FARC introduced the cell to a replacement, Mr C, but said they would have no work for a time because they were being followed. The first named applicant's husband claimed he became worried and sent his family to City C, where he joined them. On [date] "they" assassinated Mr B in City B. The first named applicant's husband claimed that he sought assistance from a family member for funds and air tickets to Australia. He and his family returned home to farewell the family and they then came to Australia. In [date] he rang a contact and was told that "they" had assassinated Mr C. He claimed that the situation in Colombia was worsening and more paramilitary groups were emerging. He claimed that if he returned "they" would kill him but the popular struggle and guerrilla ideals would not be overthrown. Contrary to the information provided in the protection visa form about where he lived and worked in Colombia, at the hearing the first named applicant's husband gave different addresses as places the family lived at various times and a significantly different employment history. He said that the address on the protection visa form was where the first named applicant lived before they married in [year] and that this place, was the address for information. Despite writing that he had always worked for his family member in his business he now claimed that he had been employed by two politicians. He had only worked for a family member from [year-year] and earlier when he was a student.

At the hearing he claimed that the "they" referred to above was the paramilitary and that the paramilitary had threatened him and his family and murdered two of his cell. He would be killed because he was with FARC. He wanted to expose political corruption in his country. When asked how his claims related to the Refugees Convention he referred generally to the "political problem my country is going through" and said that he was an informer helping FARC. Although he claimed that he passed information to FARC about the politicians for whom he worked and that FARC was responsible for the intimidation and killing of political leaders, he denied that assisting the guerrillas was a crime although he later referred to his cell as a subversive group. He was unable to explain why he believed that it was the paramilitary that was interested in him, saying he just knew it was them because of the colour of their clothes and the fact that they were well armed and behaved like the military. Later he said other informants told him it was the paramilitary. He added that the paramilitary assassinates politicians and those of "us" who are speaking the truth about the country. He agreed he had not claimed in his submissions to have spoken out or to have exposed political corruption, but reiterated that he feared for his life and that his fear was based on the feeling that he wanted to expose what the country was going through.

He was unable to explain why he would support a political group which it was widely accepted had strong links to drug traffickers and was actively involved in political assassination and intimidation as well as criminal activities such as murder, kidnapping and

extortion. The Tribunal asked him about FARC's origins, ideology, structure, leadership, objectives, political links and operations. He gave the well-known nickname of its leader and said that group began in the 1960s. He added that it was characterised by its fight to defend the peasants who were mistreated by the government. FARC operated throughout Colombia and there were several local fronts in his area. He said that the paramilitary were "really bad"; they had help from the government and persecuted the people. He agreed that there were a number of paramilitary groups operating in Colombia and that they were responsible for numerous disappearances, murders and massacres; they targeted certain groups, especially peasants, and were responsible for the forced displacement of communities forming the guerrillas' support base. He was unable to explain why, if he was being followed by the paramilitary, he was only warned and not killed for supporting FARC, or arrested to get more information out of him, saying that they were looking for a friend and were not really convinced that he was with FARC. He also claimed that he could not live safely elsewhere in the country because the paramilitary operated throughout Colombia; they would find and kill him. He was able to leave the country openly and legally many weeks after being questioned by the paramilitary because the paramilitary operated secretly and persecuted popular leaders.

The family members' passports were issued in [year]. They decided to go to Australia and applied for visas. The Australian visas were issued in early [year], before he was threatened by the paramilitary and well before he claimed he sought help from a family member for the air tickets in [month] The family also had Country C visas issued in year. Asked to explain why, if they feared for their lives, they had not fled to Country C at least initially, he said that Country C was too close to Colombia.

The first named applicant also gave oral evidence at this hearing, saying that they did not go there as she did not want to bring up her children in Country C.

She also said that the paramilitary undertakes a very thorough investigation if they are following someone and they were interested in her husband because they thought he was passing information. She claimed that in Colombia they killed not only the person involved but also the family; therefore she and her children also feared harm from the paramilitary. She had never had any contact with, or seen the paramilitary, but claimed that she heard cars outside the house and felt that she was being watched and followed by unknown people. Also the telephone would ring but no-one would speak. These things happened in [year] and in that year her husband told her that they should leave the country because he was being persecuted by the paramilitary because of his work in providing information to an unspecified group. He did not say what sort of group it was or why he was helping them or what he did. She only learned that the group was indeed the same one when she read the statement he prepared for the Tribunal. She gave the Tribunal their address in City A and said they lived there until they came to Australia. This contradicted her husband's claim that they had only been at their last (different) address for about a year. Neither commented when these inconsistencies were put to them although the first named applicant said her husband was not good with numbers.

As to why the Tribunal could find no record of the organisation of which the first named applicant's husband claimed to be a member, or of any person or organisation named in his written statement, and that although a lot of information was available about the group it was never referred to as the initial term he used, he said that the group was in Colombia. The Tribunal's doubts about the veracity of the party identity card were also put to him, and he claimed that the card was issued to him in [year] or [year] and that it was genuine.

The Tribunal put to the first named applicant and her husband separately that it had serious doubts about the credibility of their claims and suspected they were contrived. This was because these claims were not made until 18 months after they applied for protection visas, despite their statements in the protection visa forms that “more” information would follow and despite numerous opportunities and over 18 months in which to do so. In response the first named applicant’s husband said that a Departmental social worker helped them initially but then went on holidays. Several documents, proof that he had been assaulted in [year] and documents about his work history, were stolen the day they arrived in Australia - he produced a letter dated in [year] from a Sydney hotel stating that the first named applicant had reported the theft of a bag from the foyer when checking in to the hotel in [year]. As to why he had submitted the Prosecutor’s certificate dated in [year] about the assault, he said that the stolen document was a medical certificate. The first named applicant said that the social worker who was to help them was not available at first so they got someone else to help. The social worker helped them again later but said to leave the claims blank and provide information later. Although the first named applicant had received the letters referred to by the Tribunal and had them translated, the social worker said to wait until the Tribunal’s letter about a hearing came before submitting information.

Further Evidence

The applicant's solicitor provided a submission and other documents to the Tribunal. She stated that the first named applicant had instructed that her family member had moved his family to Country C in [date] "to avoid the continuing fighting and violence and the FARC". In [date] her family member was attacked by two armed men and was fortunate to escape. In addition her two closest friends were killed by paramilitaries (she did not state when this occurred). It was submitted that she was being treated for depression and that her husband had been assessed by the Service for the Treatment and Rehabilitation of Torture and Trauma Survivors (STARTTS). The solicitor said she herself had observed that the first named applicant was having difficulty recalling events or recalling them correctly, and was often tearful. She believed there was no hope for her and her children. She had been very depressed. The solicitor advised the Tribunal that the first named applicant was showing poor judgement and was beginning to doubt her relationships of trust, especially with the solicitor. The Tribunal was asked to take this into account when conducting the hearing. In a letter the solicitor advised the Tribunal that the second named applicant had been having counselling at school (he was not being treated for depression, as had been mistakenly stated in a submission).

Also submitted was a letter from a medical practitioner, stating that the first named applicant had been referred to her by her GP for treatment of depression, and that she had been unable to work since [date] due to a depressive illness. Treatment and medication was continuing (letter from Dr A.). Also submitted was a letter from STARTTS relating to the first named applicant’s husband, stating that he was suffering symptoms consistent with post-traumatic stress disorder and Dysthymic disorder (a chronic long-term depressive disorder), which prevented him from undertaking paid employment. Dr. A, a consultant psychiatrist, provided a report about the first named applicant to the Tribunal, in which she said that the first named applicant had developed symptoms of a Major Depression with marked anxiety following the rejection of her visa application. She believed Colombia to be the most dangerous country in the world and that it was not safe for her children. Dr. A stated that "In [year] when her husband confided in her his fears for his life, she initiated the visa application immediately for the family to leave Colombia. The passports were sent to [Country B] and returned a

month later, the family leaving four weeks after that. At the time, she was a [number]-year-old mother of 2 children who stayed at home but was also doing some courses at the equivalent of TAFE". She had had to reverse roles with her husband to present the case for the family to the Tribunal, and to be supportive of him as he was suffering symptoms of acute stress manifesting as irritability, anxiety and insomnia. Her children were unable to study at present and their opportunities to travel to play soccer could not be taken up. Her mental state had been very fragile, but she had major strengths which Dr A was sure she would harness to do her best for what she believed at the Tribunal hearing.

