

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

**REFUGEE APPEAL NO 76289**

**AT AUCKLAND**

<b><u>Before:</u></b>	J Baddeley (Member)
<b><u>Counsel for the Appellant:</u></b>	I Uca
<b><u>Appearing for the Department of Labour:</u></b>	No Appearance
<b><u>Date of Hearing:</u></b>	8 & 9 December 2008
<b><u>Date of Decision:</u></b>	8 May 2009

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**DECISION**

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[1] This is an appeal against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a 31-year-old married woman from Colombia.

**INTRODUCTION**

[2] The appellant arrived in New Zealand on 11 October 2004. She was issued with a New Zealand visitor's visa and was subsequently granted work visas by virtue of her husband's residence status in New Zealand. She and her husband separated in November 2007. She applied for refugee status on 13 June 2008 and was interviewed by the refugee status officer on 24 and 25 July 2008. A decision declining refugee status was published on 16 October 2008.

[3] The primary issue in this case is whether the appellant's claim to refugee status is well-founded.

**THE APPELLANT'S CASE**

[4] The following is a summary of the evidence presented by the appellant at the appeal hearing. It is assessed later.

[5] The appellant was born in Z, Colombia in 1977. Her father left her mother shortly after she was born. At the age of two, she and her mother moved to live on her mother's family's farm. In 1982, the family began to receive demands from *Fuerzas Armadas Revolutionarias de Colombia* (FARC) for protection money. The appellant's mother was personally threatened and, fearing for their safety, she and the appellant moved back to Z.

[6] Her mother's brothers, who ran the family farm, refused to accede to FARC's demands. One of them was killed by FARC several months later. When his death was reported to the police they refused to take any action. In 1984, two of her mother's brothers were kidnapped by FARC from the farm because of their continuing refusal to pay protection money. The remaining brother sold the farm and moved to a nearby town to avoid further harassment by FARC.

[7] The appellant's mother gave birth to the appellant's half-sister, AA, in 1985, in Z. Her mother became increasingly worried about the growing FARC presence in Z. Her mother's partner left her when he became aware of the family's problems with FARC. The appellant, her mother and young sister moved from Z to Ruviales in the jungle where her mother worked for a petroleum company for about four years. The appellant attended school there. Their life there was undisturbed by FARC.

[8] When her mother's contract ended in 1989 they returned to Z. One of her mother's brothers who had been kidnapped in 1984 was escorted by FARC soldiers to the appellant's aunt's home in Z. He told the appellant's mother and aunt that he could not escape from FARC because if he did so FARC would pursue his brothers and sisters. He has never been seen again. The appellant's mother then changed address several times to evade discovery by FARC and finally moved to X. The appellant attended school in X from 1989 to 1999. However, her life was different from that of other children; she was not allowed to play outdoors and had very restricted social contact with her schoolmates. The family often moved in X, in accordance with the appellant's mother's brother's advice that this was necessary to avoid their detection by FARC. Her mother supported her children by taking various jobs, changing employment from time to time in order to evade FARC. The appellant enrolled at university in X in 1997.

She completed only two semesters. She left university because of kidnappings and killings carried out by FARC near the university. She had enrolled using her family name, FF, and feared that FARC might trace her. In 1997, the appellant's mother's brother's home in Y was attacked in a fight between paramilitaries and FARC. Her three brothers then dispersed variously to V, Z and W, all a considerable distance from Y. In 1998, her mother's brother, BB who was living in W, was killed by FARC. The family was shocked by this because W was far away from the site of the family farm and they did not expect FARC to have traced him there. Although his body was taken to Z for his funeral, neither the appellant nor her mother attended lest members of FARC saw them there.

[9] The appellant's mother became increasingly anxious and moved address several more times. In 1999, the appellant's mother was unable to find work in X and they moved back to Z. By this time the appellant was working as a salesperson selling mobile phones. When she returned with her mother to Z she continued in the same work for three months until she received a better job offer in X. She moved back to X by herself in 1999. The appellant remained in X until 2002. Her life there was "calmer" but, on her mother's advice, she did not remain living at the same address for more than three or four months.

