

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO. 2498/95**

**J G S B & N L S B**

**AT AUCKLAND**

<b><u>Before:</u></b>	A R Mackey (Chairperson) S Joe (Member) L Tremewan (Member)
<b><u>Counsel for Appellant:</u></b>	Mr A Chauca
<b><u>Representative for NZIS:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	10 June 1996
<b><u>Date of Decision:</u></b>	20 March 1997

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**DECISION DELIVERED BY L TREMEWAN**

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This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellant, a national of Peru.

**INTRODUCTION**

Although the application filed for refugee status in respect of this appeal was in the name of the appellant husband, the application was also to include his wife. In this respect, we have treated this appeal as a joint appeal, covering the claims of both husband and wife. It was considered more appropriate to deal with the two cases simultaneously, given that they had virtually identical claims. Both gave evidence before the Authority at the hearing. It is recorded that the appellant husband gave the primary evidence, first, and that the appellant wife remained outside while that evidence was given.

While it is accepted that both the appellant husband and wife are to be treated as joint appellants, in the interests of clarity for the purposes of this appeal decision, we shall refer to the appellant husband, JGSB, as 'the appellant' throughout this decision.

Before turning to the appellant's case, the Authority would like to express its regret for the length of time it has taken to release this decision. The reasons for this include the fact that the Authority has been endeavouring to receive updated country information concerning the level of threat presently posed by the Sendero Luminoso, in Peru. This has taken some time. Further, the Authority has been aware that there has been more than one appeal being dealt with around the same time, involving the extended family of the present appellants. Indeed, some of the same members have been involved in the relevant cases. While each case must stand or fall on its own particular circumstances, nevertheless, the Authority has been making some effort to deal with the cases from the same family, where possible, simultaneously.

### **THE APPELLANT'S CASE**

The appellant is 57 years of age and his wife is 52. The appellant was born and raised in I, south of the city of L, where he spent all of his adult life. The appellant and his wife married in July 1963. They had two children, a daughter now aged 29 years and a son, aged 27 years. Both adult children are married and will be referred to later in this decision.

The appellant spent his working life as a building contractor. His most recent position, prior to leaving Peru, was with a particular company from 1979 to 1994. While undertaking such contracts, the appellant had between 12 and 15 workers under him. The income derived from this work was reasonably good and the appellant regarded himself as well-off. The appellant's wife also worked, as a successful clothes designer and manufacturer, with her own clothing label. She ran a business from home and employed, on average, four to six people.

The appellant had a number of siblings who lived in the provinces, and with whom he has had very limited contact. His main focus throughout his life was primarily his work and immediate family interests. Once his children became older, although they married, they remained at home. The appellant's daughter, GPSL, married at about 17 years of age, in the mid 1980s, but continued to spend

considerable amounts of time in the appellant's home with her husband and, later, her first daughter as well. The appellant's son, JSL, remained living in the family home as an adult. It was through this son that the appellant and his wife first began to have problems.

In about 1992, JSL, having trained in security work, began working for a security company. This company sent JSL to work in a suburb of the city where he was a personal guard for a local mayoress, Senora M, who was well-known for her outspoken anti-Sendero Luminoso views. She had apparently received numerous death threats and accordingly needed protection.

Soon after the appellant's son started working for the mayoress, he began to receive telephone calls from Sendero Luminoso. The appellant understood, from the initially limited information that his son would tell him, that he, the appellant's son, was being instructed by Sendero Luminoso to stop working for the mayoress because this was regarded as working against their movement. The appellant stated that the calls came constantly. He would, himself, often answer the telephone but then hand the receiver over to his son who was being specifically asked for by the caller. His son was, he said, clearly disturbed by the telephone calls. The appellant advised his son to stop working for the mayoress but his son told him that he could not do so as he had a binding contract and, in any event, he believed that it was better to try to "fight them". When asked by the Authority what he considered his son meant by this, the appellant stated that he knew his son did not like the injustice of seeing so many innocent people being killed by Sendero Luminoso.

In February 1992, the appellant, his wife, and his son were at home watching the television news when it was broadcasted that Senora M had been assassinated by Sendero Luminoso. They had all felt greatly disturbed by the news, particularly the appellant's son, who became quite distressed. One of the son's work colleagues was critically injured and hospitalised as a result of the attack. It was only a matter of luck that the appellant's son had not himself been working at the time of the attack. The appellant considered that his son might have, upon hearing the news of Senora M's assassination, quit his job. However, his son indicated that he still felt bound to complete his contract with his employer and accordingly reported to work the day after the attack. The company advised its workers at that time, that increased security would be provided for their protection.