Three articles from the internet were also submitted. Although apparently poorly translated from the Spanish (the originals were not submitted) the first referred to the deaths of 11 soldiers in combat with FARC guerrillas in an named region. The troops were there because they had suspicions that the FARC was concentrating on that area, which was on the outskirts of a mountain range. It also referred to the police having captured an "urban column of the FARC" in City A The second referred to the graves of people killed by FARC and the paramilitaries since [year], as well as referring to many of the "disappeared". It referred to the bodies of women and children without any political affiliation killed by paramilitaries. The third referred to 750 citizens kidnapped by FARC since [year]. It referred to the indiscriminate killings of citizens by violent groups in Colombia, saying that they were no longer motivated by ideology but by a desire to accumulate money.

Further oral evidence given to the Tribunal

The first named applicant confirmed that she considered herself to be well enough to give oral evidence.

The Tribunal advised her that, although her children had filled out the protection visa forms relating to people who did not have their own claims to be a refugee, she had made the claim that she feared they might be abducted by an armed group. For that reason the Tribunal proposed to consider that claim in relation to them.

The first named applicant's oral evidence

The Tribunal reminded the applicant that she had given written evidence to the Department on the protection visa application form that she was living at address A from [year] to [year] The Tribunal asked her if she had been living anywhere else in that period and, if so, whether her husband had joined her there. She responded that she married in [year] and lived from [year] to [year] at address B. She and her husband owned that house. The applicant stated that she herself was living at that address until she went to City C to catch the plane for Australia. She had been in City C on that occasion for around six hours. She said that she had not slept overnight anywhere other than the above address. She said that after they left it was initially empty and then a family member had rented it out.

She then stated that from [year] to [year] she and her husband had lived in the same city but in different areas. She then said this was from [year] to [year]. From [year] they had lived all the time at the address B. She said she could not recall the exact number. For clarity the Tribunal agreed with her that this home would be referred to as "apartment x" during the hearing. As to whether she had always lived at apartment x, she said "yes, all the time". She clarified this to say that from [year] to [year] they had lived at address B but had rented a different apartment in the same building, then had bought "apartment x", and had stayed there

until they travelled to City C to catch the plane. She said that throughout all of these periods her husband had been living with her.

She said that her older child was going to preschool until a few weeks before the family left to catch the plane for Australia. That child had stopped going to school at that point because she was busy organising the trip so was unable to take the child to and from school. As to why her husband could not do these tasks, she said that she could not recall but that he was occupied in some way. She added that she preferred her children to be with her all the time, to be safe. As to what her fears were for her children at that time, she said that when her husband told her what was happening she had suggested to him they should do the paperwork to go to Australia. She feared an attack by FARC or paramilitaries because of a warning to her husband.

The Tribunal asked her to explain why her husband's claims had differed from hers with regard to the family's movements before they left Colombia. He had previously claimed that on [date] he learned that a colleague had been assassinated in City B by paramilitaries, that on [date] FARC had introduced the cell to a replacement, but said they were being followed, that her husband had become worried and sent his family to City C, where he joined them, that on [date] "they" assassinated a colleague in City B, that the family returned home to say goodbye, and that they left the country on [date].

In response she denied her account differed from that of her husband. She said that she would be clear about the sequence of events, stating that in early [date] her husband had told her what was happening so she had suggested they should organise visas to leave the country, and their passports were sent to County B for Australian visas. On [date] her husband was intercepted by a man who asked him if he was working for FARC, shot into the air and said if he was working for FARC her husband and his family would pay. On [date] two people working with her husband were killed. That was when her husband sent her and the children to City C, where they remained for two days, then returned home. As to why they had returned to their apartment, where they could easily be located, if they considered themselves to be in danger, she said they had wanted to say goodbye to their family and pick up their belongings. They stayed at their apartment for three to four days. The Tribunal asked her why she had not earlier said, when asked about her movements, that she had gone to City C for two days with the children. She responded "you asked me where I was living, now I'm saying what happened day by day". The Tribunal put to her that it could infer from these different accounts about the family's movements before leaving Colombia that she had not feared being harmed for the reasons she had given. In response she denied that her evidence and that of her husband differed. The Tribunal also asked her to clarify further why she had chosen to stay at her home address for three to four days immediately before her departure, given that it would have been easy for anyone who wanted to harm her or her family to locate them there. In response she said that it was because things were happening so fast, and she was helping her husband to come to Australia.

Of the family's source of income before their departure in [date] from Colombia, she said that until [date] her husband was working full-time for a family member in City A, having done so for many years. The family had no other source of income. The Tribunal asked her why her husband had previously claimed that he was working for a political party from [date] to [date]. She responded that he was working unpaid for a political party. She said that he had started working with politicians in City A but later went to party meetings in City B. She said that she did not know in what years he was going to these meetings. As to why she had never wondered where he was at the times when he was attending these political meetings, she

agreed that she had not wondered. She said that he sometimes went in the afternoons and sometimes in the evenings.

The Tribunal asked her if she would describe her marriage at that time as a happy one. She responded that it was stable. The Tribunal put to her that, if so, it was difficult to believe that her husband had not told her anything of his political views or activities for so long. She responded that politicians had bought materials from a family members business to help the poor, in other words to encourage people to vote for them. The Tribunal asked her again why her husband might not have told her that he was involved in political activities, including helping FARC. She said it was so normal for people to be involved in politics. She agreed that he had not told her until [date]. She said now she knew everything he was doing.

Of her close family members, she said that they were still living in City A. As to why her husband's family member had left Colombia recently, she said that he had been living City D, which was about an hour's drive from City A. FARC had started setting up camps around there. They had feared being intercepted or kidnapped, so went to Country C.

Of her other family member, she said that they had been "attacked" in the street in [date] by men in military uniforms. She could not tell if they were paramilitaries or real soldiers. She had run off. As to the purpose of this "attack", the applicant said her family member had seen them coming towards them, had thought they were going to rob them and had run off before they touched them. As to why her family member might have assumed they wanted to harm them at all, the applicant said that paramilitaries and FARC had taken over the city so no one trusted anyone. She confirmed her belief that these men had not known that her family member was related to the applicants.

She also claimed that a friend had told her that two friends from her building had been killed in [date] They had gone to a factory they owned and a "paramilitary" there had shot them. As to why the applicant believed this person was a member of the paramilitary, she said it was "because they're the ones taking over and doing what they want. Mostly the criminals are paramilitaries". She agreed that she did not know if this man was a paramilitary or an ordinary criminal. She did not know if her friends had been involved with any political groups.

The Tribunal noted her claim in a written statement made by her on the protection visa application form that her husband was a member of "Political Party A" and that she had found this out in early [year], and also found out that he had been giving information to FARC-EP about politicians since [year] She had said that two other men who were doing the same thing were killed, possibly by FARC, in [date], and that she thought her husband might be killed by paramilitaries because he also was an informer, or would be killed by FARC. The applicant confirmed the accuracy of this account.

She stated that Political Party A was the party to which she had earlier referred. As to whether her husband was a member or a supporter of it, she said she thought he was a supporter. As to the size and significance of Political Party A, and the name of its leader, she said she did not know. She simply knew it was a large party and most people belonged to it. The Tribunal advised her that its researchers had unsuccessfully tried to locate any references to a party with the name she had given, as a result of which the Tribunal doubted that the party had existed. The Tribunal invited her to submit any evidence she might have from a reliable source that it had. She undertook to do so. (No evidence on this matter has since been submitted).

The Tribunal told her of its understanding that she had fled Colombia after two men were killed in City C on [date] and [date] respectively, but she had already been planning to leave the country from [month] onwards because her husband had told her that something might happen. She had claimed to have taken the precaution of getting Australian visas after her husband told her in [month] that “something might happen”. The Tribunal asked her to explain why they had not gone to Country C, a country for which they already had visas, instead of applying for Australian visas, which were not issued until [date]. She agreed that she and her husband were afraid from [month] onwards. She claimed that they had feared that the paramilitaries or FARC might harm them in Country C. The Tribunal asked her why, even so, they had not even gone to Country C temporarily. She responded that they had had to wait for their Australian visas. The Tribunal put to her that the Country C authorities would provide adequate protection from members of the Colombian paramilitary or FARC, and would not simply allow such groups to roam around the country. She responded that she had felt safer in Australia.

