

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76045

AT AUCKLAND

<u>Before:</u>	S L Murphy (Chairperson) J Baddeley (Member)
<u>Counsel for the Appellant:</u>	H Hylan
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	31 July 2007
<u>Date of Decision:</u>	19 November 2007

DECISION

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

INTRODUCTION

[2] The appellant arrived in New Zealand on 1 May 1999 and lodged a claim for refugee status on 23 August 2006. He was interviewed by the DOL on 5 October and 10 November 2006 and a decision declining his application was delivered on 19 April 2007. It is from that decision that the appellant has appealed to this Authority.

[3] The appellant's claim centres on harassment and detentions suffered by him in the 1980s and 1990s during and after his having studied at XY university.

[4] Counsel provided written submissions and country information on 24 July and 6 August 2007. These have been taken into account in this decision.

THE APPELLANT'S CASE

[5] The appellant was born in Huancavelica state in Peru. He is from a large family of Incan ethnicity. He attended primary school in Huancavelica, where he was not allowed to use his native language, and the family moved to Lima when he was 12 years old. There, they rented an apartment in AB suburb, where the appellant continued to live until his departure from Peru in 1999.

[6] The appellant attended secondary school from 1974 to 1978, where he suffered discrimination on account of his Incan ethnicity. The following year, he started his compulsory military service, training for service in the air force. As he was studying for the university entrance examination in a private academy at the time, he was only required to attend on weekends. He was issued with a military service completion certificate. He was told by the military that he would be treated as a deserter if he did not attend when called up.

[7] In 1982, the appellant started studying part-time at XY university. He continued to study there for nine years, but his studies were cut short when he left due to ongoing difficulties.

[8] The appellant did not join any political organisation while at university, however he was associated with two left-wing organisations. He ate his meals at a dining hall at which daily debates were held between members of the Sendero Luminoso and *Movement Revolucionaria Tupac Amaru* (MRTA), organised by the Fighting Committee of the Comensales. The appellant and other students from the provinces would eat in this dining room. He would have dinner there every night after studying and also eat there on Saturdays. Although the appellant had not joined the Fighting Committee of the Comensales, he would give them financial donations and help them sell craftwork. The money would pay the legal fees for political prisoners. Later, it was revealed that this money actually went to Sendero Luminoso and MRTA guerrillas and their families. At that point, the organisation stopped collecting funds from the university students. He also made a donation for the purchase of a pair of audio speakers, through the Fighting Committee of the Comensales. He thought the speakers would be used for playing music but they were in fact used by left-wing groups to shout slogans.

[9] The appellant was also involved in a study group. Although some study was undertaken by the 60 members of the group, the administrators of the group would organise meetings to be held in which left-wing ideas were exchanged. The

appellant was apolitical, in spite of his involvement with this group, and made this known at the meetings.

[10] The University students were all under suspicion of being Sendero Luminoso supporters as there was a Sendero Luminoso flag in the centre of the university and the walls of the university were covered with subversive slogans. Some time between 1984 and 1986, the police entered the university campus, seeking members of the Sendero Luminoso. Sendero Luminoso members set off explosives in retaliation. The appellant, together with other students, was taken into detention on suspicion of involvement in the Sendero Luminoso. Because the appellant was an Incan from Huancavelica he was under extra suspicion. He was detained for between four and six days. During the detention, he was required to make a declaration, his fingerprints were taken and a paraffin test was performed on him to ascertain whether he was involved in planting the explosion. He was then held in a cell in a dark basement area with a bag over his head. In the cell he was stripped naked, his hands were tied behind his back and he was suspended off the ground which was very painful. He was also punched in the stomach by an officer wearing a boxing glove. During the detention, he was interrogated about his activities and the whereabouts of a particular person about whom he did not know anything. He was released due to the representations of a congressman who had taken an interest in the detention of the students.