After the assassination of Senora M, JSL still continued to receive threatening telephone calls at home. Sometimes the appellant would hear his son arguing and shouting, and even throwing down the telephone. At this time, JSL had been placed by his employer carrying out security duties for the municipality offices of a particular district. However, as soon as JSL's contract was due to end, he arranged to leave Peru because he was, by this time, in fear of his life as a result of the persistent threatening telephone calls.

The appellant's daughter, GPSL, had already left Peru for New Zealand, with her husband, in November 1991. They, too, had had some significant problems with Sendero Luminoso. However, these were of a different nature and were connected with the appellant's son-in-law's family, one of whom had come to New Zealand and obtained refugee status. The appellant indicated during his evidence that neither he nor his wife were ever privy to even basic information relating to their daughter's problems as she kept these to herself. However, it was apparent to them that she had serious problems; they would often hear her speaking quietly with her husband and crying.

The appellant's son JSL left Peru in November 1992, accompanied by his new wife.

The appellant and his wife had felt confident that, with their son's departure from the family home, their lives would return to relative normality. This, however, did not eventuate because the telephone calls from Sendero Luminoso continued after the appellant's son had left, in the same way as they had previously.

The calls which came following JSL's departure were still threatening with the caller making comments such as "Where is your son?" and "Wherever he hides we will find him." At no time did the appellant or his wife ever give the callers any information. The appellant indicated that, as he worked very long hours, it was inevitably his wife who took the threatening telephone calls. As a result he would sometimes come home to find her in a state of anxiety, crying.

Soon after the appellant's son had left Peru, he began to notice certain unfamiliar people wandering around the house, on occasions, when he went out. This was often in the early morning, while he was on his way to work, but it would also in the afternoons. The appellant considered that the people acted as if they were looking for something. He noticed this on average up to three times per week. On

occasions, there would be up to six people and they would be in two small groups, sometimes having discussions. He did not ever notice anyone following him, but felt clearly that the house was under surveillance. It was relatively easy for people to observe the house because it was in between a street and a walkway and was easy for people to walk around.

The most significant incident which happened, however, occurred on 3 March 1993. The appellant was on foot, on his way home from work at around 7 or 8pm. He was a few blocks from home when suddenly a car appeared in front of him and stopped. Three adult males immediately alighted from the car and rushed towards the appellant. They were wearing balaclavas. They violently attacked the appellant. At the same time, he was told "Speak up. Tell us about your son." They also said "We're going to find your son wherever he is." The appellant did not respond. During the attack, he lost consciousness. When he later regained consciousness, he was lying on the ground with people standing over him. He was then taken to hospital.

The appellant's injuries were assessed at the hospital as comprising a significant head injury, bruising and a number of lacerations (requiring stitches). He had also suffered injuries to his body, most particularly around his shoulders, ribs and arms. The hospital treated him throughout the night and, once it was light, the doctors indicated that they had done everything they could in terms of immediate treatment for the appellant and that, as all the hospital beds were taken, he would be discharged. It was necessary however, for the appellant to continue receiving hospital care as an out-patient for six months following the incident.

It should be noted that the Authority had before it medical evidence, including a certificate from the SR Hospital in L, recording that the appellant was treated in that hospital on 3 March 1993 for a "moderate encephalic cranial traumatism associated with multiple traumatism". We also received a certificate following the hearing which referred to on-going therapeutic treatment he has received since he came to New Zealand.

The appellant could not move for two weeks following the attack and was away from work as a result. He still has physiological and psychological on-going effects, as a result of the incident. He receives medication (for headaches and insomnia) and other treatment as necessary.

The incident of March 1993 was not reported to the police because the appellant was instructed by his attackers that, if a complaint was laid, then he would later be killed. Accordingly, the appellant, feeling intimidated, told the medical staff who attended him that he had been involved in a car accident.

After the March 1993 attack, the appellant's wife still continued to receive the threatening telephone calls. The appellant would come home at night to find her terrorised by the calls. One of the callers apparently had told her "What happened [to your husband] is nothing compared to what could happen", and had also said "The next time we will kill you".