The Tribunal asked the applicant why FARC might want to harm her or her children. She responded that it was because her husband had retired from FARC by leaving Colombia. The Tribunal put to her that according to her evidence he had been loyal to FARC for many years. She responded that FARC might think that he might give information about them to the government. The Tribunal put to her that this seemed highly unlikely. She made no clear response.

The Tribunal told her that her husband had told the Tribunal during his hearing that he believed it was the paramilitaries that were interested in him, saying he just knew it was them because of the colour of their clothes and the fact that they were well armed and behaved like the military. Later he said other informants told him it was the paramilitary. The Tribunal put to her that, when he referred to the paramilitary, it seemed likely he would have been referring to the AUC (Autodefensas Unidas de Colombia) the largest paramilitary force in the country. The applicant responded that she had never heard of the AUC.

The Tribunal told her that her husband had had difficulty explaining to the Tribunal why he believed the paramilitaries might be interested in him. During his only contact with the military or unidentified armed men, they asked him if he was a FARC informer but then released him, which clearly indicated they had no suspicions about him. In response she said he was in danger, because on [date] he was intercepted. They asked him if he was working for FARC. He said was working for Political Party A, so the man warned him. I told her it seemed obvious from his description of this incident that the men had no evidence against her husband, especially as anyone even suspected of supporting FARC was likely to be seriously harmed or even killed. In response she agreed that the man had believed him. She also agreed that the family had had no further contact with paramilitaries.

She said that there had been some “anonymous calls”. As to these she said that when she answered the phone the caller hung up.

The Tribunal invited her to comment on evidence that in 2002 a unilateral cease-fire was declared by the AUC and a nationwide demobilization took place. Although there was still paramilitary activity, it was at a lower level now. She responded that now it was worse. In 2005 over 4,000 graves had been found, in which were 31,000 bodies. People had been killed by paramilitaries in 2005, 350 people had disappeared and in 2003 three MPs had been killed. In City A there was a grave of women and children found. Some time before the hearing

there had been killings in City C by paramilitaries. Young people were recruited against their will.

The Tribunal expressed understanding that she did not want to live in Colombia, noting that at the time she left there was a great deal of violent conflict in the country, and it was understandable that she wanted her children to live in a peaceful environment. However not everyone from Colombia had a well-founded fear of being persecuted because of their political opinion or one of the other reasons in the convention. She responded that her case was linked to FARC and the paramilitaries.

Her children were now [age] and [age] respectively. The Tribunal told her of evidence that most young people joined the paramilitaries voluntarily, because of the income, but then found it hard to leave. While it may have been occurring at the time she left, no information could be found by the Tribunal to suggest that guerrilla or paramilitary groups were now forcibly recruiting young people in the City A area, so the chance seemed remote this would happen to her children. She disagreed, and undertook to submit evidence about current forced recruitments in Colombia, and City A in particular.

The hearing was adjourned and resumed at a later date. In the interim the solicitor submitted that a Human Rights Watch report about youth recruitment to which the Tribunal had referred was from 2003 and was based on interviews of young people captured by the Colombian army. It was submitted this was a small pool of interviewees on which the Tribunal to rely in finding that young people in City A were not at risk of being forcibly recruited into the paramilitary or guerrilla forces. Also submitted was

- a fax in Spanish with an English translation purporting to be from a relative of the first named applicant who was in the Colombian army. It was accompanied by a photocopy, with translation, of an identity card in the name of the author. He stated that in Quindio Department groups such as guerrillas and paramilitary forces were operating on the wrong side of the law. They kidnapped minors to join their organisation. In 2006, in the Cordoba area, three children aged 16 to 18 were kidnapped (he gave their names). In 2004, in Pijao district, two children aged 14 and 16 were kidnapped from their homes by paramilitary forces. One was found murdered. In 2007, in Buena Vista district, two young people were recruited (he did not state by which group). This incident was reported to the Quindio Department authorities. He stated that in City A there were urban guerrillas and paramilitary groups, for example in suburb A. Many young people were recruited by these groups and forced to be part of their ranks; [Cordoba and Pijao are towns with a population of between 1,000 and 5,000, in Quindio department, according to Encarta.]

(The first named applicant subsequently claimed that the author was a relative)

- a report headed "The conflict in Colombia charged the 37 children's life armed in 2007" [sic]. It was poorly translated into English, apparently from RCN Radio (a Spanish language website) but referred in part to the UN Security Council having referred to "recruitment and armed minor abuse" in Colombia. (The Tribunal was unable to locate a reference to this topic in the United Nations "Report of the Security Council, 1 August 2006 - 31 July 2007").

The Tribunal put to the first named applicant that UNICEF and the UN Security Council's websites, where they addressed the issued of recruitment of child soldiers by illegal or legal

armed groups in Colombia, made no reference to forcible recruitment as an ongoing problem. In response she said that the guerrillas and paramilitary kidnapped them, and forcibly removed them. There were over 100 cases that had not yet been reported. She undertook to submit translations of other relevant material.

The Tribunal also put to her that in 2002 it was reported that City A had been quiet as far as guerrilla conflict had gone over the previous years. City A was now on the fringe of, or just outside, the typical range of regular FARC activities. There seemed to be little reason to think FARC might harm her or her family in City A, or anywhere, whether her husband was a FARC informer or not. She responded that they could take her children away. Between [year] and [year] there had been reports of assaults and abductions by FARC in City A. This was continuing.

I further reminded her that her relative had been living unharmed in the applicants' previous apartment for the past [number of] years, and had not been contacted or threatened by anyone because of their links with the applicant or her husband. This indicated to the Tribunal that her relative was confident that, whatever dangers there might be to all residents of City A, the relative's links with the first named applicant did not put them at any particular additional risk. Further, no one in the family had been contacted or threatened by any paramilitary or FARC group because of their connection with the applicants. Again this indicated that no one was interested in harming the applicants because of a political opinion imputed to them. In response the first named applicant said that her relative had had a problem, and even her other relative had had to leave everything behind. There had always been problems.

I put to her that she and her husband and their children had all applied for and been issued with new Colombian passports after their arrival in Australia. Their willingness to apply for these passports appear to signify that they had no fear of the Colombian authorities, which indicated that they were not fearful that her husband was suspected by paramilitaries, which cooperated with the government, of being a FARC informer. She agreed that they had got new passports through the Colombian consulate, saying this was because their passports had expired. She claimed that her present adviser had told her that they had to apply for passports in order to apply for protection visas. The Tribunal notes that the solicitor, who was present at the hearing, shook her head at this point. I advised both that I was making no enquiries of the applicant or her adviser as to what they had discussed. However I put to the first named applicant that I found it difficult to believe that her adviser might have given her such advice, which was plainly incorrect.

I told the first named applicant that I could form the impression that she and her family had left Colombia because of the generally violent environment, as many other Colombians were doing at that time, not because her husband was involved in any political activities. I asked her if the truth was that she was simply looking for a peaceful country in which to bring up her children. She responded that they left because they were desperate. Her husband was always involved in this organisation and supported it. Her town was involved in terrible conflict, and they had to leave in a hurry.

Noting that paramilitaries worked hand in hand with government forces, I asked her if she feared the Colombian authorities. She confirmed that she did. I asked her if she knew why, if her husband had been a FARC informer, he had never expressed a fear of those authorities. She responded that since the beginning she had spoken about both FARC and the paramilitaries. She said she did not know anything about the relationship between the paramilitaries and FARC.

The husband's oral evidence

The witness told the Tribunal that he was in touch with his family members and confirmed that a family member lived in his old apartment

As to what news they had given him of the security situation in City A now, he said it was difficult there, not only with his family members but also friends of his family. He said that his family member had been "attacked by a group of paramilitaries" last year, and two of his and his wife's friends had been killed. He said that also young people were being recruited by FARC and paramilitaries. As to which paramilitaries, he indicated there was no particular group but they worked with the government, had a stronghold in Quindio and were in City A. There they were recruiting young people. Their tactics were intimidation and "luring them to get hold of them by promising things".

I asked him what he foresaw in terms of any problems he or his family might have if they returned to City A, where they had relatives and owned an apartment. He responded that they would all be at risk of being eliminated by "the paramilitary group", especially because of his involvement with FARC. I asked him if he was referring to the AUC, which was the biggest paramilitary group when he was living in Colombia. He responded only that he was a FARC informer and the paramilitaries would kill him if they found out. I asked him again if he meant the AUC or some other group. He responded that he meant paramilitary groups organised by the government. I asked him why he had said they would kill him "if they find out". He responded that they had found out. He knew they knew about him because he and two others belonged to FARC, and they had killed the two others. Also he had a warning.