[11] The appellant was arrested for a second time in 1986 or 1988. Police raided the university because the students were throwing Molotov cocktails. Three to four hundred students were arrested. This time, he was detained for approximately four days. Tear gas was thrown into his cell and he was subjected to threats, insults and punches. He was charged with subverting public peace, and taken before the courts. As he was able to prove that he was studying and working part-time, and had police certificates to prove that he did not have a criminal record, he was found not guilty and released.

[12] He and the other students were filmed leaving jail for their court hearing, and the footage was shown in an item on the television news. Some relatives and neighbours saw the news item and recognised the appellant. He was not recognised by any strangers as a result of the footage.

[13] In 1988, the appellant started working part time for a company run by a former Prime Minister who remained influential. He continued working there until

his departure from Peru. By the time of his departure, he was working full time as head manager of a warehouse and controlled a large amount of funds.

[14] Around 1988-1989, the appellant was arrested for a third time from the University. That time, the police entered the university, rounded up students and took them to the university pavilion. They were beaten violently. The appellant was taken by truck to the police station where he was detained for two days in a damp cell by himself.

[15] The appellant was released from the third detention after a court hearing. He was represented by a lawyer hired by his father, and found not guilty on account of his lack of criminal record and the absence of proof of wrong-doing on his part.

[16] His brother, CD, was in detention at the same time. CD had been arrested the previous day from the family home. The appellant had been questioned at this time but not taken into detention. CD was held for three days without water or food. Following CD's arrest from their home, the landlord asked the family to vacate the rental premises they were living in at the time, believing the family to be involved in terrorist activities.

[17] In the course of one of the appellant's detentions, his military identification card was taken. He was told that he was required to attend the military base where he had received his training in order to renew his military card every six months. This he did until he left Peru. Students from other emergency zones such as Apurac and Ayacucho were also required to do so.

[18] Until the time of his third detention, the appellant had resolved to continue his studies, because he wished to obtain a degree. He would take precautions to avoid difficulties such as avoiding dark streets on the way to the university and making sure he had friends around him. However, after his final detention, he was too frightened to continue with his studies and left the university.

[19] In addition to the abovementioned detentions, the appellant was picked up by the police from the streets on six to eight occasions in the 1980s and 1990s. On two or three of these occasions, he was held overnight, once for two to three days. After being arrested from the street, he would typically be taken to the police station and questioned, asked how long he had been in Lima and where he was living. His records would also be checked through a computer. The last such

detention occurred around 1995 to 1996. He was not held overnight, instead being released at midnight, after having informed the police that his wife was pregnant. He was invariably treated roughly when taken into detention, for example, being dragged by the hair and clothes and thrown onto the floor of the police vehicle.

[20] The appellant's brother, EF, also studied at XY university. He was subjected to a serious detention for two to three days because he was studying law and was born in Huancavelica. The appellant does not know the details of his treatment during detention but understands he was mistreated.

[21] The appellant had some administrative difficulties registering the birth of his child in 1995 because the city of Huancavelica was recorded on his electoral identification card as being his residence. Because of this, government officials understood he was living in Huancavelica. The appellant was required to obtain documentation proving that he was in fact living in Lima. This he was able to obtain and the birth of his child was then registered. He had no subsequent problems registering the births of his next three children.

[22] The appellant also had some difficulties travelling inland from the coast due to Huancavelica being recorded as his place of birth on his identification card. He would be questioned, but never prevented from travelling. On one occasion, he had to apply for special permission to travel. This he was able to obtain. After a period he stopped travelling inland because of the large number of killings that were occurring.

[23] After the appellant stopped going to university, he restricted his movements to only travelling from his home to his work. In light of this, he did not face any further detentions. However, on two to three occasions, officials would come to his house, asking his whereabouts. They were wanting to make sure he still lived there.

