

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

**REFUGEE APPEAL NO 76402**

**AT CHRISTCHURCH**

**Before:** B A Dingle (Member)

**Representative for the Appellant:** The appellant represented himself

**Appearing for the Department of Labour:** No Appearance

**Date of Hearing:** 12 October 2009

**Date of Decision:** 27 November 2009

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**DECISION**

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**INTRODUCTION**

[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 national of Brazil.

[2] The appellant is a man in his mid-20s who has lived all of his life in a city in the southeast of Brazil. He claims to be at risk of serious harm in Brazil because he will be targeted for violence by a drug trafficker as a result of previous events. The appellant asserts that the trafficker is part of a larger organisation called *Comando Vermelho* and also has links with *Fuerzas Armadas Revolucionarias de Colombia* (hereafter "FARC") and therefore the appellant cannot readily locate to any other state in Brazil or any other country within the Americas. He also claims that he cannot access police protection in Brazil.

[3] Further, the appellant claims that he is at risk of prosecution by the Brazilian authorities because he has not reported for compulsory military service.

[4] The issues to be determined in this case relate to credibility and well-foundedness.

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

[5] What follows is a summary of the evidence given in support of the appellant's refugee appeal. An assessment of this evidence will follow later in the decision.

[6] The appellant is one of three children. His parents and his two siblings (an older brother and a younger sister) all still live in the family house in Z city. His father and brother both work in paid employment. The appellant's mother has always worked in the home and his younger sister is a school student. The family are not financially well off although the appellant's father has always had steady employment and his brother was able to work while he studied for a marketing degree at a private university.

[7] For the purposes of this decision, the appellant's early life was unremarkable. He attended primary and secondary school and went on to complete some technical courses after his secondary education. Until September 2008, the appellant did not have any specific problems which are relevant to his refugee claim.

[8] On 31 January 2008, the appellant was issued with a genuine Brazilian passport.

[9] In late August 2008, the appellant travelled to Chile and Argentina for three days. He did so to improve his Spanish language skills and have some fun. He travelled by himself and did not have friends or relatives with whom he visited in either country.

[10] In mid-September 2008, within a couple of weeks of his return from his travels, the appellant was invited to go to a shooting range with his cousin, BB. BB is a police officer in a city close to Z city. BB took the appellant to a private shooting range where police officers undertook training and where they could take friends and associates to have shooting practice. When BB dropped the appellant at home, they took a rifle inside so that BB could teach the appellant how to clean the gun. When they later left the house, they were seen by a drug dealer, AA. AA

was a local boy whom the appellant had known since childhood when they had been friends. Approximately five or six years ago, AA had become involved with a gang and had started dealing drugs and participating in violence. Throughout his teenage years, the appellant had been approached by both AA and other gang members who encouraged him to join the gang. Although the appellant was aware of how much money gang members could make trafficking and dealing in drugs, he believed that such activities were wrong and he refused all requests that he join.

[11] Later that same day, AA approached the appellant and asked about the gun and BB. The appellant explained that he had accompanied BB to shooting practice.

[12] A few days later, AA again approached the appellant and asked him to teach AA and his associates how to use a rifle skilfully. The appellant refused the offer.

[13] Within another few days, AA approached the appellant for the third time and encouraged him to teach AA how to shoot and pressured the appellant to join gang activities. The appellant resisted both requests and although AA became quite aggressive, the conversation ended peacefully and the appellant was able to walk away. However, in late September or early October 2008, approximately two weeks after AA's first approach enquiring about the gun, AA began drug dealing on the street outside the appellant's home. This was the first time that the appellant was aware of drug deals being conducted outside his home and he believes it was in response to his refusal of AA's requests. The appellant was aware of the drug-dealing because AA asked him if it was all right if he did his drug dealing there. The appellant agreed because he knew that if he objected, he would be killed.

[14] In approximately mid-October 2008, a few weeks after the drug dealing began, the appellant reported AA's activities to the local police station. He was surprised when the police responded within half an hour and immediately arrested AA from the street.

[15] On the day of AA's arrest, at about 8pm, two uniformed police officers from the local station visited the appellant at home. His family were all watching television together and when the gate bell sounded the appellant went to the gate and spoke with the officers. They indicated that AA had paid the officers so that

he could be released from custody. They also indicated that if the appellant was able to pay them a sum of 30,000 reais, they might be able to provide some protection for the appellant from AA. The appellant explained he did not have that sum of money at which time the officers slapped, kicked and verbally abused him. After his conversation with the officers the appellant realised that AA must have been released from custody and knew the appellant had caused his arrest.