I asked him to explain why, if he had thought he was in danger, he had not gone to Country C or at least moved out of the apartment, particularly given that at the time he was waiting for an Australian visa the family already had valid visas for Country C. He responded that they had not gone to Country C because it was too close and they did not think it was safe there. As to why the family had not at least moved out of the apartment, he said that it would not have been safer to move elsewhere because the paramilitaries had too many contacts. I put to him that nevertheless it would have been safer to move to another address temporarily than to stay in the apartment. He responded that they would find you even if you only moved temporarily so the only solution was to leave the country.

He agreed that he had been giving information to FARC obtained through his involvement with the *Political Party A*. As to why he had decided to give information to FARC, he said that when he started he gave it no second thoughts. He did not think about what he was doing. Then he saw what was happening to his other friends and what might happen to him and his family. I asked him to explain clearly what had motivated him to start giving information to a group that was illegal and well-known for its violent activities. He responded that for 35 years the people of Colombia had suffered because the government was corrupt. At least FARC were helping people. I put to him evidence that FARC were also involved in killing people. He agreed with this, saying that he had known that but that it was not as close to home. When he started participating with FARC he did it in the hope that it would stop the government's violations towards the people. He thought that giving information about the movements of members of this group would help.

I asked him why the Tribunal might have been unable to locate evidence from any independent source that the party of which he claimed to have been a member had ever

existed. He responded that it was a small group operating in different suburbs and helping needy people. The Tribunal could not find a record of it because it was small.

I asked him why he had never mentioned to his wife in eight years of marriage that he was going to meetings of Political Party A or giving information to FARC. He responded that he did not want her to know because she would worry about him doing this. He confirmed that the *Political Party A* was a legal group and that it was looking for sympathisers among local people. I asked him why his wife had remained totally unaware of his political views about the government. He responded that he had never told her because he was an informant for FARC. I asked him why nevertheless he had not at least told her about his involvement with *Political Party A*, a party which he and its other members were openly supporting in the community anyway, and in whose name they were helping local people. He responded that she did not know because he "wasn't 100% into it", and just spent one or two days per week working for it.

Invited to add anything further he wished, he asked the Tribunal to consider the protection of his children, who were at great risk in Colombia.

The second named applicant's oral evidence

This applicant told the Tribunal that he was now aged [age] and that he feared being captured by armed groups and also feared the general security situation. The Tribunal told him that it had before it no reports of specific incidents of forced recruitment of young people in City A. He did not dispute this and make no further comment on this point.

Of other matters, he said that he was hoping to go on to further studies in Australia.

The third named applicant oral evidence

This applicant told the Tribunal that he was [age] years of age. The main reason he did not want to go back to Colombia was that he feared being recruited by paramilitaries. I asked him if he would join them if they offered to pay him and he said he would not.

Of his other reasons to want to stay in Australia he said he was at school and was doing well in his studies. He played soccer and wished to go on to higher studies at university. He told the Tribunal that his mother was very depressed and his father sometimes got angry. He said that he would love to travel but could not do so because of his visa situation.

After the hearing the Tribunal received documents in Spanish from the applicants, the sources being La Cronica newspaper and an individual's weblog.

Pursuant to s.424A the Act, the Tribunal wrote to the applicants advising them that

You are invited to comment on or respond to information that the Tribunal considers would, subject to any comments or response you make, be the reason, or a part of the reason, for affirming the decision that is under review.

The particulars of the information are:

It has been claimed that [husband] (the witness – being your husband/father respectively) was a member of [*Political Party A*] during the 1990s, up to [year] when he left Colombia. The Tribunal has before it no evidence from any independent, reliable, source that this party existed in Colombia in the 1990s.

The Tribunal could infer from this that he was not a member of this party, and therefore that he was not giving information about its members to FARC-EP. The Tribunal could infer from this that he, and therefore you, are not at risk of harm in Colombia as a result of his links with the *[Political Party A]* or, consequently, with FARC.

In explaining why the Tribunal could locate no evidence that this party existed, [The husband's] oral evidence was that *[Political Party A]* was just a small, local party in [City A]. However [the first named applicant] told the Tribunal that all she knew was that it was a large party, to which most people belonged.

The Tribunal could infer from this difference in the description of the party that it did not exist.

3. [The Husband] told the Tribunal that the *[Political Party A]* was a legal group which was seeking support among local people, and which openly did community work in the town. He worked for it for 1-2 days every week for some years. He has been unable to provide a clear explanation as to why [the first named applicant] remained unaware of his political opinions or these political activities until [year], despite having been married for the previous 8 years.

The Tribunal could infer from this that he was not involved in these political activities.

In his evidence on [date], [the Husband] was unable to explain why he had acted as an informer for a political group, FARC-EP, which had strong links to drug traffickers and was responsible for political assassination and intimidation as well as murder, kidnapping and extortion. The manner in which he expressed his political views and knowledge was not consistent with his claimed long-standing political activity and level of commitment.

The Tribunal could infer that he was not involved with any political groups or parties in Colombia, and therefore that he, and therefore you, are not at risk of harm in Colombia as a result of suspicions about his political allegiances.

[The husband] submitted to the Tribunal, [detail removed pursuant to section 431 of the Act], a membership card of *[Political Party A]*, containing his photograph. The card is undated. It contains an address [address stated] different to that listed on the protection visa form, and not referred to in the applicants' oral or written evidence at any other point.

The Tribunal could infer from this that the card is not a reliable form of evidence that he was a member of a party of this name.

[The Husband] told the Tribunal [detail removed pursuant to s.431] that out of fear for your safety he sent the family to [City C], where he joined you some time between [date] and [date], after which you all returned home to farewell relatives before leaving Colombia on [date]. [The first named applicant] told the Tribunal initially that the family stayed in [City C] for only 6 hours, while awaiting the flight out of Colombia. She said she had not slept overnight anywhere other than at her home in [City A]. However she later told the Tribunal that she stayed in [City C] for 2 days, then returned to the family's apartment in [City A] for 3-4 days before leaving Colombia.

The Tribunal could infer from these inconsistencies that you have not been truthful about the circumstances leading to your departure from Colombia.

It has been claimed that the family feared being harmed by an armed group from [date] onwards. At the time every family member had a visa for the [Country C], issued in [year]. Instead of using these visas, you applied for Australian visas, which were not granted until [date].

Your failure to take an existing opportunity to get protection in the [Country C] is not consistent with your claim to have feared imminent harm in [year].

All the applicants, and [the husband], applied for new Colombian passports after arriving in Australia.

FARC is regarded as a terrorist group by the Colombian authorities, and its members face arrest. There is much evidence that since the 1990s members of the government security forces and paramilitary forces have been known to collaborate and share intelligence with each other. Therefore a willingness to seek the assistance of the Colombian authorities abroad does not appear to be consistent with the claim that [the husband] was suspected by paramilitary groups of supporting FARC, as it could attract unwelcome official attention to his whereabouts. The Tribunal could infer from this that he has no fear of pro-government paramilitary groups arising from his claimed links with FARC, and therefore that the applicants have no such fear.

In sum, the Tribunal could infer from the matters set out above that you do not have a well-founded fear of being persecuted for reasons arising [the Husband's] political opinions or activities.

In response the Tribunal received a statutory declaration from the Husband and from the first named applicant respectively. The Husband stated that a) Political Party A was a small cell in City B which had an affiliation with a Party of Colombia, the largest political party in the country. His wife may have confused the two; b) he believed was best for the safety of his wife and children that he did not tell her about his community work and activities in the town for Political Party A. She was busy with their children and he did not want to trouble her; c) through his community work on the suburbs of City B he saw people from the FARC helping the poor. At that time he was impressed and thought they really cared for the poor and decided to help them; d) the address on the membership card was his wife's relatives' house. When he was in City B he used to stay there. He did not recall using this address; e) out of fear and to ensure their safety he had sent his wife and children to City C and had joined them some time between [date] and [date], after which they all returned home to farewell relatives before leaving Colombia on [date]; f) Country C was very close to Colombia and he would not feel safe there as Colombian drug trafficking occurred in many parts of the Country C. Australia was over 24 hours away, with few Colombians living there; g) he had never claimed that he feared the Colombian authorities "other than the paramilitary and the Colombian authorities' use of the paramilitary ...". He had never been a member of the FARC. His passport and two children' passports expired about the same time. His wife was considering applying for protection and he thought they should have valid passports for identity purposes in Australia and to get any visa stamps placed in the new passports.