[24] Around 1998 to 1999, the appellant was visited by officers of the National Intelligence Service at his home. He was questioned and forced to give them US\$400. Several months later, intelligence officials again came to the appellant's home. This time, they had a photograph of the appellant's fingerprints. They took the appellant to the beach in a van for two or three hours and showed him photographs of a number of students who had disappeared and people from Huancavelica who were resident in Lima and asked him to identify them. The

intelligence officials believed the appellant was very well paid because at the time he was working for a former prime minister. Because of this, they asked him for US\$1,000. The appellant paid only US\$800, saying he could not afford US\$1,000. The appellant was not aware of what agency the intelligence officials belonged to, but believed that they were military personnel because they were tall and had very short hair.

[25] Prior to leaving Peru, the appellant visited the military service base and gave them a written statement advising them that he was planning to leave Peru for up to a year. Because of this, the military base extended the validity of his ID card to 30 September 2001. He bribed them with key rings in order to obtain this extension.

[26] The appellant left for New Zealand on 29 April 1999 and arrived in New Zealand on 1 May 1999. He did not have any particular problems obtaining a passport to leave. He was issued with a four-month student visa to study English in New Zealand. On 1 and 5 November 1999, the appellant visited the Peruvian embassy and paid a fingerprint processing fee to update his address and list his residence in New Zealand.

[27] The appellant remained on permits until 2001, after which time he began residing illegally in New Zealand until he applied for refugee status on 23 August 2006.

[28] In 2001 the appellant endeavoured to renew his military service card, initially through the Peruvian Consulate in Auckland, as it was due to expire in September that year. The Embassy official said it was most unusual that his card needed renewing and that she had never seen a military identification card with an expiry date previously. The official with whom he dealt initially sent him away on the basis that she was going to check how to renew the card with the Wellington office. The second time he attended the embassy, she said that she would write to Lima to work out how to renew the card. On the third occasion he attended the embassy, a month before the expiry date on the card in 2001, the official said that the card was a military matter that was not the concern of the embassy. The appellant then telephoned the Peruvian Embassy in Wellington. The official to whom he spoke also said it was a military matter that could not be dealt with by the embassy. The appellant subsequently learned that the secretary of the embassy with whom he had dealt was married to a former Peruvian policeman

who had admitted to torture. He did not want to communicate with the embassy after this and had no further contact with it.

[29] The appellant also attempted to renew his military service card by writing to the Supreme Council of Military Justice in Peru, and to the military barracks where he had previously renewed his military card. However, he did not receive any reply to his letters.

[30] The appellant believes that he will be treated as a deserter if he does not renew his military service certificate. This is because he was warned at the time he was originally issued his military service card that if he was called up and failed to attend he would be treated as a deserter.

[31] Two to three years ago, the appellant learned that one of his female cousins had been questioned by the authorities on many occasions. They wanted to know whether she had any dealings with the head of the MRTA. The appellant is unaware whether any other of his family members have had any difficulties since his departure. He remains in contact with a number of family members.

[32] The appellant has been advised that certain people have come looking for him since his departure from Peru. They have not identified themselves, so his family do not know who they are, but the appellant understands they are not from the army.

[33] The appellant fears that the Peruvian military will believe that he is undertaking propaganda for the Sendero Luminoso whilst overseas. He also fears a former intelligence agent MN who was released from jail two weeks before the appeal hearing. He understands this former agent has said he is seeking revenge against former university students, as he was jailed as a result of his activities at university where he had worked undercover as a soldier.

[34] The appellant believes it would be difficult for him to prove his innocence upon his return to Peru because, in the past, he had to provide a student certificate and a work certificate and employed the services of a lawyer to prove his innocence. He said that lawyers now do not wish to help those accused of terrorism because they themselves will be accused of being terrorists or killed by the government.

[35] The appellant says he is at risk of 25 years' imprisonment because he gave family members of the Sendero Luminoso money to help them fund lawyers and

clothes while he was at university. The appellant has not, to date, suffered any difficulties from having provided funds to left-wing groups.