The appellant and his wife did, at this time, start making enquiries about moving to another address. They had, however, some reservations about this, believing that if they moved, it could only be a matter of time before they would be located. They continued to try to cope as best they could with the calls. However, about five months after the beating (while they had been out one day looking for possibilities of alternative accommodation), they returned home to find a lot of their property inside their home had been moved around and disturbed. The appellant and his wife reported the matter to the police who were disinterested because nothing had, in fact, been taken. The appellant and his wife were, however, disturbed by the incident, particularly since the red material had all been taken.

Two months after the breaking and entering of the appellant's home, there was a second similar incident. However, this time the burglars took numerous appliances from the home and, as well, items from the appellant's wife's clothing business. The appellant's wife said in her evidence that all of the finished product had been taken as well as all of the red-coloured material. The appellant and his wife believed that Sendero Luminoso were also behind this incident.

The next incident occurred one morning when the appellant was leaving for work. As he stepped out into the garden, he saw a beheaded dog had been left in the front garden area, which was covered in blood and gore. On the front walls of the house had been painted a hammer and sickle with the words "This is the way our enemies die". The appellant's wife indicated in her evidence that she thought the words and symbol may have been written in blood. This was not the first time pintas had been painted on the wall. There had been another incident after the March 1993 beating, when the appellant had come out in the morning to find Sendero Luminoso slogans with a hammer and sickle painted on the front wall.

The appellant disposed of the dog and hosed the writing off the wall. He then went to work, gave instructions to his workers, and returned home to be with his wife because she was extremely distressed. The matter was not reported to the police because they considered that the police, because of limited time and resources, would take no interest in such a matter.

The appellant and his wife were traumatised by the incident involving the decapitated dog, which they regarded as being 'the final straw'. They immediately began making plans to leave Peru for New Zealand. They applied for passports and were able to arrange sponsorships through a friend who was living in New Zealand already.

The telephone calls still continued, coming at all hours, including during the night. On one occasion, when the appellant's wife answered the telephone, she heard the sound of someone moaning, as if they were being tortured on the other end of the telephone. The caller then said "Can you hear this? One of you will be like this soon if you don't tell us where you son is." The calls continued up until the time of their departure for New Zealand, although they might have only been as regularly every four to six weeks at that time. The appellant considered that he continued to see strangers periodically wandering around their house, as if it was under observation until the time that he and his wife left Peru.

The appellant and his wife arrived in New Zealand on 4 March 1994. After their departure, the family home (a substantial four-bedroomed residence) was left in the care of a close friend of the appellant's wife, M. She was to live there rent-free, in order to look after the premises. She has, however, recently written to the appellant and his wife, indicating that she has had to move because of the numerous telephone calls she has received since living in the premises. Although M told the callers that she did not know the appellant and his wife, and that she had rented the premises through an agent, the calls continued. The Authority had before it a copy of the letter from M referring to these and other matters. Also before the Authority, was a letter from the Association of Proprietors and Residents of the particular urban area where the appellant's home is situated. This letter, dated 20 February 1996, asked that the appellant make an overdue payment to the Association and as well, take steps to restore "tranquillity in the neighbourhood", referring to strangers having been seen around the appellant's house and a problem with windows at the home being broken.

Before concluding this section of this decision, it is recorded that the Authority has not considered it necessary to separately detail the evidence presented by NLSB, the appellant's wife. This is for three reasons. First, a full and very detailed narrative was presented to the Authority by the appellant himself, covering both of their situations. His wife's evidence was, by comparison, briefer, given that the basic account had already been given. As stated earlier, their situations are virtually identical. Secondly, it became apparent to the Authority that the appellant's wife's evidence corroborated, in every material respect, that of her husband. Accordingly, once the Authority had covered the basic issues with JGSB, little time was needed to be spent on such matters as pursuing discrepancies since there really were none. Thirdly, where the appellant's wife gave relevant evidence on matters not already covered by the appellant, these have already been included within the appellant's account above.

It is noted that the appellant filed an application for refugee status on 1 December 1994. That decision was formally declined by letter dated 24 October 1995. It is from that decision that the appellant and his wife appealed to this Authority.

### **THE ISSUES**

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

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



Because the issue of relocation arises in this case, the decision of this Authority in Refugee Appeal No 523/92 Re RS (17 March 1995) requires two additional issues to be addressed:

- (a) Can the appellant genuinely access domestic protection which is meaningful?
- (b) Is it reasonable, in all the circumstances, to expect the appellant to relocate elsewhere in the country of nationality?