The first named applicant stated in her statutory declaration that a) she was talking about the a party of Colombia, a large party to which most people belonged; b) her husband worked long hours and she was focused on their children She did not ask what he was doing and he did not tell her; c) the address was her relatives' address. Her husband stayed there between once a week and once a fortnight when in City B She did not know why he used her relatives' address on the membership card; d) as to the trip to City C, she claimed that her answer was confused. They had stayed in City C for two days and then in City A for three to four days before leaving for Australia; e) Country C was only a few hours away from Colombia and there were many Colombians there. She wanted to get far away from Colombia and Australia met that criterion.

Evidence from other sources

FARC

FARC (*Fuerzas Armadas Revolucionarias de Colombia* or Revolutionary Armed Forces of Colombia; also known as FARC-EP, where the EP means People's Army) is the largest guerilla group in Colombia. Sources suggest that their actions pose the greatest threat to the security situation in the state. The second largest guerilla group, ELN (*Ejército de Liberación Nacional*, or National Liberation Army), was regarded in 2005 as a 'distant second group' that posed a 'law and order concern' rather than national security concern (Marks, T. A. 2005, *Sustainability of Colombian Military/Strategic Support for "Democratic Security"*, Strategic Studies Institute website, 1 July, p. 2, <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB610.pdf> – accessed 14 January 2008). By contrast with smaller guerrilla groups, FARC, by the late 1990s, had assumed a strong military position in Colombia and was beginning to make a transformation towards a more conventional style of modern, mobile warfare (Marks, T. A. 2002, *Colombian Army Adaptation to FARC Insurgency*, Strategic Studies Institute website, January, p. 7 <http://www.strategicstudiesinstitute.army.mil/pdffiles/PUB18.pdf> – accessed 14 January 2008).

Of the security situation in Colombia, a Human Rights Watch report noted:

During the first half of 1996, President Samper governed Colombia under a "state of internal commotion," invoked after the killing of Conservative leader Alvaro Gómez on November 2, 1995, and extended through August. Although the measure never produced the capture of Gómez's killers, its stated goal, it did suspend key rights, like freedom from unwarranted search and seizure. The military was also authorized to circumvent local civil authority and petition the executive directly to declare "special public order zones" where more rights were suspended, like free movement. By the end of May, over one-third of Colombia was a "special public order zone."

... Over 750,000 Colombians were internally displaced because of political violence, the single largest group in Latin America. A national study in 1995 found that paramilitary violence was responsible for 32 percent of all forced flight, compared to 26 percent caused by guerrillas and 16 percent by the armed forces. The problem worsened during 1996. Although the government developed a plan to assist the displaced, as of this writing it had failed to allocate funds to it. Guerrillas routinely used forced displacement as a tool of war, demonstrating that neither side was yet willing to honor Protocol II Additional to the Geneva Conventions, ratified by the government in 1995.

... For their part, guerrillas committed violations of international humanitarian law, including political killings, kidnappings, the use of landmines, and attacks on civilian targets, including public buses. In a single incident, [FARC] militants were believed to have murdered eleven men on the Osaka Farm on February 14 (Human Rights Watch 1997, *Human Rights Watch World Report 1997 – Colombia*, UNHCR Refworld website, 1 January <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6a8b138> – accessed 11 January 2008).

The US Department of State's *Country Report on Human Rights Practices 1996 – Colombia* also provides details on specific incidents involving FARC:

Guerrilla forces continued to be responsible for numerous killings and disappearances, as well as 30 to 50 percent of all kidnappings. The [FARC] guerrilla group showed no interest in releasing three American missionaries whom the FARC kidnapped on January 31, 1993.

... Guerrillas were responsible for between 30 and 50 percent of all kidnappings. They continued to deny, implausibly, that their practice of kidnaping constitutes common criminal extortion. Arrests or prosecutions in any of these cases were rare. ...

...The loosely organized guerrilla groups of the Simon Bolivar Coordinating Body, which include primarily the FARC and ELN, commanded an estimated 10,000 to 15,000 full-time guerrillas organized in over 100 "fronts." These groups exercised a degree of permanent influence in over half of Colombia's local municipalities. They committed a host of violations, including killings, kidnappings, deployment of antipersonnel land mines, oil pipeline bombings, and other acts of sabotage. According to estimates by CINEP and Justice and Peace, guerrillas were responsible for killing at least 189 civilians between January and September. In the continuing struggle for control of the narcotics

and arms trafficking corridor of Uraba, guerrilla retaliation for paramilitary attacks regularly victimized innocent civilians, although some direct clashes with paramilitary units did occur. To justify summary executions of civilians, guerrillas typically charged that their victims were either informants for the army or related in some other way to the State, or that they simply refused to support the guerrillas' operations.

.. In August and September, FARC forces killed over 100 people ... (U.S. Department of State 1997, *Country Report on Human Rights Practices 1996 – Colombia*, UNHCR Refworld website, 30 January, sections 1.b, 1.g <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6aa6414> – accessed 11 January 2008).

More recently, the 2007 US Department of State's *Country Reports on Human Rights Practices* provided a review on the current security situation in Colombia, saying that the 42-year internal armed conflict continued between the government and terrorist organizations.

...
The FARC and ELN committed the following human rights violations: political killings; killings of off-duty members of the public security forces and local officials; kidnappings and forced disappearances; massive forced displacements; suborning and intimidation of judges, prosecutors, and witnesses; infringement on citizens' privacy rights; restrictions on freedom of movement; widespread recruitment of child soldiers; attacks against human rights activists; harassment, intimidation, and killings of teachers and trade unionists.

... Guerrillas, particularly the FARC, committed unlawful killings. Guerrillas killed teachers, journalists, religious leaders, union members, human rights activists, candidates for public office, elected officials and other politicians, alleged paramilitary collaborators, and members of the government security forces ...

...In many areas of the country, the 12,000-member FARC and the 2,000-member ELN worked together to attack government forces or demobilized paramilitary members; in other areas, especially in Arauca Department, they fought each other. There were an estimated 1,990 guerrilla desertions during the year.

...FARC and ELN guerrillas committed numerous unlawful killings, kidnapped civilians and military personnel, displaced citizens, and recruited child soldiers. They killed journalists, religious leaders, candidates for public office, local elected officials and politicians, alleged paramilitary collaborators, and members of government security forces. The Presidential Program for Human Rights reported that during the year the FARC killed at least 40 persons in seven massacres, although another 143 persons were killed in massacres in which the perpetrators remained unidentified (U.S. Department of State 2007, *Country Reports on Human Rights Practices 2006 – Colombia*, 6 March, sections 1.a, 1.g, www.state.gov/g/drl/rls/hrrpt/2006/78885.htm – accessed 8 March 2007).

Sources indicate that FARC took advantage of the 1998 cease-fire and a demilitarised zone to mobilise its forces (Murphy, H. and Faries, B. 2007, 'Uribe Proposes Demilitarized Zone for Hostage Talks', *Bloomberg*, 7 December

http://www.bloomberg.com/apps/news?pid=20601086&sid=ahiFXy6lozLY&refer=latin_america – accessed 15 January 2008).

A comparison of the US Department of State reports from 1996 and 2007 suggest that whilst the tactics may be different, there were few other differences in the actions undertaken by FARC. Their estimated numbers remained similar, and the reports both mention widespread kidnappings and murders. However these reports also suggest that the number of these crimes has decreased significantly since 1996. According to respective U.S. Department of State Reports the number of FARC members was 10,000 to 15,000 in 1996 and 12,000 in 2007. Human Rights Watch put the number of militia in FARC in 2003 at over 26,500 (U.S. Department of State 1997; U.S. Department of State 2007; Human Rights Watch 2003, "You'll learn not to cry": Child combatants in Colombia', HRW website, September, p. 23 <http://www.hrw.org/reports/2003/colombia0903/colombia0903.pdf> – accessed 14 January 2008). The main differences in the security situation between 1996 and 2008 revolve around the actions of President Uribe. In 2002 his administration implemented a counter-guerrilla

strategy, which sought to cancel the negotiation process of the previous government, and instead take a counter-insurgency approach to directly confront guerilla groups in an effort to weaken their position within the state

The most significant change in the security situation between 1996 and 2008 appears to be in the response of the government who are confronting guerrilla groups more directly. Guerrilla groups are still undertaking the same actions, although they have suffered setbacks, but beyond this it is difficult to quantify the different levels of security over this period. One indication may be that government anti-kidnapping forces have assisted in reducing kidnappings across Colombia from over 3,500 in 1996 to 687 in 2007 (U.S. Department of State 1997, section 1.b; US Department of State 2007, section 1.b). These figures suggest increased government control over the security situation, at least regarding kidnappings, but Marks warns against drawing too many conclusions based on such figures:

Statistics are a double-edged sword. First, there is the political reality that efforts to arrive at metrics for assessing the progress of an approach – though absolutely necessary – take on meaning only as they are interpreted by the audience. All parties to the present Colombian political debate, for example, agree that there has been demonstrable progress toward normalcy by any metric utilized, such as the decline in kidnapping and murder. Yet there is little agreement as to what “normalcy” as an end-state actually should look like. Second, there is the empirical reality that no efforts have proved successful at “explaining” statistically the causes of insurgency.

