

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

**REFUGEE APPEAL NO 76291**

**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>	11 & 12 December 2008
<b><u>Date of Decision:</u></b>	27 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 national of Bolivia.

**INTRODUCTION**

[2] The crux of the claim is that the appellant is a member of the *Movimiento Nacionalista Revolucionario* Party (MNR) and an organiser of the MNR election campaigns. This party is in opposition to the current government led by President Evo Morales.

[3] The central issue is whether the appellant's claimed fear of being persecuted by the current regime is well-founded.

[4] The appellant arrived in New Zealand on 28 March 2008. He applied for refugee status on 6 May 2008. He was interviewed by a refugee status officer and the decision declining refugee status was published on 29 October 2008.

## **THE APPELLANT'S CASE**

[5] The account which follows is a summary of the evidence given by the appellant. It is assessed later.

[6] The appellant is a 41-year-old man of mixed Spanish and indigenous Indian descent (*Mestizo*). He left school without any qualifications when he was 16 years old and returned to attend night school when he was 22 where he completed a secondary education by gaining a high school certificate. He lived in Z other than brief periods in Brazil, Cochabamba and Santa Cruz. Most of his employment history involved clerical work for government agencies or the political party MNR which he joined in 1985 and with which he continued to be closely involved throughout his time in Bolivia.

[7] The appellant had a brief *de facto* relationship with a woman, AA, beginning in 1983. Their son was born in 1985 shortly before the relationship ended. The following year, he began a relationship with one BB whom he married in 1990. They had one daughter in 1994. Their marriage ended in 1996 and, in 1997, he resumed his relationship with AA who had had a son by another man in the interim, whom the appellant adopted. His relationship with AA is ongoing.

[8] The appellant completed one year's military service from 1987 to 1988. He held various clerical positions in an export company in Brazil and in the Ministry of Peasants' Affairs. He developed a particular expertise in the field of identification cards. His first such position was with the *Registro Unico Nacional* where he eventually obtained a supervisory position which he kept until 1998. Throughout this time he remained involved in the MNR. This helped him obtain jobs due to the party's influence. From 1998 to 1999, he worked as a paid employee for the MNR in a district office in Z, providing information about the party to the public. He actively campaigned for the MNR presidential candidate. He worked for one year with the Customs Department in Cochabamba, otherwise all of his employment was in Z.

[9] His work in Cochabamba was during the turbulent times of the water riots in 2000. He lost his job to a member of the ruling political party *Accion Democratica Nacionalista* (ADN). He returned to Z and continued working in the MNR district office organising campaigns and events for MNR candidates.

[10] With the MNR out of power, the appellant did not earn enough money to support himself and his children and partner. He was financially assisted by his parents and lived in their home. After the MNR won the 2002 election, however, he obtained a good position in *Servicio Nacional de Patrimonio Del Estado* (SENAPE) in 2003. This job lasted only three months because the MNR president Sanchez de Lozada resigned in October 2003, as a result of riots protesting the sale of gas to Chile. This became known as 'Black October'. Protesters were killed during the riots and the MNR was blamed for these deaths. The appellant lost his job but resumed his work for the MNR in the lead-up to the December 2004 municipal elections. He was unable to find further work in Z after the elections.

[11] The appellant and his partner then relocated to Santa Cruz where his brother-in-law had a taxi business. The appellant became a taxi driver. This job was problematic because he constantly found himself in arguments with local people because he was an outsider. His son experienced similar problems at school. After less than a year, the appellant and his family returned to his parents' home in Z where they lived with his sister and her children. He found it difficult to get a job; his MNR membership now counted against him when he applied for government jobs and, because of the economic situation, he could not set up his own business or find work in the private sector. AA supported the family through her teaching job. The appellant never had full-time employment again but he continued working on the MNR campaigns, for which he was paid a modest salary.

[12] In January 2006, Evo Morales, the left-wing MAS candidate, was elected President. The activities of the MNR were drastically reduced. The MNR district office where the appellant worked was open only once a week and the appellant spent most of his time at home. Some of his MNR colleagues were harassed and physically abused by the MAS.

