

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 4 October 2002

Date Determination notified:

14th November 2002

Before:

Mr M W Rapinet (Chairman)
Mr C A N Edinboro

Secretary of State for the Home Department

APPELLANT

and

ROBER WILSON FERNANDEZ MORENO

RESPONDENT

Representation

For the appellant : Mr D. Ekagha Home Office Presenting Officer

For the respondent: Miss S. Sher, counsel, instructed by Mirza & Co.

DETERMINATION AND REASONS

1. The Secretary of State appeals by leave of the Tribunal against the determination of an Adjudicator, Mr I.M. Scott, allowing the respondent's appeal against the Secretary of State's refusal to grant leave to enter and asylum. The grounds of appeal are in the bundle before us.
2. The respondent arrived in this country in May 1999 on his own passport and immediately claimed asylum. The basis of his claim is set out in paragraphs 7 and 8 of the determination. An uncle of the appellant's had, in about 1993, been considered by FARC as being a supplier of arms to a rival guerrilla organisation. This uncle had then disappeared and the appellant's other uncles had been driven out of the area by FARC. In 1988 they turned their attention to him and he was threatened. He decided to leave the country.

3. The Adjudicator has accepted the appellant as being credible and has allowed the appeal following the Tribunal determination in Gomez (00/TH/02257). The Secretary of State appeals on the basis that Gomez has been misapplied. Mr Ekagha in his submissions emphasised the grounds of appeal and the claim that Gomez had been misapplied by the Adjudicator. In paragraph 14 of the determination he has accepted that FARC would impute a political opinion to him by reason of his uncle's activities. But, as Mr Ekagha points out, the uncle had been killed three years previously and there was no evidence before the Adjudicator as to what the uncle's political opinion was. They had taken no interest in the respondent until three years after the death of the uncle. The Adjudicator had failed to address the question of the identity of the guerrilla group for whom the uncle had been supplying arms, nor had he addressed the question of why it had taken three years for FARC to catch up with the respondent. We were referred to the Tribunal determination in Gomez and in Mr Ekagha's submission there was no justification for the Adjudicator's findings that there was an imputed political opinion.
4. Miss Sher in her submission maintained that Gomez had been properly applied by the Adjudicator in paragraph 14 of the determination. Not only had the uncle been killed but the other uncles had been driven out of the area. There was clearly a risk at the hands of FARC to this respondent. The Adjudicator had accepted this and accepted that FARC was persecuting the respondent. He had been accused of trafficking in arms as his uncle had been. He had been told to leave the area.
5. We raised with Miss Sher the question of internal flight and drew her attention to the US State Department Report. We asked whether it would be unduly harsh for the respondent to seek internal flight to an area not controlled by FARC and Miss Sher was not in a position to submit any arguments as to this. She pointed out that the respondent had gone to Bogota but had been followed there.
6. Mr Ekagha in his submissions drew our attention to the interview notes which indicated that the respondent had not been followed to Bogota. The telephone calls made to the respondent had been after he had returned to his home area from Bogota. The respondent had come to this country with a valid travel document and a ticket which had been issued [five days prior to his departure.
7. In our view, the Adjudicator has not misapplied the case of Gomez to the circumstances of this case. The Tribunal in Gomez emphasised the broad interpretation that must be placed upon the term 'political' and in paragraph 40 states 'As well as the need to adopt a broad definition of the term "political" there is also a need to recognise that the term is a malleable one.' In the circumstances of this case the respondent's uncle had been supplying arms to another guerrilla group, a rival group to FARC, and it was for that reason that he had been killed. For a similar reason, presumably, the uncle's brothers had also been driven out of their area by FARC which is clearly an area controlled by FARC, as is apparent from the respondent's reply to questions at B5 at

interview where he says ‘All my uncles lived in as village called Travesias. Travesias is totally a guerrilla area.’

8. Although the respondent was working at a domestic electrical goods company, he was perceived by the FARC guerrillas as also supplying arms to a rival group, as is apparent from the respondent's replies to questions at B4. It seems to us, applying the principles laid out in Gomez, that in the case of this respondent where his uncle had clearly been collaborating with a rival guerrilla group and supplying them with arms, the uncle would be perceived by FARC as holding a political opinion contrary to them in an area under their control. Similarly, they perceived the uncle's siblings as holding similar political views to those of the uncle who had been killed by them. The respondent and his uncles were clearly perceived to be associated with a rival guerrilla group holding political opinions different to FARC. In the circumstances of this case it is our view that the Adjudicator has correctly followed Gomez when he finds that FARC imputed a political opinion to him and the Adjudicator's finding in paragraph 14 is in our view perfectly valid so far as they relate to the appellant's immediate area. We also agree with his findings that FARC are agents of persecution as the authorities in that particular area of Colombia from which the respondent comes are clearly not in a position to offer sufficient protection.
9. However, we do find ourselves in disagreement with the Adjudicator's findings in paragraph 13 that this fear extends to the whole of Colombia. We put this view to Miss Sher and asked whether there was any evidence to show that FARC would be in a position to pursue the respondent anywhere in the country. She pointed out to us that the respondent had been followed to Bogota which in fact is not the case. Page 10 of the interview states:

‘When I went to Bogotá I stayed with a friend and tried to look for work. I went to an agency for displaced persons. They said I had to wait for the agency to call. I was trying to find work in Bogotá. They never rang me back. I had no work so I went back to my town.’
10. He then goes on to point out the instances of persecution at the hands of FARC that arose upon his return to his home town. He stated in his evidence (paragraph 8 of the determination) that he had been telephoned in advance by his friend and told not to go to Bogota. Persons claiming to be from FARC had called at the friend's house looking for him. But this is not apparent from the interview which we have quoted verbatim above. He clearly went to Bogota, whether or not FARC had contacted the friend, and clearly went there for the purposes of finding employment and failed in that endeavour. He does not allege that whilst he was there FARC contacted him in anyway or that he was in any way harassed by them, notwithstanding the alleged phone calls. Also at interview (B5) he makes it clear that the influence of FARC does not extend to the townships. He states:

‘I live in Ansema. All my other uncles lived in a village called Travesias. Travesias is totally guerrilla area. it would be difficult to come and do the same in the town. They are never in the town.’

11. The US State Department Report would also indicate that the influence of FARC does not permeate throughout the state of Colombia. The report would indicate that there are areas, particularly in urban conurbations, where the government is able to offer adequate protection against non-state agents. We can see no reason why in these circumstances, the appellant himself not having engaged in the traffic of arms to a guerrilla group rival to FARC, and it being apparent from the evidence that the uncles who had been driven out of their village had been able to find security elsewhere and not subsequently been pursued by FARC, that the respondent himself would equally find security and protection against persecution at the hands of FARC elsewhere in the country. We did ask Miss Sher if there was any evidence to show that it would be unduly harsh for the respondent so to do. She did not make any submissions in relation to this. The respondent is twenty-four years old had previously been employed in the domestic electrical field and therefore presumably has some experience in this field, and we can see no reason why he should not be able to obtain employment elsewhere in the country. He has a girlfriend and apart from this there would appear to be no other commitments to his own area and nothing which in our view would make it unduly harsh for the respondent to seek protection elsewhere in the country.
12. The Secretary of State's appeal is therefore allowed, not on the basis of the grounds submitted, but on the basis that the respondent has established a well-founded fear of persecution in his own area but that internal flight is available to him elsewhere in Colombia. Appeal allowed.

**M W RAPINET
VICE PRESIDENT**