... In the matter of statistics, it is the combination of quantitative and qualitative indicators that gives rise to the judgment that progress is being made. This does not mean, however, that merely advocating “more of the same” is the prescription for further action so much as “staying the course” (Marks 2005).

Paramilitaries

The largest paramilitary group in Colombia is the AUC (*Autodefensas Unidas de Colombia* or United Self-Defense Forces of Colombia). A 1996 Human Rights Watch report on the relationship between the military and paramilitary groups revealed that the military-paramilitary partnership was a fact of life throughout Colombia. Collaboration between military intelligence, division, brigade, and battalion commanders and paramilitaries continued. The military high command continued to organize, encourage and deploy paramilitaries to fight a covert war against those it suspected of support for guerrillas. The military had apparently moved paramilitaries around the country to carry out political killings. Although the army denied conducting surveillance of political parties and elected officials, the surveillance of legal political groups appeared to be among the prime duties assigned to military intelligence, which had apparently used paramilitaries to gather information and later act on it by threatening and killing people. A retired army major described paramilitaries as the “principal source” of army intelligence. “These people live in the region and have contacts with both their own side and with the enemy,” he told us. “In fact the principal action of the paramilitaries is [to collect] intelligence, in addition to serving as an extermination group” (Human Rights Watch 1996, *Colombia’s Killer Networks: The Military-Paramilitary Partnership and the United States*, UNHCR Refworld website, 1 November, section 1 <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6a8530> – accessed 11 January 2008). In 1997 an Amnesty International Report stated:

More than 1,000 civilians were extrajudicially executed by the security forces and paramilitary groups operating with their support or acquiescence. Many victims had been tortured. Human rights activists were repeatedly threatened and attacked. More than 120 people “disappeared” after detention by the armed forces or paramilitary groups. “Death squad”-style killings of people regarded as “disposable” continued in urban areas. Several army officers were charged in connection with human rights violations, but many others continued to evade accountability for thousands of extrajudicial executions

and “disappearances” in recent years. Guerrilla groups were responsible for numerous human rights abuses, including scores of deliberate and arbitrary killings and the taking and holding of hundreds of hostages (Amnesty International 1997, *Amnesty International Report 1997 – Colombia*, UNHCR Refworld website, 1 January <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6a9f92c> – accessed 11 January 2008).

The US Department of State report for 1996 stated:

According to credible NGO sources, during the first 9 months of the year, members of paramilitary groups committed 59 percent of politically motivated extrajudicial killings; guerrillas were responsible for 33 percent; and government forces for 8 percent of them (U.S. Department of State 1997).

The US Department of State’s *Country Reports on Human Rights Practices 2006 – Colombia* provides information on the recent activities of paramilitary groups:

Illegal armed groups committed the majority of human rights violations. Despite a unilateral cease-fire declared by the AUC in 2002 and a nationwide demobilization, renegade paramilitary members committed the following criminal acts and human rights abuses: political killings and kidnappings; forced disappearances; torture; interference with personal privacy and with the political system; forced displacement; suborning and intimidation of judges, prosecutors, and witnesses; infringement on citizens’ privacy rights; restrictions on freedom of movement; recruitment and employment of child soldiers; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists.

...There continued to be credible reports that some members of the security forces cooperated with illegal paramilitaries in violation of orders from the president and the military high command ... Such collaboration often facilitated unlawful killings and sometimes may have involved direct participation in paramilitary atrocities.

Impunity for military personnel who collaborated with members of renegade paramilitary groups remained a problem ...

Renegade paramilitary members committed numerous political and unlawful killings, primarily in areas under dispute with guerrillas or lacking a strong government presence ...

...Demobilized paramilitaries committed crimes, which primarily affected civilians. The NGO Colombian Commission of Jurists (CCJ) claimed that paramilitaries, demobilized or active, had killed more than 3,000 civilians from December 1, 2002, through July 2006.

According to CINEP [Centre for Investigation and Popular Education], demobilized paramilitary members were responsible for the deaths of 58 civilians from January through June, a 75 percent decrease from 234 deaths reported during the same period in 2005. Demobilized and renegade paramilitary members killed journalists, local politicians, human rights activists, indigenous leaders, labor leaders, and others who threatened to interfere with their criminal activities or showed leftist sympathies (U.S. Department of State 2007, sections 1.a, 1.g).

A report from the Council of Foreign Relations comments on the demobilisation of paramilitary groups in recent years:

... Between 2003 and 2005, violence committed by paramilitaries dropped sharply; for instance, assassinations dropped from 1,240 to 329, according to a research organization in Bogotá.

... Despite its problems, the demobilization process has revealed the degree to which paramilitaries have infiltrated the highest levels of Colombian politics. ...

In a May 2007 report on Colombia’s armed groups, the International Crisis Group says that regardless of what one labels these groups, they all have ties to drug trafficking and criminal networks. It documents three types of armed groups: paramilitaries that did not demobilize; groups in collusion with drug cartels; and criminal gangs that have arisen to fight for a share of the drug trade. Sergio Caramagna, head of the OAS mission in Colombia, told NPR, “the danger is that these groups have a big fountain of revenue that comes from narcotrafficking that allows them to develop and recruit people and continue affecting the population” (Hanson, S. 2008, *Colombia’s Right-Wing Paramilitaries and Splinter Groups*, Council on Foreign Relations website, 11 January <http://www.cfr.org/publication/15239/> – accessed 14 January 2008)

The above sources suggest that whilst demobilisation has been progressing, and while violence caused by paramilitary groups has been on the decline, these groups are finding other ways to undermine the system. Aside from these, sources suggest that the security situation involving paramilitary groups has improved since 1996, in particular since the 2003 truce (Hanson, S. 2008).

Political Party A

No information could be found by the Tribunal in any of the searches made on Political Party A or any derivatives.

Current security situation in City A

City information removed pursuant to s.431 of the Act.

Forced recruitment of young people

FARC have recruited young people and children as soldiers. A Human Rights Watch report from 2003 stated:

Human Rights Watch estimates that more than 11,000 children fight in Colombia's armed conflict, one of the highest totals in the world. At least one of every four irregular combatants in Colombia is under 18 years of age. Several thousand of them are under the age of 15, the minimum age permitted for recruitment into armed forces or groups under the Geneva Conventions.

... Approximately 80 percent of child combatants in Colombia belong to one of the two left-wing guerrilla groups, the FARC or ELN. The remainder fights in paramilitary ranks. ... The FARC continues to recruit and use children, and have made no commitment to stop this practice. By Human Rights Watch's estimate, the FARC has the majority of child combatants in Colombia. A conservative estimate is that 20 to 30 percent of all FARC combatants are under 18 years old (Human Rights Watch 2005, 'Colombia: Armed Groups Send Children to War: U.N. Security Council to Discuss Colombia's Child Soldiers', HRW website, 22 February <http://hrw.org/english/docs/2005/02/22/colomb10202.htm> – accessed 14 January 2008).

Human Rights Watch say of the recruitment of young men and child soldiers that:

The great majority of child recruits to the irregular forces decide to join voluntarily. Yet forcible recruitment occurs in some parts of Colombia. Human Rights Watch interviewed thirteen former combatants, all of whom had belonged to either the FARC-EP or the UC-ELN, who described having been forced to join the ranks of the group unwillingly; they made up slightly more than 10 percent of the children we interviewed. Another two children said that they had been pressured to join a guerrilla group. And even the voluntary decision to join irregular forces is more a reflection of the dismal lack of opportunities open to children from the poorest sector of rural society than a real exercise of free will. Irregular forces exploit children's vulnerability. They mount recruitment drives that glamorize the warrior life and tempt with promises of money and a brighter future. Some families send children to combat because they are unable to support them ... But once incorporated, children cannot leave voluntarily. To the contrary, they know that the price of attempting to desert could be their lives.

