

IN THE IMMIGRATION APPEAL TRIBUNAL

LV (Internal Relocation - FARC) Colombia CG [2002] UKIAT 04431

Appeal no. HX0 3978-2002

Heard: 10.09.2002

Typed: 11.09.2002

Sent out: 27.09.2002

IMMIGRATION AND ASYLUM ACTS 1971-99

Before:

John Fox (chairman)
John Freeman (vice-president) and
Dr AU Chaudhry

Between:

Luz Stella VÉLEZ Vanegas,
appellant

and:

Secretary of State for the Home Department,
respondent

DECISION ON APPEAL

Mr N Jayawardhena (solicitor, Nimal Jay & Co) for the appellant

Mr S Ouseley for the respondent

This is an appeal from a decision of an adjudicator (Mr LV Waumsley), sitting at Bromley on 27 March, dismissing an asylum and human rights appeal by a citizen of Colombia, from removal directions as an illegal entrant on 16 March 2001. In the grant of leave, the point was taken that no destination had been specified in the removal directions. While that was regrettable, it seemed to us that the decision of the Court of Appeal, sitting as a Divisional Court, in **Hwez (CO-2090-01)** meant that there was nevertheless an appealable decision, which had to be considered on the merits of the appellant's claim for asylum (or protection under the Human Rights Convention): there has never been any question of her being removed to anywhere other than Colombia. Leave was given on the basis of a UNHCR letter about internal flight in Colombia, dated as long ago as 22 December 1997.

2. These were the adjudicator's relevant findings of fact:

19. *I am prepared to accept that if the appellant were to return to her home town of Caloto, and if her presence there were to come to the attention of the members of the paramilitary group who threatened her previously because of her suspected links with FARC, there would then be a real risk that she might be killed or*

harmed in some other way by those paramilitaries. However, there is of course no obligation on the part of the appellant to return to her home area where she is known. On the contrary, she has the whole of the rest of Colombia in which she could relocate. In particular, she could consider moving to one of the larger cities, such as the capital, Bogota.

20. *On the evidence before me, it is clear that if the appellant were to relocate to some other part of Colombia well away from her hometown, it is extremely unlikely (to put it at its highest) that she would be recognised by anyone who knew her previously before her departure from Colombia some 20 years ago. She is not a well-known political or public figure. On the contrary, she is just an ordinary individual from a small town who has never been involved in any form of political or public activity. She would therefore just be another anonymous individual if she were to relocate to some other part of the country.*
21. *No suggestion has been made on the appellant's behalf that it would be unreasonable or unduly harsh to expect her to relocate to some other part of Colombia if she is unwilling, for understandable reasons, to return to her own home town. She is still a relatively young, able-bodied woman with no family commitments. I am therefore satisfied that it would not be unreasonable or unduly harsh to expect her to relocate to some other part of Colombia where she would be safe from the members of the paramilitary group who threatened her previously in her home town.*
3. The evidence on which these conclusions were based was as follows: we should perhaps say to help adjudicators that they need not employ *oratio obliqua* ["she states"] where that can be understood from the context.
7. *The appellant states that prior to her departure from Colombia, she lived in a small town called Caloto. In 1997, she rented out two of the rooms in her home to a man called Luis Carlos Arango.*
8. *About two years later, a military patrol was attacked near Caloto, and some of the soldiers were injured. Shortly afterwards, on 2 August 1999, the police started raiding all the houses in Caloto on suspicion that local people had informed the guerrillas who had attacked the military patrol. When the police searched the room in the appellant's home where Luis Carlos Arango slept, they found some documentation which they said was evidence that he was a member of FARC (Revolutionary Armed Forces of Colombia), one of the major guerrilla groups in Colombia. The appellant was then arrested, and was taken to the police station for interrogation. She states that she was threatened, had cold water thrown over her, and was hit with a stick when she started falling asleep. The police wanted to know about her contacts with the guerrillas.*
9. *The appellant states that some of her neighbours vouched on her behalf to the police, and that she was then released without charge after being detained for about three to five days. However, she was required to report to the police on a daily basis, and duly did so.*
10. *The appellant states that about two or three weeks later, on 23 August 1999, a notice was put up in the main street of Caloto by members of a paramilitary group naming about ten to twelve individuals who were to be killed because they had assisted the guerrillas. The appellant's name was amongst those who were on the death list.*