[10] The appellant's mother and sister, AA, remained in Z until 2002 when FARC raided her mother's home and burnt all her belongings. As a result, she and AA left Z for X. They stayed there for a short time with the appellant before her mother left for Curacao where she worked as a housekeeper and nanny. Both AA and the appellant followed her there several months later. They were allowed to remain there legally for nine months but, because they did not wish to return to Colombia, they overstayed their visas and the appellant and her mother both continued working there illegally.

[11] In Curacao, the appellant began a *de facto* relationship with CC, a Venezuelan citizen. They became engaged. He worked as a contractor in various countries and asked the appellant to join him in Japan. She returned to X for four to five months, again changing address frequently because she feared discovery by FARC. Eventually, she joined her fiancée in Japan. His next contract was in New Zealand and the appellant arrived in New Zealand on a visitor's visa with her fiancée on 11 October 2004. They married in February 2005.

[12] In January 2005, AA returned to Colombia from Curacao because the authorities there had begun a crackdown on illegal immigrants. She joined her mother's brother, DD, in V. In October 2005, the appellant travelled to Colombia to see her mother and sister and to have a minor operation. Her mother had joined AA at DD's home in V. About five days after their arrival in V, there was a night-time attack on the town by FARC in which houses were destroyed. The appellant's mother and sister sheltered in DD's home during the attack. They were both too frightened to come out. Eventually they emerged and were taken by the police on a five or six hour drive to a displaced persons' camp. DD has never been located since. His wife blames the attack on the presence of the appellant's mother, a person wanted by FARC. After about a week searching for her mother and sister, the appellant, who had been staying in Z at the time of the attack, found them in the camp and brought them back to X which they believed was safer than Z.

[13] The appellant's husband agreed to pay for her mother to accompany her to New Zealand. They arrived in April 2006. They did not have enough money for AA's airfare and decided that the appellant's mother was more likely to be targeted by FARC than AA. The appellant and her mother sent money from New Zealand to AA regularly. AA moved address frequently, becoming increasingly unwell and unable to work. She lived in isolation and, even though now in New Zealand, currently suffers from depression and post-traumatic stress disorder as a consequence of her experiences in Colombia.

[14] In May 2006, the appellant's mother lodged a claim for refugee status at the suggestion of a Colombian national she had met in New Zealand. She was eventually granted refugee status by the RSB for reason of a well-founded fear of being persecuted by FARC. The appellant's husband was annoyed and insulted by his mother-in-law having lodged a refugee claim. The appellant's marriage became increasingly problematic and unhappy.

[15] In June 2007, the appellant returned to X to help AA whose health had deteriorated further. While there, she attended a church service and met EE whom she had known in 1998. She stayed with his family for about a week and they began a relationship. His mother, a nurse, helped her get treatment for AA and agreed to help AA after the appellant returned to New Zealand.

[16] When the appellant returned to New Zealand in August 2007 she was pregnant with EE's child. She and her husband separated in November and EE joined the appellant in New Zealand in December 2007. Their son was born in March 2008. The appellant's husband had threatened to have her work permit cancelled if she left him. She became very anxious about her ability to remain in New Zealand. This prompted her to lodge an application for refugee status in June 2008. The appellant's sister AA arrived in New Zealand in September 2008 to join her mother and the appellant.

[17] The appellant fears that, on return to Colombia, she will be targeted by FARC. She would again be by herself as she is unable to live with any of her mother's family. She does not know where her father is and has no contact with him. She would not be able to live with her husband's family. They do not know about her family's history of being persecuted by FARC. If they did, they would be very afraid for her husband and themselves. In Colombia she had lived like a fugitive, never staying in one place for long. She would have to resume the same routine on return but this would be much more difficult now that she has a baby son. He would be unable to remain at one school for any length of time and his social life would be as restricted as was hers. She believes that it is merely a matter of time before FARC would trace her and she might then be kidnapped or suffer other forms of serious harm.