### **ASSESSMENT OF THE APPELLANT'S CASE**

Before we can deal with the issues posed, it is first necessary to assess the appellants' credibility. In doing so, we find that the appellant's account, and that of his wife, is accepted by the Authority. We considered that they both presented their evidence in a straightforward and frank manner. They appeared to resist any temptation to elaborate their account. Their demeanour was entirely appropriate with the evidence given. Indeed, they both became extremely distressed when presenting certain parts of their evidence, most particularly with respect to the attack on the appellant husband in March 1993, and the incident when the beheaded dog was found in their garden. It was apparent to the Authority that the appellant husband also found it distressing even hearing his wife when she was giving her evidence about some of these matters. Breaks had to be taken during the course of the hearing to allow the appellant and his wife to compose themselves. It was our view that their detailed evidence was not only consistent with one another's, but also consistent with previous statements given by them, in all material respects.

We also note that the appellants had been able to have their account corroborated in several ways with independent evidence. First, a police certificate was available, confirming some of the complaints which had been made by the appellant and his wife. Secondly, as referred to previously, copies of letters were made available, specifically from the "house-sitter", M, who has abandoned her rent-free position in the appellant's home because of the risks associated with that tenancy, and, as well, a letter from the president of the Association of Proprietors and Residents of the SE Urbanisation. It was our view that both of these letters appeared authentic. Indeed, they each had a "ring of truth" about them.

Lastly, the appellant had medical evidence which specifically supported his account of his medical condition as a result of the March 1993 attack, as well as confirmation of treatment (both physiological and psychological) he has received since coming to New Zealand.

In summary, we conclude that the appellant and his wife are credible witnesses and the account given by them is accepted as truthful.

**OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?**

We accept that the appellant and his wife have both been targeted in a consistent, on-going way by Sendero Luminoso following their son's departure for New Zealand. In the relatively recent decision Refugee Appeal No. 2507/95 re JEAH (22 April 1996) the Authority found that recent country information indicated that Sendero Luminoso had largely been defeated, however the Authority acknowledged that isolated acts of activity continued to occur, particularly in respect of persons of prominence.

Since Refugee Appeal No. 2507/95 re JEAH (22 April 1996) was published, the Authority has received more recent country information from a variety of sources. This information appears to confirm that Sendero Luminoso, while not as strong as in its heyday (in the 1980s and early 1990s), still poses a threat. The following extracts are from different sources.

The *Andea Group Report* published by the Business Monitor International in London (September 1996), highlights the fact that the Sendero Luminoso (or "Shining Path" movement) continues to pose a serious threat in the rural regions:

"Events in the second half of August clearly demonstrated that the guerrilla threat has not been eliminated altogether, despite the government's success in severely weakening the rebel movement, Shining Path, since the 1992 capture of the group's leader Abimael Guzman. Around 100 members of the Maoist organisation took control of Alomella Robles, a small village situated 345 miles north-east of Lima, killing one resident and taking a number of others hostage. The incident marks the latest setback to the government in its attempt to end the conflict with the Shining Path in a war that has cost at least 30,000 lives and an estimated US\$25 billion in damage to the country's infrastructure since 1980.

However, despite fears of a return to the chaos of the 1980s when rural areas came under guerrilla control, threatening mining concerns and bringing the government to the verge of collapse, a repeat of such a scenario is unlikely. Not only do the terrorist movements lack the resources and numbers to stage a repeat of their earlier successes, but the guerrillas now find themselves fighting a far more

formidable opponent than a government undermined by corruption and hyper-inflation.”

In an article “Shining Path Makes Bloody Return” *Sunday Star Times*, 11 August 1996, it is stated:

“A spate of deadly attacks has shaken Peruvians, put security forces on alert and raised fears the Shining Path Maoist guerrillas are set for a bloody comeback. But despite their renewed activity, analysts believe the leftist rebels are a limited threat compared to their violent heyday in the late 1980s and early 1990s.

“The guerrillas are fighting like an old boxer,” said Carlos Tapia, a leading researcher on Peruvian guerrillas. “They can score well in one round but it does not mean they can carry on doing it.”

In a series of high-profile attacks over the last few weeks, the Maoist guerrillas have killed six people, injured dozens and caused millions of dollars in damage to property. They set off powerful car-bombs at a police headquarters and outside the home of an army general in Lima and murdered a shantytown community leader.