[13] In April 2006, the appellant and four of his associates were attacked by MAS supporters as they left a meeting at the MNR office. They were beaten and the appellant suffered a broken nose and injuries to his ribs. He evaded his attackers by running away to his sister's house. He was afraid they might be waiting for him at his own home. His sister treated him for his injuries and he stayed with her for 10-12 days. He did not report the attack to the police. He believed they would do nothing to help him because his attackers were MAS supporters, their government was in power and the police supported the regime.

[14] It became difficult for him to go out in public. He was locally recognised as a committed MNR supporter. He and his wife were insulted on the streets and had vegetables thrown at them. He saw unfamiliar people watching his home. He would evade them by leaving the house in the early morning and returning late. He did not remain in the neighbourhood but would go by bus to suburbs on the other side of the city or to his brother's house in another district. He lived at his siblings' homes' for several months, moving between his brother, his sister and his brother-in-law's houses.

[15] Eventually, he settled for three months in a rented room about one hour's ride from his home. His mother, who was concerned about his safety, paid for his accommodation. He did not find work and rarely left the house. He kept in telephone contact with MNR colleagues and his family.

[16] In July 2007, the appellant attended a birthday party for an MNR colleague. There were about 50 guests. The appellant left the party at 10pm and was attacked by some people who thought the occasion was an MNR meeting. His attackers shouted accusations of "murdering our people" (which he took as a reference to 'Black October'). He ran off, having sustained a bleeding nose and bruising. Again, he did not report this incident to the police. He had gone to the party because he mistakenly believed that because it was a private occasion he would be safe. He discovered that other guests had also been attacked as they left the party.

[17] He returned to the rented room for another two months. His mother became more worried about him after this attack and arranged for him to return with her to her own apartment which was closer to the family home in the district where he had previously lived. He lived there for five months but rarely left the apartment other than to obtain his passport and visa. His brother took him by car to obtain these documents. On another occasion, he walked through the market and was abused and had items thrown at him.

[18] The appellant and his mother decided that it would be best for him to leave Bolivia and go to his cousin in New Zealand. His mother paid for his travel to New Zealand.

[19] The MNR is still active in Z. It held internal elections in November 2008. The party headquarters had moved several times after being burnt down in 2003 and the appellant does not know where the current headquarters are located.

After arriving in New Zealand, he asked AA to get in contact with three of his former MNR colleagues to provide documentary confirmation of his activities and his current predicament. She had difficulty finding two of them because one, the head of the MNR district office, was in hiding in Z and another travelled around a lot in the course of his business. The third had changed his allegiance to the MSM. All three were of higher or equal rank to the appellant in the MNR. These three people are signatories to a certificate dated 4 December 2008 which is described in para [26]. Although the MNR still operates legally and the MAS needs the support of other parties including the MNR in Congress, on the streets MNR members continue to be intimidated, particularly when mass protests and demonstrations are held by the MAS.

[20] The appellant believes that he is blacklisted by the current government because of his involvement in the MNR election campaigns. This blacklist is an unofficial list of people who have worked for opposition political parties. Hostility towards political opponents did not occur before 2006 in the way that the appellant has experienced it since then. Morales has motivated coca growers and ethnic Indians to stage mass protests in order to intimidate his political opponents.

[21] The appellant does not believe he will be free from serious harm were he to relocate outside Z because the MAS has a register of the names and photographs of people like the appellant who have been their political opponents.

[22] In Z he knows of about 100 MNR members who were operating at the same level in the party hierarchy as himself. They have all been attacked "in one way or another". These attacks on MNR members are not reported in the media because it is controlled by the government. Outsiders are unaware of the amount of corruption and electoral fraud which has taken place in Bolivia. Other senior MNR members have remained in Z in safety because, unlike the appellant, they are wealthy and are able to move around a lot. Even the United Nations agencies operating in Bolivia are unaware of the extent of the corruption and human rights violations. Other international agencies do not report these abuses because their reports are directed to specific topics and do not cover the atrocities against MNR members.