[16] Still later that evening, at around midnight, AA rang the gate bell and the appellant went out to meet him. At that time, his brother was working on the computer and his parents and younger sister were sleeping. AA was extremely angry that the appellant had reported him to the police and threatened to kill the appellant's family one by one before killing the appellant. AA was accompanied by two "soldiers", men who worked for the gang as drug couriers and sellers. AA and the two soldiers then abducted the appellant, dragging him onto the street and down to AA's house. There they taunted the appellant with abuse and threats. AA cut the appellant's long hair off and told him that he needed to leave Brazil and the entire American continent if he wanted to survive and ensure the safety of his family. When the appellant enquired why he could not just move to another state or to a nearby country, AA explained that he was involved with the Red Commanders gang, *Comando Vermelho*, who were also linked with FARC. The coverage of those organisations meant that the appellant was a threat to AA if he remained within the Americas. The appellant was then permitted to return home.

[17] Over the next one or two months, both the two police officers and AA continued to harass the appellant. On each occasion that the police officers visited him, they tried to extort money from him, hit and verbally abused him for no known reason. They stopped visiting the appellant about two months before he left Brazil.

[18] Likewise, AA continued to harass the appellant by jumping over the wall of the house and knocking on the appellant's bedroom window. He would remind the appellant that he needed to leave Brazil and continued to threaten the family. The appellant's parents were not aware of this ongoing harassment and his brother always pretended to sleep through the incidents.

[19] In mid-October 2008, when AA had first threatened the appellant, the appellant decided that he would leave Brazil and began selling goods so that he could do so. He stopped working because he was too frightened to leave the house. He also failed to respond to a letter requesting that he appear for an

interview with the military authorities in relation to his military service obligation.

[20] In February 2009, however, the appellant was persuaded by his friends that AA no longer appeared to be interested in harassing him and therefore he should attend a party. On return home after the party, he saw AA having an argument with another man on the street. The appellant attempted to walk past without being noticed but AA saw him and called out to him. As the appellant turned around to respond, AA shot the man he was arguing with in the head. AA then laughed and said that if the appellant did not leave Brazil soon, he would suffer the same fate. The appellant was extremely traumatised by this event and became even more fearful for his safety.

[21] Following the shooting, the appellant convinced a paternal uncle to lend him some money to leave Brazil. He did not tell him the exact reason why but just explained that he was sick of Brazil and wanted to leave. He had also convinced his father to sell a car and various other possessions so that he had enough money to leave.

[22] On 16 February 2009, the appellant flew from his home city to Rio de Janeiro and departed Brazil from Rio de Janeiro international airport. Within minutes of his departure from the airport, AA visited the family home and informed the appellant's brother that the family was now safe because the appellant had left the country. The appellant has no idea how AA knew of his departure.

[23] On 18 February 2009, the appellant arrived in New Zealand and was issued with a visitor's permit. Since his departure from Brazil, AA has stopped dealing drugs outside the house but he has visited the family house several times to check that the appellant is no longer there.

[24] Since his arrival in New Zealand, the appellant has kept in contact with his family, mostly through the use of email and MSN live messaging programmes. Until August 2009, he also maintained email and internet communication with two of his friends, CC and DD. From July 2009 until now, the appellant has also resumed contact with his ex-girlfriend in Brazil, EE. In approximately mid-September, EE informed the appellant that both CC and DD had been killed and that everybody believed they had been killed by AA or his associates.

[25] The appellant asserts that if he returns to Brazil, he will be killed by AA or his associates. He asserts that even if he lived in another area of Brazil, the

organisation of which AA is part would identify him and kill him. He says the same thing will happen if he returns to any country in the Americas.

[26] The appellant also asserts that he will not be able to receive police protection, both because he has been specifically targeted by police officers and because the police are simply unable to protect people. Furthermore, he claims that on return to Brazil, he would immediately be arrested and jailed for life because he has failed to attend his appointment with the military service authorities.

### **MATERIAL SUBMITTED IN SUPPORT OF THE APPEAL**

[27] Prior to and following the hearing the following documents were submitted:

- (a) a letter each from John Cadigan, Associate Pastor at a local church (dated 6 October 2009) and Graeme Laughton-Mutu, Youth Pastor at another church (undated). The letters attest to the appellant's attendance at Church services and related youth events. Both writers recommend the appellant as a person of good character and commend him for his contribution to their various Church communities and groups. Neither letter refers to any specific aspect of his refugee claim.
- (b) a character reference from Ms Dilys A Dawai (dated 1 October 2009, received 15 October 2009) which attests to the appellant's general good character. Ms Dawai also opines that his fears for his family's safety in Brazil are genuine because he has reported to her problems with depression, self-harm, sleep disturbances and paranoia and she witnessed him react strongly to an individual in New Zealand whom he believed was involved in illicit drug activity.
- (c) an audio-visual clip which reported on the general situation in the appellant's home town including reference to drug dealers and violent gangs; and
- (d) a full copy of his Brazilian passport.