### **The appellant's mother**

[18] Prior to her departure from Colombia the appellant's mother was in contact with only one of her siblings, GG. They met once before her departure and GG warned her that they should not associate with each other or any of their remaining siblings in Colombia because that could attract FARC's attention. She has had no news of her since coming to New Zealand because she has not been able to contact her by telephone and does not have her address. The appellant's mother has one brother in Colombia and one other sister but does not know where they are, having had no contact with them for 15 years (in the case of her sister) and eight years (in the case of her brother). She has no news about any of her nephews or nieces.

[19] The appellant's mother believes that if the appellant returned to Colombia she would have to live in hiding, whether in X, Z or elsewhere. This would be

much more difficult for her now with her baby and it would only be a matter of time before FARC found her.

[20] The appellant's mother was threatened by FARC in 1982. They threatened to kill her and the appellant. Twenty years later, in 2002, FARC was still pursuing the appellant's mother when they raided her house and set fire to all her belongings. She believes that FARC have a vendetta against her family which they continue to pursue to the present day.

### **The appellant's sister**

[21] The appellant's sister, AA, recalled moving house frequently as a child and attending many different schools. She did not see her friends outside school and her only outings were with the appellant occasionally, to church or to a park. The memory of the attack in V is still vivid and causes her flashbacks which were very distressing.

[22] When she lived by herself in X from 2006 to 2008 she was very afraid. She changed her residence every month or more frequently and used a false name. She had no friends and left her home only to obtain food. She became mentally and physically very unwell. When the appellant returned to help her she was able to go to a doctor and got some help from EE's mother. She remained very afraid until she left Colombia.

[23] A psychiatric report prepared for this hearing advises that AA suffers from a full-blown and severe form of post-traumatic stress disorder after the V bombing, compounded by her subsequent isolation in X. This is evidenced by her highly changeable mood and behaviour, her anxiety about leaving the house or being left alone, sleep disturbance, poor emotional regulation, erratic eating patterns and suicidal ideation.

### **The appellant's partner, EE**

[24] EE met the appellant in 1998 at church. They attended some youth group meetings held after the church service. He kept in occasional contact with her via Internet chat rooms, where they exchanged news about their church.

[25] When he next met her in March 2007, at church in Colombia, he discovered that she was very fearful and distressed about her sister. This was the first time he knew about her family's history of persecution at the hands of FARC. He visited AA and the appellant in the motel where AA was staying at that time. AA was too scared to leave her room and was obviously very unwell. He arranged continuing help for her from his mother after the appellant returned to New Zealand.

[26] EE has not told his own family about the appellant's problems with FARC. He knows they would be very alarmed and worried about the safety of the appellant, his son and himself. He does not believe they could have a normal family life on return to Colombia. In particular, his son could not remain at the same school while the appellant would have to live reclusively because FARC is now able to use more sophisticated intelligence techniques. He believes they would be able to trace the appellant and cause her serious harm. He also fears for his son, if he came to the attention of FARC.

## **THE ISSUES**

[27] 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."

[28] 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**

[29] The Authority must first determine whether the evidence given by the appellant and other witnesses is credible. The appellant's evidence has been consistent throughout; from her initial statement and interview to the RSB to subsequent statements and evidence at the appeal hearing. It is also consistent with her witnesses' accounts and in particular her mother's evidence given to the RSB in 2006 in support of her own refugee claim for refugee status. Her sister, AA, claims that the attack on the house in V and her family's fear of FARC and her subsequent life as a fugitive in X have left her with enduring and serious depression. She has recently been diagnosed as suffering from post-traumatic stress disorder with severe co-morbid mood disturbance. The thorough psychological assessment of AA dated 6 February 2009 (for which both the appellant and her mother were also interviewed) identifies a particular world view and belief system shared by the FF family which the psychologist describes as stable and super-ordinate to other sources of information or logic. The report concludes at page 11:

"It is concluded that for this family their sense of perception and reality has been irrevocably and likely irreversibly shaped by the prolonged and extreme trauma that they have suffered at the hands of FARC."

[30] The Authority accepts the appellant's and her witnesses' accounts of events in Colombia as credible and that their fear of FARC is genuine. The issue which now falls to be determined is whether this fear is well-founded.

**Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to Colombia?**

[31] The question of whether the appellant faces a real chance of being persecuted on return to Colombia is to be determined according to the appellant's ability to enjoy fundamental human rights and freedoms in Colombia. The Authority has regard to her past experiences and current country information in making this assessment.