[36] The appellant's home state Huancavelica has been in a state of emergency since 1984. The state of emergency was extended in January 2007.

[37] The appellant's brother studied at XY University and graduated in law. He is now unemployed and to the appellant's knowledge is facing no difficulties.

Documents

[38] The appellant submitted the following documents in support of his claim

- a. expired military service card;
- b. employee identity card; and
- c. extensive country information.

THE ISSUES

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

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

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

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

ASSESSMENT OF THE APPELLANT'S CASE

[41] The Authority accepts the appellant's evidence as credible.

Appellant's risk based on his profile

[42] The appellant's counsel submits that the appellant has a well-founded fear of being persecuted because of his ethnic origin as an Incan, which is apparent from his physical appearance. He submits that because the appellant was one of a small number of Incan university students at the time of his studies this made him stand out as a target for Sendero Luminoso activists and authorities. He also submits that he was persecuted because of his ethnicity and place of birth. He says that his physical appearance as an ethnic Incan makes him unable to escape the attention of the Peruvian authorities, fellow students and the SL activists.

[43] Counsel's submissions contain some concerning assertions as to the current situation in Peru. He says, for example, that the state of emergency in Huancavelica in place since 1984 and extended on January 18 2007 continues to result in:

"...mass jailing of Indians and ruthless murdering of opponents, which is harsher in towns where our client's ethnic group people Ayacucho men and Huancavelica men are slaughtered and no one cares." [sic]

[44] He submits that:

"In Lima as a result of the violent night raids by special commands of the armed forces, many Huancavelica men are arbitrarily arrested. Only their certificate identity cards display as place of birth Huancavelica or Ayacucho if the ID shows tertiary education they are charged as terrorists."

[45] The submissions specify that "all this happens now even under the government of Alan Garcia".

[46] None of the material submitted by counsel, however, supports these claims. Due to the concerning matters raised in counsel's submissions the Authority made its own inquiries on this matter. However it was unable to locate any information whatsoever in support of Counsel's assertions.

[47] Counsel is however accurate in his submission that the appellant has suffered past persecution in the form of several arbitrary arrests and torture at the hands of the Peruvian government. This persecution was for a suspected political association with the Sendero Luminoso due to his ethnic origin, attendance of XY university and place of birth. However those events occurred in the context of an armed struggle between the Sendero Luminoso and government. The armed struggle had effectively ended by the mid 1990s. There is no evidence whatsoever that the actions that the police took against persons with the

appellant's profile are continuing today. Ten years after the struggle the Sendero Luminoso has diminished to a tiny portion of its former size, and the remaining group members (estimated by Amnesty International in 2006 as numbering 200), are no longer directing their focus on political activities, and instead are defending the narco-traffickers in the cocoa growing regions. (Amnesty International Report Peru (May 2006)). In this political context, the risk that the appellant would continue to be targeted for suspected involvement in the Sendero Luminoso is remote.

[48] It is acknowledged that the appellant did suffer extortion at the hands of agents from the National Secret Service several years after the war. The incident was, however, eight or nine years ago, in the aftermath of the war, and was connected with events that occurred at the time of the war. Moreover, the body whose agents were involved in the incident no longer exists: the National Intelligence Council, the successor body to the National Secret Service was disbanded in March 2004; Bank A.S et al *Political Handbook of the World 2005-2006* (2006) CQ Press: Washington at 913. The Authority therefore finds that the occurrence of that incident is not indicative of any risk to the appellant at the current time.

[49] The appellant's family, all of whom are Incan Indians are living without difficulties in Peru, including his elder brother who has a closely comparable risk profile to the appellant, in that he was born in Huancavelica and attended XY University. It is noted that the appellant endeavoured to explain his brother's apparent lack of difficulties by the fact that he had an accident during military service and is "kind of handicapped". However that factor did not preclude him from being subjected to a "serious" detention at the time the appellant's was targeted, therefore would be unlikely to have prevented him from being further targeted were persons of his profile still under suspicion.