[28] At the outset of the hearing, the appellant was asked whether he wished to call any witnesses. He confirmed that he did not.

## **THE ISSUES**

[29] 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."

[30] 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**

### **CREDIBILITY**

[31] Before considering the issues raised by the Convention, it is necessary to determine whether or not the appellant's account is credible.

[32] The Authority finds the appellant's account of having been threatened by AA and harassed by police officers in Z city to be untruthful. Almost every facet of the account relating to the claimed harassment by police officers and AA was inconsistent or implausible. The entire account is rejected for the reasons which follow.

#### **Inconsistent chronology of account**

##### *Shooting with cousin*

[33] The appellant told the RSB that his cousin first took him for shooting practice in July 2008, on the appellant's birthday. In contrast, he told the Authority that the first time his cousin took him to shooting practise was in early September 2008, approximately two weeks after the appellant had returned from his Chile/Argentina trip. When asked by the Authority to explain the apparent

discrepancy, the appellant stated that in July 2008, he had gone to celebrate his birthday at a farm and while there, his cousin had suggested that they do some shooting but that it had not been at the shooting range. He also told the Authority that the farm was not a place where police officers did their shooting training but it was just a farm where ordinary civilians could go for pleasure. The appellant reaffirmed his evidence to the Authority that he had not gone to the police shooting range until September 2008.

[34] The Authority does not accept this explanation because the transcript of the RSB interview clearly indicates that the place to which he was taken in July 2008 was a police training ground where only police or friends of police could attend. That RSB account cannot be reconciled with his assertion to the Authority that the July 2008 event was simply a trip to the farm where they happened to do some shooting. This view is reinforced by the fact that in the RSB interview, the appellant went on to talk about going back on successive weekends to the same place he had visited in July with his cousin.

[35] The appellant also told the RSB that his problems with AA began five weeks after his cousin first took him to shoot which cannot be reconciled either with the appellant's (RSB) assertion that his cousin took him to shoot in July or with his appeal account where his cousin first took him to shoot in mid-September 2008.

#### *Calling the police*

[36] The appellant told the RSB that he made the call to the police which resulted in AA's arrest approximately one week after his return from the Chile/Argentina trip. When asked by the RSB which day of the week it occurred the appellant replied: "Don't know, it was about a week after I arrived from Chile and Argentina." To the Authority, the appellant said that he called the police approximately five weeks after his return from his trip and that he did not even go to the shooting range with his cousin until two weeks after his return.

[37] When asked to explain the discrepancy, the appellant asserted that the RSB evidence was wrong and that it did not make sense to him. He maintained his evidence to the Authority. The Authority does not accept this explanation because the appellant's evidence to the RSB was confirmed several times in his answers to the related series of questions and therefore cannot be explained by a genuine mistake in the date given by the appellant. His repeated confirmation of the timing in the RSB transcript also indicates that there is no real possibility that



the record of the interview has wrongly recorded his answers.

*Police visiting appellant to extort money*

[38] The appellant told the RSB that the police came to his house to extort money from him at least a few days or possibly as much as a week or two before AA was arrested and then abducted the appellant. In contrast, he told the Authority that the police arrived on the same day that AA was arrested and four hours before AA abducted the appellant. When asked to explain the different accounts, the appellant suggested the evidence he gave to the RSB was vague and that during that interview he was using a mixture of English and Spanish (neither of which are his first language), meaning the RSB evidence could not be relied on. The Authority does not accept this explanation because the questions and answers recorded in the interview transcript give no indication that there was any confusion about the evidence given. At the outset of the RSB interview, the appellant had indicated that he was happy to proceed with the interview in English using the Spanish interpreter when needed. There is no sensible explanation why he would have said the visit was a few days before AA came to his house if the visit was a matter of hours before. The Authority finds that his explanation is simply a spontaneous attempt to explain the inconsistency in his account. It is rejected.

*AA shooting stranger*

[39] In his confirmation of claim form the appellant stated that AA shot the man on the street in view of the appellant four days after the incident in which AA abducted and threatened the appellant. In contrast, he told the Authority that it happened approximately four months after he was abducted. When asked to explain the discrepancy, the appellant maintained his evidence to the Authority and stated that the claim form was wrong. He confirmed that he had written the confirmation of claim form himself and did not offer any further explanation as to why he would have given incorrect information in it.

Other discrepancies

[40] Strengthening the Authority's view that the account given about AA and the police officers is false, the Authority records these further discrepancies in the appellant's account. To the RSB, he said that when AA approached him asking

questions about his shooting practice and requesting that he (the appellant) pass on his shooting training, AA was accompanied by other associates. In contrast, he told the Authority that AA approached him alone. When asked to explain the inconsistent evidence, he maintained his evidence that AA was alone but said that he was accompanied by others when the appellant was abducted, impliedly asserting that that explained his RSB evidence. It does not.