In the provinces there were more killings, clashes with the army and the occupation of a whole town where the rebels sought to force their propaganda on local inhabitants.

Security officials say the new wave of attacks stems from growing control over the movement by its militant faction. It may also indicate Shining Path is recovering from the 1992 capture of its leader Abimael Guzman, which left a divided force unable to pose any challenge to the government.

“We have finished our restructuring,” a Shining Path rebel said in a clandestine video interview with Peruvian reporters. “You’ll see what we’ve got planned.”

Peru’s guerrilla war has killed at least 30,000 people and caused \$36.7 billion in damage since 1980. The latest offensive has left many wondering if they are witnessing the return of a movement that once held large rural areas, bombed and cut services at will in Lima and threatened to bring down the government.

“In no way are the guerrillas a spent force,” a Western diplomat said.

Peru’s security forces, embarrassingly caught off guard by the recent campaign, predict bloodier attacks to come. “As the increase in activity has achieved wide publicity, it is likely military operations will occur on a larger scale,” a report said. - Reuters

To similar effect, we refer to the following extracts taken from “The Shining Path Comes Back”, *The Economist*, 17 August 1996, page 35:

“Recent weeks have brought two car-bombs, attacks against three firms involved in roadbuilding in the Andean highlands, and the occupation of a town in the coca-growing upper Huallaga valley. Six people have been killed, and dozens injured. On August 7th police uncovered some 10,000 sticks of dynamite buried in sand dunes near a port north of Lima. Documents found by police contain directives to militants to intensify their recruiting of academics and students.

The worst incident was on August 2nd, when 200 guerrillas, disguised in army uniforms, blocked the road into Aucayacu, a town on the Huallaga river, and in open daylight took over parts of it. Bursting into a radio station, they broadcast a call for residents to gather in the main square. Two people died.

...In the upper Huallaga region, guerrilla activity is entwined with drug trafficking and it is unlikely to go away. Guerrilla recruitment there is based on a man’s fighting qualities, though in some highland areas recruits are fed a purer ideological line. The question now is whether the Shining Path can re-create its reign of terror-for terror it was, and little more- in wider areas.

After Mr Guzman was captured, the Shining Path’s organisation collapsed and thousands of militants fell into the hands of police. It has reorganised, as the

recent incidents show. But recruitment is an uphill battle. The government has managed to create a culture that rejects the Shining Path, says Carlos Tapia, a sociologist who taught with Mr Guzman at a university in Ayacucho, the highland town where the Shining Path was born.

Though the Aucayacu attack mirrored many others during the Shining Path's 16-year old war, the movement is a shadow of what it was, he reckons: its activists may number 1,000 a tenth of the figure of 1990. Nor is there a single party line, as there was under Mr Guzman's firm hand.

...And now? In the field, the Shining Path is believed to be under the command of Oscar Ramirez Durand, "Comrade Feliciano," the only member of Mr Guzman's permanent committee still at large. Some analysts had pointed out that the "new" Shining Path appeared to be taking a less violent tack; it even at times admitted it had made mistakes, something that was never done in Mr Guzman's heyday. Yet early this year, it caught up with Pascuala Rosado, a community leader and mother of eight in a shantytown. She had put her life on the line to oppose the Shining Path. It killed her. The new attacks confirm that, though its claws may not be so sharp, the leopard still has all its spots."

In the 22 August 1996 publication of *Latin American Weekly Report* is an article "Re-appraising the Sendero threat - scope and pattern of recent raids indicate tactical shift". It states that:

"The Peruvian government is beginning to take much more seriously the recent upsurge in activity by the Sendero Luminoso guerrillas, as it becomes evident that they have recovered the ability to stage major raids - and that they appear to have adopted entirely new tactics."

Extracts from the Peruvian news publication *Diario La Republica*, 7 March 1996, refer to assassination of Pascuala Rosado, an "ex-leader and social worker" of some profile, who had reportedly been in exile in Chile since June 1993, only to be assassinated by the Sendero Luminoso upon her return to Peru, some three years later, in 1996.

According to various other extracts from Peruvian newspapers published around March and May 1996, incidents of bombing and assassinations by the Sendero Luminoso have led to continued periods of 'state of emergency' being imposed by the Government in many provinces and in Lima. (Refer 'Diario La República - Peru', 'Aja', 'Actualidad', 'Expresso', 'El Comercio Lima', 'OJO').