*The appellant's circumstances in Colombia*

[32] The appellant has never been physically harmed by FARC. She was five years old when her mother was first threatened by FARC and she began to follow a lifestyle predicated by the need to protect herself and her daughters from the vendetta which FARC was pursuing against members of the FF family. This involved frequent changes of occupation and accommodation. The appellant, her



mother and her sister lived at various times in Z, Ruviales and X because of her mother's fear of discovery by FARC which was revived each time her brothers were targeted. Eventually, 20 years after the initial threats, her mother's home was attacked in 2002 and her belongings burnt. This extinguished her mother's hope that FARC were no longer interested in her and caused her to leave Colombia for Curacao.

[33] Throughout these years, the appellant lived with her mother and sister, she attended school, enrolled briefly at university and had a number of jobs. During this time she has not been directly harassed by FARC. However, she has lived in the shadow of FARC, initially because of her mother's fears and as she grew older on account of her own knowledge of FARC and its attacks on her mother's brothers. She had a circumscribed life; as a child she could not play freely with school mates because of her mother's fear that FARC might kidnap her. The family moved frequently which caused her to change school, churches and associates so that she had no long-term friendships or community ties. She remained at university for only a few months because FARC began to abduct some of her fellow students. When she lived by herself and was working she frequently changed her job and her residence to avoid detection.

[34] When beginning a new job she always had to register in her own name as required by the Colombian social security services. She was required to provide her national identification card on enrolling at education institutions, when renting premises (other than very cheap temporary accommodation), for hospital treatment and sometimes in order to travel within Colombia. It is because her mother had to use her identity card in order to travel to V that the appellant believes that she was traced by FARC and her uncle's house was attacked. The appellant's national identity card shows her name as FF. Although she knew that it might be possible to obtain a false identity card she was too afraid of the authorities to do this and believes that FARC would be able to trace her even if she did so.

[35] On return to Colombia the appellant believes she will still be at risk from FARC and she will have to take the same precautions as she did previously. In addition she will be accompanied by her child and harbours fears for him as a potential kidnap victim. EE's family do not know about FARC's pursuit of the appellant's family. She would not live with her mother-in-law for fear of placing her

at risk. The appellant would not be able to enjoy a settled life in the same house or neighbourhood. She believes to do so would inevitably attract the attention of FARC.

### *Country information*

[36] For the last four decades Colombia has suffered internal armed conflict between security forces and paramilitary groups on the one hand and guerrilla groups, such as FARC, on the other. A result has been one of the largest populations of internally displaced people in the world which reached its highest level in two decades in 2008 (refer Refworld: Internally Displaced Monitoring Centre 2008, Colombia *Rate of New Displacement Highest in Two Decades* (7 November 2008), [www.unhcr.org/refworld/docid/48f868/f2.html](http://www.unhcr.org/refworld/docid/48f868/f2.html)). A principal cause of this displacement is identified as guerrilla groups, notably FARC, which launched attacks against civilians to counteract the perceived diminution in its strength caused by the increased governmental offensive against it. It is reported by Amnesty International in *Leave Us in Peace: Targeting Civilians in Colombia's Internal Armed Conflict* (28 October 2008) [www.unhcr.org/refworld/docrd/4908272d.2.html](http://www.unhcr.org/refworld/docrd/4908272d.2.html) that, in 2007, some 260 civilians were killed by guerrilla groups, principally FARC which was responsible for some 147 cases of kidnapping as well as bomb attacks in urban areas and the use of landmines. Colombia has the highest number of landmines in the world. Jane's World Insurgency and Terrorism *Fuerzas Armadas Revolucionarias de Colombia (FARC)* (15 October 2008) acknowledges that FARC has recently been placed on the defensive by the death of three members of its ruling elite but because of the weakness of the Colombian state and FARC's continued ability to finance its endeavours from the cocaine trade it is still operating effectively in both urban and rural areas. The report states:

"The FARC is without doubt still the best equipped and organised guerrilla movement in Latin America and it poses a serious threat to Colombia's security forces and to a lesser extent the civilian population. Over the past two decades, due to the weakness or absence of the Colombian state, the FARC maintained effective sovereignty over around a third of Colombia's territory. The FARC regularly demonstrated its strength through an ability to take over towns in the interior of the country, attack military and police installations, extort regional businesses and individuals and kidnap large numbers of the civilian population. ... Although FARC's chances of being able to overthrow the Colombian state are currently negligible, the Uribe government's chances of being able to definitively crush the FARC or force it to the negotiating table also seem remote."