[41] Similarly, other peripheral aspects of the account were inconsistent. For example, he told the RSB that at the time AA came to his house to threaten him, he was on the computer talking (via MSN) with a friend in New Zealand. He also said that all of his other family members were asleep. In contrast, he told the Authority that his brother was awake and using the computer and that he (the appellant) was not doing anything, just “freaking out”. When asked by the Authority what specific activity he was doing at the time, he could not name anything. When the Authority alerted him to his RSB evidence, he then asserted that both he and his brother were on the computer and suggested that being on the computer was not an activity and so he had not mentioned it. He could not explain why he had told the RSB his family were sleeping when he now asserts his brother was awake and in their bedroom.

[42] Likewise, he told the RSB that when AA visited the house after the appellant left Brazil, the appellant’s family were all at the house. In contrast, he told the Authority that AA only visited the house when his brother was there alone. His evidence to the Authority was in the context of a general assertion that his parents knew nothing of his difficulties and still do not. When asked to explain his inconsistent evidence about whether his parents were there when AA visited he said that in his initial evidence to the Authority he had failed to recall that his parents had been there on one occasion.

#### Post-hearing internet information

[43] Following the oral hearing, the Authority became aware of internet information (in the form of messages posted on an internet forum) which indicated that the appellant had been planning to travel to New Zealand from at least July 2008. This contradicted his oral evidence to the Authority in the hearing that he only contemplated travelling to New Zealand for the first time in October 2008 as a direct response to his problems with AA. When asked (by letter) to explain this apparent contradiction he conceded that he was intending to travel to New

Zealand for a visit but stated that he did not (in July 2008) intend to remain in New Zealand to live. The Authority does not accept this explanation because it cannot be reconciled with his oral statement that he had not contemplated any travel to New Zealand before his problems with AA.

### **CONCLUSION ON CREDIBILITY**

[44] All of the concerns outlined above lead the Authority to conclude that the appellant's claimed difficulties with AA are untrue. The Authority also rejects the appellant's claim to have been threatened and mistreated by local police officers. The Authority finds that the appellant has no profile whatsoever with the Brazilian police and has not either asked for or been refused police protection in the circumstances he claims. There is no other credible evidence on which to assess his claim that he is in need of police protection but unable to access it.

[45] As to his claim to be at risk of being prosecuted for not completing his interview with the military authorities the Authority finds there is no credible basis on which to consider the matter. In the context of his false claim regarding AA and the police officers, the Authority does not accept the appellant's bald assertion that he has not attended his interview and will therefore be at risk of prosecution. In doing so, the Authority notes that country information indicates that a large proportion of young men of military service age are able to seek deferments. Although there is a legal obligation on all men of 18 years of age to answer the call for military registration, only a small proportion (recorded as less than 10% in 1998) are actually called up for military service; see War Resisters' International's (WRI) survey *Refusing to Bear Arms: Brazil* (6 May 1998) and Alexei Barrionuevo "President of Brazil Unveils Plan to Upgrade Military" *New York Times* (19 December 2008).

[46] In any event, the fact that the appellant may hypothetically be subject to some sort of penalty or prosecution for his non-compliance (and it is not accepted here that he has not interviewed) such circumstances would not *per se* provide a basis for a refugee claim. Brazil is entitled to require compulsory military service and prosecution for non-compliance is not of itself a violation of a fundamental human right. For the purposes of this decision, the Authority does not accept any of the appellant's assertions about being at risk of serious harm because of military service obligations. He has not filed any documents relating to his military service obligation and he confirms that since leaving Brazil, the authorities have

not contacted him or his family in relation to his obligations.

[47] While the Authority has considered the letters submitted by the church pastors and Ms Dawai, it finds that they do not mitigate the credibility findings above. The two pastors do not address issues relevant to the appellant's life in Brazil or his refugee claim. Ms Dawai's letter summarises what the appellant has told her of his life and refers briefly to his mental condition and one example of his behaviour in New Zealand. It is not, and could not be, determinative of the reasons for his condition and behaviour. Given the credibility findings noted above, no weight is placed on her letter.

[48] The Authority therefore finds that the appellant is a national of Brazil, aged 19 years, who has no profile with the Brazilian police authorities and is not being targeted for harm by any individual or group. It also finds that the appellant is not at risk of serious harm due to his non-completion of military service in Brazil.

[49] On the basis of the facts as found, there is no credible basis on which the Authority can determine that the appellant is at risk of serious harm for a Convention reason should he now return to Brazil.

## **CONCLUSION**

[50] For the above reasons, the Authority finds 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.

"B A Dingle"  
B A Dingle  
Member