The influence of Sendero Luminoso (inter alia) in the Government's decision to maintain states of emergency in much of the country was also noted in the Amnesty International Report for 1996, at 248.

The very latest information available to the Authority comes from the United States Department of State Country Reports on Human Rights Practices for 1996: Peru

(January 1997). As this information was received not from a published text, but from the Internet, the page references relate only to that source.

“Since 1980, much of the security forces’ effort has been directed against the Sendero Luminoso and the Tupac Amaru Revolutionary Movement (MRTA) terrorist groups. They continue to pose a threat in some areas, but at a much reduced level than in previous years. ...” (p1)

“... Sendero Luminoso and MRTA terrorists were responsible of the vast majority of the killings and other violence. Sendero Luminoso used torture and other forms of brutality, infringed upon citizens’ privacy rights, intimidated religious workers, and violated the rights of indigenous people.” (p1)

“... Sendero Luminoso whose insurgency has led to the deaths of over 25,000 persons since 1980, continued to kill civilians. During the year, Sendero killed a total of 124 persons, including security force personnel and civilians, according to statistics compiled by Peruvian non-governmental organisations (NGOs). Among the civilians killed by Sendero was Pascuala Rosado, a community leader in Huaycan, known for her opposition to Sendero. On July 30, Sendero killed community leader, Epifanio Santarria in Los Olivos, near Lima. In February, Sendero killed a community leader and his sons in Angashyacu, Huanuco. On August 22, Sendero murdered the brother of the mayor of Delicias, Huanuco.” (p2)

“... Many victims of Sendero Luminoso also showed signs of torture. Credible accounts indicate that Sendero tortured people to death by slitting throats, strangulation, stoning, and burning.” (p3)

“ ... Although both the army and Sendero Luminoso committed serious human rights abuses in Peru’s internal conflict, the latter was responsible for many more heinous acts. Sendero frequently used arbitrary violence against civilians and non-military targets. It continued to detonate powerful bombs in public places, indiscriminately killing and injuring bystanders, and persisted in its practice of entering villages and killing residents. Victims included unarmed women and children. Sendero Luminoso terrorists were responsible for 124 killings, including six current or former members of that organisation. A Sendero car bomb on July 26 killed one civilian and seriously injured a police officer in front of a police station in central Lima. A Sendero car bomb next to a Shell warehouse in Lima on May 16 injured 10 persons. In armed confrontations, Sendero never took prisoners or attended to the wounded. Sendero also practised forced military conscription of children. In Delicias, Huanuco department, Sendero terrorist forcibly recruited eight adolescents in August. There were also reports that Sendero forced Ashaninka tribesmen in the Satipo area of Junin department to join its ranks.” (p7-8)

“Sendero Luminoso rejects religion and continues to threaten and intimidate religious workers. Members of the Mormon Church, in particular, continued to receive threats and were victims of extortion by Sendero. ... Sendero still occasionally tries to interrupt free movement within the country. Sendero roadblocks were reported to be commonplace in sections of the Huallaga valley.” (p9)

“ ...Legitimate fears of physical attack by Sendero severely limited the ability of human rights monitors to carry out their work in some parts of the country. A human rights attorney fled Peru for three months early in 1996 due to threats that she received. ... Human rights groups repeatedly denounce Sendero Luminoso as the greatest violator of human rights in Peru, while simultaneously documenting violations by the security forces. Documentary evidence indicates the Coordinadora members have been balanced in their denunciations of abuses by

both sides. In its annual report, the Coordinadora regularly reported and denounced political violence by Sendero as well as by the MRTA and has issued press communiqués denouncing violence by terrorist groups. ...” (p10)

“The number of those disabled (in Peru) is believed to have increased as a result of the years of violence during the Sendero and MRTA insurgencies. Although according to the 1993 census, 1.3 percent of the population (288,526 persons are disabled in some form, nongovernmental experts believe that the figure is in reality much higher. ... Sendero Luminoso has been the most egregious violator of indigenous rights. At the end of the year, thousands of Ashaninkas in the central jungle area remained displaced, and many were in areas under Sendero control, although some displaced groups of Ashaninkas reincorporated into their original communities. Reports continued, however, of forcible recruitment of Ashaninkas by Sendero.” (p12)

From the available country information before us, it would appear that the relative strength and activity of the Sendero Luminoso is in something of a state of flux. However the general consensus from these most recent reports indicates that the Sendero Luminoso *may* be enjoying a limited resurgence in organisational capacity, although nowhere near to the same extent as previously. It could be inferred from these reports that the Sendero Luminoso continues to have the means to locate opponents it perceives to be of some significance or profile.