Appellant's fears in relation to failure to renew military service card

[50] The appellant also claims to be at risk of prosecution for desertion in Peru on account of his failure to renew his military service card. This is because he was told at the time his military service card was issued that he would be treated as a deserter if he does not attend a call up.

[51] However he has provided no country information in support of any link between failure to renew military service cards and being treated as a deserter.

Further, there is also little if any risk of the appellant being persecuted (as opposed to being legitimately prosecuted under the ordinary law) for failure to renew his military service card. There is no country information before us to suggest that failure to renew military service card results in persecution of any nature (or indeed any punishment, even legitimate).

Risk from recently released intelligence officer

[52] The appellant claims to be at risk from a former intelligence officer who was released from prison shortly prior to the hearing, in light of his having said that he will take revenge against former students. However the appellant demonstrated no personal link between him and the officer, so any risk faced by him is speculative only.

Risk from Sendero Luminoso

[53] Counsel submits that the appellant is also at risk from Sendero Luminoso, and cites in support the US Department of State *Country Report for Human Rights Practices 2004: Peru* (28 February 2005) which says that Sendero Luminoso violates the rights of indigenous people by coercing rural peasants into joining its ranks and demanding war taxes. The appellant, however, has not to date experienced any difficulties from the Sendero Luminoso. Moreover, although indigenous, he is university-educated and his family is long-since settled in urban Lima, far from the remote regions in which Sendero Luminoso continues its limited operations. He is therefore not among the indigenous, rural peasant group that is currently targeted.

Risk for giving money to Sendero Luminoso members

[54] The appellant also claims to be at risk for giving money to an organisation for political prisoners which transpired to be funding Sendero Luminoso family members. We find there to be no real chance of the appellant being persecuted for that reason. The appellant has never to date suffered any difficulties as a result of the donations made during his student years. Even in the 1980s, at the height of the armed struggle, during the time he was under suspicion of involvement with the Sendero Luminoso simply for being a student, on every occasion the appellant was arrested he was able to convince the Police, and on two occasions the Courts, that he had no association with the movement. Given that his donations did not come to light at the time of the armed struggle, the

likelihood of them coming to light and him being punished for them in the current political climate is very remote.

Risk of discrimination

[55] Finally, the appellant's counsel submits that the appellant risks discrimination as an Incan Indian, as Incans from highland areas such as Huancavelica are looked down upon and often stigmatised. He submits that Incan people have worse health and education statistics than other Peruvian nationals.

[56] It is acknowledged that the appellant suffered discrimination at school. However, other than the matters that occurred in the context of the armed struggle discussed above, the appellant gave no evidence of having suffered discrimination in his adult years. He was from a well-to-do Incan family and was able to attend university. During and after university, he was employed by a former Prime Minister. He gave no evidence of difficulties accessing healthcare or being otherwise discriminated against in his day to day activities.

[57] In light of the above, the risk of him suffering any discrimination upon his return that will impact in any significant way upon his life is low. Moreover, it is noted that even if the appellant is at risk of discrimination upon his return, this alone would not be enough to establish a case for refugee status; *Refugee Appeal No 71404* (20 October 1999).

Conclusion on well-foundedness

[58] The issue is whether a person having all of the characteristics of the appellant faces a real chance of being persecuted. We have regard to the fact that the appellant is of Incan descent, was born in Huancavelica, attended XY university in the 1980s, suffered a number of arrests as a student during the heyday of the war against Sendero Luminoso, has been out of Peru for some years and has an expired military service card. None of these characteristics, taken singly or cumulatively, give rise to a real chance of him being persecuted if he returns to Peru.

[59] The appellant has no well-founded fear of being persecuted upon his return to Peru. The first framed issue is answered in the negative and the second does not arise.

CONCLUSION

[60] For the above reasons, the appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeal is dismissed.

"S L Murphy"
S L Murphy
Chairperson