11. *The appellant states that the local priest in Caloto told her that he was making arrangements for the safe departure of those individuals who were named on the death list. He offered to take the appellant with him. She accepted immediately, and went to Santander two days later on 25 August 1999. She remained there for two days before moving on to Cali, which is about one hour from Caloto by bus.*
12. *The appellant states that she remained in Cali for about one month before leaving Colombia with the assistance of a paid agent. She kept a low profile during that period. She left Colombia on 10 October 1999, and entered the United Kingdom clandestinely two days later. She states that she fears that if she were now to return to Colombia, she would still be at risk from the members of the paramilitary group which threatened her previously because they believed wrongly that she supported or otherwise assisted the FARC guerrilla group.*
4. The UNHCR letter on which leave was given is from their deputy representative in this country to someone at the Refugee Council. The view is expressed that *"there is no realistic 'internal flight alternative' in Colombia for Colombians with a well founded fear of persecution. UNHCR knows of no safe havens in Colombia."* The adjudicator's decision was not of course based on the existence of any specific "safe havens", as can be seen from the passage quoted. Mr Jayawardhena also relied on a UNHCR position paper of February 1999; but that does not deal specifically with Colombia at all. It does not take account of the decision of the Court of Appeal in **Robinson [1997] Imm AR 568**, which is the leading expression of this country's law on the subject, and we do not find it of any particular help.
5. Mr Jayawardhena went on to suggest that it was for the Home Office to show that there was somewhere in Colombia to where it would *not* be unduly harsh to expect the appellant to return. We see no warrant for that in **Robinson**, which leaves it to the adjudicator to make an overall judgment of the reasonableness of return. What needs to be shown in any individual case will be a matter of evidence, relating to its relevant individual circumstances. Returning to those in the present one, they can be seen from the adjudicator's § 10, set out at § 3 above.
6. We put it to Mr Jayawardhena that, if the para-militaries chose to advertize their intentions by publishing this appellant's name, amongst others, on a list in a public place, then those intentions must have been directed towards frightening her into leaving the neighbourhood: if they had been planning direct action, no purpose would have been served by issuing a warning. If what the para-militaries wanted was for the appellant to leave the area where they thought she had given aid and comfort to the FARC (*Fuerzas Armadas Revolucionarias de Colombia*), then the corollary must surely be that, if she did leave the area, then their interest in her would cease? This interpretation of events is to some extent supported by the priest's actions in arranging internal flight for those concerned.
7. Mr Jayawardhena relied on a decision of this Tribunal in **Asevedo [01/TH/01397]**. They took the view that, because of the system of identity card registration in force, an appellant who had been a relatively high-profile human rights and trade union activist in his home town could not reasonably be expected to seek internal flight: even if he would not be sought out and persecuted elsewhere, he would have "a long-standing and genuine subjective fear of what

would happen if the police and para-militaries found them [*him and his paramour*] and discovered [his] history”. Leaving aside the correctness or otherwise of basing a **Robinson** decision on a subjective, rather than a reasonably based “objective” view of the situation, that is a long way from this case. The only other published material on which Mr Jayawardhena relied is to be found in the CIPU report at A67, where reports of collaboration between the police and para-militaries are discussed; and at C49, where there is evidence of general lawlessness by government forces and para-militaries.

8. There is however a letter from UNHCR (the well-known deputy Representative in this country) dated 17 July 2001, addressed to the Tribunal dealing with **Asevedo** (which it may suggest should have been spelt **Acevedo**). Since the letter had been considered by the Tribunal in that case, we agreed to look at it, even though it had not been filed and served in accordance with the standard directions. There is a great deal of discussion of the general law on the subject: we have to say again that this is not a useful purpose for such communications. If UNHCR have, as they sometimes do, something serious to say about the law, then the Rules allow them to apply to intervene and be represented by counsel, whose professional judgment should keep his submissions confined to what is relevant to the case in hand.
9. The interesting part of a letter of this kind, given that UNHCR is represented in Colombia by a number of field offices (as Mr Ouseley pointed out from the map he produced), would have been some attempt at an up-to-date assessment of the position on the ground there. There is no sign of that at all: instead the writer contents himself with reiterating the position previously taken, last put before us in the form of the 1997 letter. This is distinctly jejune: we have quoted the entire substance of it at § 4; and the general effect of UNHCR’s contributions is not helpful, because it does not bear on the issues in this case.
10. **Conclusions** This appellant, unlike Acevedo, had no public rôle at all: her whole case is based on a mistaken assumption by the para-militaries that she was a supporter of FARC. While that, as the adjudicator was prepared to accept, might have given her a well-founded fear of persecution or breach of human rights if she had stayed in her home town, Colombia is a rugged country of considerable size and population. The conduct of the para-militaries themselves in putting her name on a public notice, following the termination of police action against her, does not to us suggest that they can have had anything more in mind than driving her out of town. Having succeeded in that aim, there is nothing to show that they would have been interested in tracking her down anywhere else in Colombia, whether or not they could have got the help of the police in doing so; though that in itself appears unlikely, after her release. The appellant herself does not suggest that anything happened to alarm her during her month in the city of Cali: if she kept a low profile there (see the adjudicator’s § 11, set out at § 3 above), that appears to have been no more than she was used to doing in any event. In our view, the adjudicator was fully justified in not regarding it as unduly harsh to expect this appellant to return to some other part of Colombia than her home town.

Appeal dismissed

John Freeman (chairman)