[23] The appellant has not asked his MNR colleagues (such as those AA contacted to obtain the certificate) to provide information concerning the attacks on MNR members because he does not want them to know that he is applying for refugee status. If they knew this they would bother AA and go to his home asking

for information about how to apply themselves. He does not want AA to be put in this position.

[24] If the appellant were to return to Bolivia he would become politically active again although he has not been involved in any MNR activities for the last three years. He would not return to live in hiding because his thinking has changed.

[25] The appellant claims that as a *Mestizo* (person of mixed descent) he experienced hostility and discrimination. The current regime of Morales promotes the idea that people who are not ethnic Indians are foreigners and the appellant claims that he will experience discrimination amounting to serious harm on return.

### **Documents**

[26] The appellant produced the following documents:

- (a) Personal identification documentation such as his military identification card, his Bolivian identification card and Bolivian passport.
- (b) The appellant produced a large number of documents (over 50 pages) relating to his various jobs and qualifications. All of these are in Spanish. Translations have not been provided but they are reasonably self-evident.
- (c) The appellant's MNR membership card, letters and certificates from the MNR party dating from 1996 concerning the various positions he held in the party and the work he carried out on the party's behalf. These are also all in Spanish.
- (d) Letters from his family members: his partner AA, his mother and sister and his friend CC, an MNR colleague. These refer to the attacks the appellant suffered in 2006 and 2007 and the fact that he had been living in hiding and fear. Other letters and documents in Spanish have not been translated and therefore cannot be assessed, a point which was explained to the appellant at the hearing. He requested and was granted leave until 30 January 2009 to provide translations of any documents on which he wished to rely, but none have been received.

- (e) Photographs of the appellant at MNR meetings and demonstrations.
- (f) Letter dated 22 July 2008 from a doctor in New Zealand which describes her examination of the appellant as revealing scarring and a long defect to the ridge of the appellant's nose; injuries consistent with punching and kicking inflicted about two and a half years previously which is when the appellant says he was first attacked by MAS supporters.
- (g) Items of country information most of which are in Spanish and photographs of a march in Santa Cruz of coca growers, some of whom are armed with weapons including guns.
- (h) A certificate dated 4 December 2008 from the MNR party. It was translated in part by the interpreter at the appeal hearing. It is signed by three MNR officials who are well known to the appellant. It states (*inter alia*) that the appellant, who had been in charge of the district office, had to leave his family, the party and the city "for reasons already known". The certificate lists the various positions the appellant had held in the MNR party including, most recently, that of Head of the District.

[27] Counsel filed submissions dated 7 December 2008 and 24 March 2009 and supporting country information, all of which has been considered in this decision.

## **THE ISSUES**

[28] 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."

[29] 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**

[30] Before determining the issues in this case an assessment must be made of the appellant's credibility.

[31] The Authority accepts that the appellant is a member of the MNR and was active in promoting MNR candidates and policies. He provided a considerable number of letters and references from various MNR officials attesting to his work for the party. These are all in Spanish, however, and the Authority can make no detailed assessment of them. Although the Authority granted an extension of time for the appellant to obtain translations, his counsel by letter dated 24 March 2009 advised that they could not be obtained because of financial constraints and the unavailability of legal aid for this purpose. However, on their face it is apparent that they attest to a long involvement with the MNR, including the various positions held by the appellant over the relevant period. The appellant also showed a detailed knowledge of MNR and Bolivian politics. The Authority accepts that he is recognised as an MNR party organiser in certain districts in Z and that since the events of October 2003 he, along with others, has been harassed by political opponents because the MNR is blamed for the deaths which occurred during 'Black October'.

[32] The Authority extends to the appellant the benefit of the doubt in regard to the attacks by MAS supporters which he says he suffered in both 2006 and 2007 when leaving MNR gatherings, which made him fearful and caused him to stop his public support of MNR and to restrict his movements within the city.