... Although the UC-ELN is often believed to resort to press-ganging less than the FARC-EP, Human Rights Watch found that some fronts seem to resort to forcible recruitment on a significant scale. ... (Human Rights Watch 2003).

This Human Rights Watch report suggests that forced recruitment sometimes occurred in contested areas where people were forcibly driven from their homes. In a section detailing the recruitment of children, the report notes:

Forcible recruitment in Colombia is the exception rather than the rule. It rarely takes the form of a military press-gang operation in which villagers are herded together at gun-point. More subtle pressures are usually involved. Often inducement and persuasion are backed by thinly veiled threats. Both the FARC-EP and the UC-ELN are credibly reported to resort on occasion to use force to gain new recruits.

... The most plausible explanation of forcible recruitment is the inability of guerrilla units to replenish their ranks by voluntary enlistment alone. We are unable to judge whether the use of force is authorized at higher levels or whether recruiters resort to force to meet their targets even though the official guerrilla policy prohibits the use of force (Human Rights Watch 2003).

In 2003 paramilitary forces were responsible for forcibly recruiting “children” although, compared to FARC and ELN, they relied less on forced recruitment because they could afford to pay wages that were attractive to young recruits. Human Rights Watch noted:

Although cases of forcible recruitment have been reported, the money seems to have been decisive in gaining new recruits. Once admitted into the ranks, if children attempt to desert, they risk capture and execution by their commanders as suspected infiltrators or informers.

The paramilitary forces pay child recruits a wage monthly or every three months, ranging between 900,000 and 1,200,000 pesos (approximately U.S. \$300 to \$400), with bonuses for special missions. Most of the former paramilitary children we interviewed said that they joined primarily for the money, even though this attitude was frowned on by paramilitary leaders. Many entered the AUC in the company of friends or already had contacts within the group. ... (Human Rights Watch 2003).

More recently UNICEF reported of Colombia

(http://www.unicef.org/infobycountry/colombia_2660.html, accessed 13 March 2008) that there were still an estimated 6,000 to 7,000 child soldiers in urban militias and other armed forces. UNICEF and its partners had been demobilizing and reintegrating hundreds of former child soldiers. They were also providing sports and other programmes that gave adolescents “alternatives to joining armed militias” This report did not refer to forcible recruitment of children.

A 2006 UN report notes that in 2006 the Colombian representative reported to the UN Security Council that nearly 43,000 members of illegal armed groups had been demobilized and the number of children recruited into armed conflict had been reduced substantially as a result of laws prohibiting the recruitment of people below 18 years of age. As the Secretary-General’s report indicated, violent groups outside the law were the only parties that recruited children in Colombia. The number of kidnappings had also been reduced, and internal displacement had slowed. She said more than 3,000 children had entered into the special attention programmes established by the Colombian Family Welfare Institute, where assistance was provided to reintegrate them with their families and social environments. ... Although Colombia joined other countries in rejecting the recruitment and use of children in armed conflict, it believed that it was not appropriate to give equal attention to children affected by conflict in all situations of concern.... She added that it was not appropriate to give other violations affecting children the same weight as that of recruitment and use. ... A change in approach would weaken the objective, which was to end the recruitment and use of child soldiers. ...” (UNSC SC/8877, Security Council 5573rd Meeting (AM & PM) “Security Council strongly condemns continued use of children in armed conflict; notes progress in implementing mechanism to monitor, eliminate practice”).

Of “Child soldiers” the US State Department report (2008) said that during 2007 guerrillas continued to use children as soldiers. The Ministry of Defence estimated that 4,620 FARC members and 1,330 ELN members were minors and that most guerrilla fighters had joined the guerrilla ranks as children. Human Rights Watch reported that there were approximately

11,000 child soldiers, stating that the percentage of those in the FARC and the ELN had increased relative to those who may have joined new criminal groups. The report also observed that a 2002 UNICEF study estimated that 83 percent of child soldiers volunteered to join guerrilla and then AUC paramilitary groups and did so because of limited educational and economic opportunities and a desire for acceptance and camaraderie. Nevertheless, many children found membership in guerrilla and paramilitary organizations difficult, and the Ministry of Defence reported an increase in the number of minors who deserted illegal armed groups. At least 709 children (494 of them former members of the FARC) surrendered to state security forces during 2007 and were transferred to a reintegration program for former child soldiers.

A recent report "Child Soldiers, Global Report 2008"

(<http://www.childsoldiersglobalreport.org/content/colombia>, accessed 27 June 2008, source: Coalición contra la vinculación de niños, niñas y jóvenes al conflicto armado de Colombia and Coalition to Stop the Use of Child Soldiers, *Frontiers: Children at the Borderline*, February 2007) observed that, despite some improvements, during the previous three years children had been recruited and used by the opposition FARC and ELN and various other armed groups, mostly operating in urban areas, including some paramilitaries who had failed to demobilize. Recruitment of children by the FARC and ELN extended to areas of Ecuador and Venezuela near the Colombian border. Another recent report observes that FARC continue to "actively recruit" young people as soldiers (Lost Childhoods, 2008, YCare International, 9 January, <http://www.ycareinternational.org/1375/news-stories/lost-childhoods.html>, accessed 27 June 2008).

The UNICEF website (http://www.unicef.org/infobycountry/colombia_31370.html, accessed 13 March 2008) observed that all known illegal armed groups in Colombia continued to recruit children, although it did not refer specifically to young people being recruited by force.

No information could be found by the Tribunal in the sources consulted to suggest that there were guerrilla or paramilitary groups forcibly recruiting young people in the City A area in particular. However guerrilla and paramilitary activity appeared to be sporadic and unpredictable and, aside from areas of intense conflict, it is difficult to outline any particular area in Colombia where forced recruiting was prevalent at any particular time.

FINDINGS AND REASONS

Colombian passports have been submitted in evidence that each of the applicants is a national of Colombia. The Tribunal accepts that they are and has considered their claims in relation to Colombia.

In brief, it has been claimed that the applicants have a well-founded fear of persecution because they are family members of the Husband, who faces harm because of his past political activities. However for a number of reasons the Tribunal is not satisfied that the Husband was politically active during the 1990s.

Firstly, it has been claimed that he was a member of a legal party during the 1990s, up to [year] when he left Colombia with the applicants. The Tribunal has before it no evidence from any independent, reliable, source that this party existed in Colombia in the 1990s. During the Tribunal hearing he claimed that the reason the Tribunal had been unable to locate evidence that this party existed was that it was a small group operating in different suburbs

and helping needy people. He said that the Tribunal could not find a record of it because it was small.

He has since claimed that the party was a local cell of a major political party in Colombia. The Tribunal accepts that the latter party was and is a major political party. However if Political Party A was part of that larger party the Tribunal would have expected the husband to readily say so in his oral evidence. The applicants have been given every opportunity to locate and submit evidence from a reliable independent source that Political Party A itself existed. None has been submitted. Tribunal researchers have also attempted to locate any reference to this group in independent sources, without success. If, as has been claimed, the group was simply a local "cell" of a major national party, one would expect its name to reflect that link as well as the localised focus of its work. However the name reflects neither. The Tribunal considers that the belated explanation that it was a local branch of a major party is a late invention intended to explain the inconsistency in the evidence that, on the one hand, it was a large party, and on the other that it was a small local party in City A

It has also been claimed that The first named applicant's husband was a member of political Party A for at least eight years. She told the Tribunal that their marriage was stable and that they were living together throughout this period. Both agree that he never told her of his membership of this group, nor of his active involvement with it, during these years, despite telling the Tribunal that he worked for it between one and two days every week, and that the group openly helped people in the town. It is not unheard of that a partner in a marriage might live a "secret" life, but in the present case no reason, apart from that it might worry her, has been provided as to why he did not tell his wife that throughout much of their marriage he was openly doing community work for a legal, reputable, local group, a fact which in any case must have been common knowledge to many other local people.