In turning now to this particular case, we are satisfied that there is a real chance of the appellant being persecuted if he was returned to Peru. We note:

- There was actual physical violence in the form of a clearly planned and brutal attack on the appellant (committed some distance away from his home), resulting in a significant head injury and on-going effects.
- the persistent and numerous threatening telephone calls (one of which referred to the attack committed upon the appellant);
- observation of the appellant and his wife and their house by unknown persons, the inference being that these events are linked to the other incidents of threats and violence;
- terrorist slogans (pintas) bearing Sendero Luminoso insignia being painted on their wall;
- a beheaded dog having been left outside their door along with Sendero Luminoso slogans (this event having a marked impact on the appellant and his wife);

- two separate incidents of breaking and entering of the appellant's home, in circumstances where there was a correlation between items taken (for example, all of the appellant's wife's red material) and the Sendero Luminoso;
- more recent evidence of the appellant's house continuing to be targeted following their departure.

Having carefully considered the facts of the appellant's particular case in light of the recent country information, while we are of the view that there is a real chance of persecution, we do find that this is limited to the appellant's home area only, given the decreased threat which Sendero Luminoso now appears to pose. It is therefore necessary for us to consider the issue of relocation (if we find ourselves satisfied as to Convention ground, to which we now turn).

#### **CONVENTION GROUND**

We find that there is a Convention ground present in this case. In our view, the appellant and his wife have been persecuted because of an imputed political opinion namely that they were "against" the Sendero Luminoso. This was because they have consistently refused to provide information sought by the group. Their refusal to comply with directives of this kind has, we consider, been interpreted as a 'stand against' Sendero Luminoso.

Further, we find that an alternative Convention ground of 'particular social group' also exists. The appellant and his wife are immediate family members of their son, JSL and, as such, have been targeted by Sendero Luminoso by reason of that association.

#### **RELOCATION**

Finding, as we do, that the appellant's fear is well-founded with regard to his own locality in Lima, it is necessary to address the question whether relocation within Peru is an available option for the appellant and, if so, whether it would be reasonable to expect him to relocate.

We are of the view that in the particular facts of this case, it is unreasonable to expect the appellant and his wife to relocate. The appellant and his wife are in their 50s although, with respect, they appear to be much older than this. They have been subjected to traumatic and harrowing incidents which have clearly had a marked impact upon them. Although they made efforts to 'ride out their situation' initially, and hoped that their problems would pass, this did not occur. The net result has been that they have suffered even more incidents which have left them traumatised. This was not only abundantly clear by the way in which the appellant and his wife gave their evidence before this Authority, but has, in addition, be confirmed by the various medical reports available to us (which concluded that the appellant suffers, inter alia, from post-traumatic stress disorder with underlying depression). It is our view, given the appellant's age and particular circumstances that they would not be psychologically fit to return to any part of Peru.

We accept that, in the usual course of events, those who seek refugee status will always be expected to relocate to other parts of their country of origin before obtaining the international surrogate protection of the Convention, except in the most limited circumstances. There is a very limited scope within which the operation of the Convention allows for persons, who have become so traumatised by their experiences, to be recognised as refugees on the basis that it would be simply unreasonable to expect them to return. We refer to Refugee Appeal No 135/92 Re RS (18 June 1993) and Refugee Appeal No 523/92 Re RS (17 March 1995). We find that the facts of this particular case allow it to fall in this extremely limited group of cases.

Given this finding, it is not necessary for us to turn our minds to the issue of whether the appellant can genuinely access domestic protection which is meaningful in Peru.

## **CONCLUSION**

In summary, the Authority's conclusions are as follows:

1. The appellant and his wife have a real chance of being persecuted if returned to Peru, in their own location.



2. There is a Convention reason for that persecution, namely imputed political opinion, and, as an alternative, that of particular social group (being immediate family members of JSL).
3. It is not reasonable, however, to expect the appellant to relocate elsewhere in Peru.

Accordingly, for these reasons, we find the appellant and his wife are refugees with the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

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Member