[37] Women and children have been found to be particularly at risk of being harmed in the internal armed conflict in Colombia. The Amnesty International report (*supra*) reports:

“Women and girls are targeted by all parties of the conflict to sow terror within communities and so make it easier for military control to be imposed.”

[38] Internally displaced women (such as the appellant) are reported to be particularly vulnerable. In the Amnesty International report (*supra*) it notes that:

“Women are typically the most affected by the trauma of displacement. Many displaced women will recently have lost their husbands as a result of the conflict. They have been forced to flee their rural homes with their children abandoning their livestock and possessions. What refuge is available in surrounding shanty towns and cities is often precarious. Displaced women are at greater risk of being subject to sexual violence including rape or having to resort to prostitution because their livelihoods and support networks have been destroyed.”

[39] FARC continues to operate effective intelligence networks and military bases within Colombia. It is not expected that there will be any meaningful negotiations between FARC and the government before 2010. (Refer *Inside View – On the Offensive in Colombia* 2008, Europe Intelligence Wire, 1 October (Gale Onefile). In the meantime, FARC, although weakened, is still able to set up its attacks when it chooses and is likely to increase urban bombings.

[40] The appellant has no confidence that state agencies are effective against FARC. This assertion is based on her family’s experience of FARC’s violent operations across various different regions of the country. This view is supported by the Amnesty International Report (*supra*) which notes:

“However, this is only a part of the picture. Colombia remains a country where millions of civilians especially outside the big cities and in the countryside continue to bear the brunt of this violent and protracted conflict. Their voices are increasingly silenced because their stories would visibly and convincingly undermine the official account that this is a country that has largely overcome its bloody past. These Colombians include the hundreds of thousands forcibly displaced each year; the hundreds of civilians abducted each year by guerrilla groups; victims of enforced disappearances by paramilitary groups and the security forces; the growing numbers of civilians extrajudicially executed by the security forces; the children, some as young as 12, recruited by paramilitary and guerrilla groups; those killed or maimed by guerrilla antipersonnel mines; the women raped by all the parties to the conflict; the human rights defenders, social activists and community leaders threatened and killed, mainly by paramilitary; and the victims of bomb attacks in urban areas, many of which have been blamed on the FARC.”

*Conclusion as to well-foundedness*

[41] The appellant has not lived in Colombia since 2002, other than two brief stays for a few months. On return to Colombia, she will have no community or family support (other than her partner). She would not live with her partner's family (who are still unaware of her family's problems with FARC). She will have a young child to protect and care for. Any interaction with government agencies such as schools or hospitals for herself or her child will involve her revealing her identity and family name. Her own remaining family have essentially disappeared and have no contact with each other for fear of attracting adverse attention from FARC.

[42] Although she may be able to lead a circumscribed and fearful existence as she has in the past and thereby avoid the attention of FARC, given its continued strength and the frequency of its use of revenge attacks as a political tool, the Authority cannot be satisfied that FARC's interest in her family (as evidenced by the 2002 attack on her mother's home and possibly the 2004 attack in V) has diminished to a level such that she does not face a real chance of serious harm. The Authority concludes that her fear of being persecuted on return is well-founded.

**Convention reason**

[43] Notwithstanding the appellant's apolitical views, FARC is an extreme left-wing political movement which categorises its victims as enemies of the working class. Its actions are confused, often contradictory and usually criminal, but the underlying political current is sufficient to satisfy the Authority that any harm to the appellant would be for reasons, at least in part, of political opinion.

**CONCLUSION**

[44] For the reasons mentioned above, the Authority finds the appellant is a refugee within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

"J Baddeley"

J Baddeley  
Member