Further the Husband submitted to the Tribunal a membership card of *Political Party A*, containing his photograph. It contains an address which, according to the applicant and her husband, was her relatives' address. No explanation has been provided as to why that address might have been used if the card had been issued by a political group, and the Tribunal also notes that the card does not contain a date of issue or period of validity. The Tribunal is not satisfied that the card was produced by *Political Party A*.

For these reasons the Tribunal is not satisfied that *Political Party A* existed. Therefore the Tribunal is not satisfied that the Husband was a member of it

Secondly, in his evidence to this Tribunal at various stages the Husband has been unable to explain with any cogency why he chose to act as an informer for FARC-EP in particular. The evidence from the other sources above indicates that such a choice would normally be made by a person with strong political convictions who was prepared to take considerable risks in support of them. The manner in which he expressed his political views and knowledge was not consistent with his claimed long-standing political activity and level of commitment.

The Tribunal is not satisfied that he was giving information about another political group's members to the guerilla group FARC-EP.

The Tribunal does not accept that the Husband was involved with any political groups or parties in Colombia. As the Tribunal is not satisfied on this point, it follows that the applicants do not have a well-founded fear of persecution on the basis of their membership of his family, that fear arising from the Convention reason of political opinion.

The Tribunal is satisfied that the first named applicant and her husband chose to continue to live in their apartment until their departure, despite possibly spending a couple of days in City C before returning to that apartment. Their willingness to return to their normal home address is consistent with some confidence that they were not at risk of any imminent targeted attack, for example motivated by any particular group's perceptions of their political opinions. The Tribunal has also noted that they were willing to wait for Australian visas to be issued rather than using their existing visas for Country C. Again, that is consistent with a high level of confidence that they were not at risk of any imminent attack. The Tribunal considers that they were willing to do these things because they did not have a subjective fear of any serious harm in the immediate future but, rather, were simply fearful about the possibility of more random harm arising from the poor security situation.

The Tribunal is no doubt that when the applicants left Colombia they feared for their safety. The Tribunal considers highly reliable the evidence from Human Rights Watch ([year]) that in the year of their departure over 750,000 Colombians were internally displaced because of political violence, that paramilitary violence was responsible for 32 per cent of all forced flight, that the problem had worsened during year, that the government was unable to assist the displaced, and in addition that guerrilla groups such as FARC were committing violations of international humanitarian law including political killings, kidnappings, the use of landmines, and attacks on civilian targets, including public buses. The Tribunal considers it highly plausible that, because of this violent and unpredictable environment, the first named applicant and her husband decided to leave Colombia with their two young children in the hope of finding a secure place in which to live.

For the reasons set out above the Tribunal finds that the applicants did not have a well founded fear of persecution at the time they left Colombia for reasons of political opinion imputed to them, or for reasons arising from their membership of the husband's family.

The first named applicant completed Part C of the visa application form as a person making refugee claims. Her children, the second and third named applicants, completed Part D of the visa application form as members of her family. However, her statement to the Department demonstrates that there were refugee claims made on behalf of her children in the visa application. In these circumstances, the Tribunal finds that each of her children made applications as a refugee and their applications should also be considered against the refugee criterion.

The particular claims made in relation to the two children are identical concerning Colombia. These are that they might be forcibly recruited by members of an armed group. The Tribunal has no doubt that they and their parents are genuinely fearful that this might occur and that forcible recruitment into an armed group could constitute "serious harm" because, at the very least, it involves a threat to liberty.

As to whether that fear is well-founded, the Tribunal has sought evidence from reliable independent sources that might indicate that young people aged between 16 and 19 are being forcibly recruited in the area of City A. The Tribunal has carefully considered all the evidence before it on these points, including that submitted by the applicants. The most specific evidence comes from a person claiming to be the first named applicant's relative in Colombia, who wrote that in City A there were urban guerrillas and paramilitary groups, and that many young people were recruited by these groups and forced to be part of their ranks. However the specific examples given by him were not of events in City A, and also referred to a very small number of incidents in the area around it in a four year period since 2004. No

information from a verifiable, reputable, source was found by the Tribunal confirming that there are guerrilla or paramilitary groups commonly forcibly recruiting young people in the City A area. On the other hand the Tribunal considers reliable the evidence that regular armed confrontations and attacks against civilians are still occurring in and around the applicants' home department of Quindio (United Nations Office for the Coordination of Humanitarian Affairs 2007) and that Quindio is in a 'fragile security situation', where attacks by FARC still occur and 'events' are regularly reported (UN Office for the Coordination of Humanitarian Affairs 2007). Generally consistent with this, the Tribunal also considers plausible the claim by the first named applicant and her husband that friends and relatives have been threatened or harmed recently in Armenia by unknown individuals.

Although the Tribunal is satisfied that the majority of recruitment of young people by armed groups is now voluntary, and does not consider it *likely* that the second and third named applicant's will be forcibly recruited by an armed group, it does not consider the chance remote that this might occur if they return to Quindio department. The Tribunal has had particular regard to the evidence about the unpredictability of the security situation in that area, and the evidence that armed groups, including FARC, which is known to forcibly recruit young people in urban areas, are active in that department, as well the more general evidence from UNHCR that guerrilla and paramilitary groups still have the capacity to undertake operations throughout Colombia, with constant shifts in territorial control between the different parties of the conflict, an increase in frequency and intensity of combat, and violations of international humanitarian law often creating grave threats to the life, liberty or security of civilian populations in given zones or territories (UNHCR 2007). In the Tribunal's view it would be unreasonable to find that the chance of two teenage children, returning from many years outside Colombia, being at risk of forced recruitment was remote. The risk to them is increased by the fact that, having lived abroad for many years, they may attract unwanted attention, and also that they will possibly unwittingly take risks with their safety that local young people might not.

As to whether they could relocate within Colombia in order to avoid harm, the Tribunal does not consider that would be a reasonable option, given that their only relatives live in City A, that they have never lived in Colombia anywhere other than City A, and that, according to UNHCR, accessibility to alternative relocation areas may not be safe because there are large numbers of illegal checkpoints on travel routes throughout the country where individuals concerned may run the risk of indiscriminate violence (UNHCR 2005, "International Protection considerations regarding Colombian asylum-seekers and refugees", March). Further, they will be unfamiliar with the security situation wherever they reside, and thus have fewer tactics than other citizens for limiting risks to their safety. UNHCR has observed that, given the situation in the country, the application of the internal relocation concept may generally be considered as irrelevant, unless in extremely clear-cut cases (UNHCR 2005). The Tribunal therefore concludes that it would be unreasonable to expect the second and third named applicants to relocate in order to avoid the harm of which they have a well-founded fear.

The Tribunal is satisfied on the basis of the evidence before it in relation to their circumstances that, if they were to be targeted for forcible recruitment, the reason would be that they are identifiable as [information deleted under s.431]. The Tribunal considers that to be a particular social group for the purposes of the Convention.

For these reasons the Tribunal considers that the second and third named applicant's have a well-founded fear of Convention-related persecution in Colombia.

CONCLUSIONS

The Tribunal is satisfied that the second and third named applicants are persons to whom Australia has protection obligations under the Refugees Convention. Therefore they satisfy the criterion set out in s.36(2)(a) for a protection visa and will be entitled to such a visa, provided they satisfy the remaining criteria.

The Tribunal is not satisfied that the first-named applicant is a person to whom Australia has protection obligations under the Refugees Convention and therefore cannot satisfy s.36(2)(a) of the Act. Nor is she able to satisfy s.36(2)(b), as she is not the spouse or a dependant of the other applicants. However, the Tribunal is satisfied that she is a member of the same family unit as the second and third named applicants for the purposes of cl.785.222(a) and 866.222(a) of Schedule 2 to the Regulations. This is because the Tribunal is satisfied that she is their mother and therefore that all are members of the same family unit. The fate of her application therefore depends upon the outcome of the second and third named applicants' applications. She will be entitled to a protection visa provided she satisfies the criterion set out in s.36(2)(b) of the Act and the remaining criteria for the visa.

DECISION

The Tribunal remits the matter for reconsideration with the following directions:

- (iii) that the second and third named applicants satisfy s.36(2)(a) of the Migration Act, being persons to whom Australia has protection obligations under the Refugees Convention; and
- (iv) that the first named applicant satisfies cl.785.222(a) and 866.222(a) of Schedule 2 to the Migration Regulations, being a member of the same family unit as the second and third named applicants

I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the *Migration Act* 1958.

Sealing Officers ID: PRRTIR