[33] Finally, the appellant claims that on return he will be "one hundred percent politically active" and this will certainly place him at risk of serious harm. He was asked by the Authority why he would now engage in active and open opposition to the government and what had changed to cause him to adopt this (according to him) dangerous stance. He replied that he would not "stay locked inside any more". When asked the same question by his counsel he replied that people in



general, not only MNR supporters, are experiencing violations of their religious and educational freedoms. He would now openly oppose this.

[34] There has been no dramatic change in his own situation or the country conditions referred to by him as giving rise to a reason for changing the nature of his political activities. The Authority finds that this claim to suddenly become “one hundred percent politically active” is no more than an attempt to raise his political profile beyond that which he already has as a member and organiser for the MNR. It does not accept that, on return, he will change the nature of his political involvement to place himself at risk of serious harm.

[35] The Authority now turns to address the appellant’s evidence which it has accepted as credible in regard to the issues raised by the Convention.

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

*Country information*

[36] At the hearing, counsel was asked to indicate the country information forming the basis of her submission that “the situation in Bolivia for persons similarly situated to (the appellant) is clearly one of severe persecution”. (Counsel’s submissions dated 19 September 2008 at page 10.) In response she stated that there was no specific country information about MNR supporters but that those opposed to Morales had been harmed because of their political opinion. She cited the following examples:

- (a) Large scale demonstrations in 2007 in Cochabamba where three people were killed and dozens left wounded (Freedom House Annual Report 2008 – Bolivia).
- (b) Violence erupting in several cities including Santa Cruz and Cochabamba leaving five people dead and others injured (Amnesty International *AI Report: Bolivia* (2008)).
- (c) The arrest of the governor of Pando province in September 2008 where opposition groups had blockaded roads and threatened to disrupt natural gas shipments. These demonstrations were marked by violence. Opposition supporters referred to the governor of Pando province as being on a government “blacklist”. (Refer “Bolivia says

Morales, Provincial Governors Reach Deal”, *CNN* (16 September 2008) at <http://addition.cnn.com/2008/world/americas/09/16/bolovia.governor.arrest/index.html>).

- (d) An article in *Los Tempos* dated 10 February 2008 concerning a street demonstration by MNR disrupted by MAS supporters.

[37] The Authority was also referred to a Canadian Immigration and Refugee Board Report (Immigration and Refugee Board of Canada: Bolivia Update BOL 35905.E (25 October 2004) which noted that the only incident involving the mistreatment of MNR members by civilians occurred in February 2003. This report, referring to events five years previously and well before the Morales government came to power, is not relevant to the appellant’s current situation.

[38] Counsel was given leave to provide further country information and submissions concerning the risk faced by the appellant on return. At counsel’s request, this leave was extended and submissions and further country information were eventually received on 25 March 2009. A summary of this country information is as follows:

- (a) An estimated 17 deaths occurred during politically related conflicts in 2008 as reported in the United States Department of State *Country Reports on Human Rights Practices for 2008: Bolivia* (25 February 2009). The same report notes 45 incidents of lynching. However, there was no additional information as to the identity of these victims, their political affiliations or the circumstances in which these deaths occurred.
- (b) The Bolivian police force commits frequent human rights violations. Counsel argues that this lack of state protection together with the practice of detention of political dissidents as reported in the United States Department of State report (*supra*) puts the appellant at risk. However, there is no evidence to suggest that the appellant is likely to be detained for being a MNR member.
- (c) Violence was frequently used by MAS supporters. The United States Department of State report (*supra*) reports an attack on an indigenous activist who was on a hunger strike and had attempted to obtain signatures to a petition criticising President Morales. The

circumstances of this indigenous activist are not relevant to the appellant's situation.

- (d) Similarly, the unlawful arrest of an opposition youth leader in June 2008. This does not appear to be relevant to an MNR member such as the appellant. Counsel also cited the example of threats of intimidation daily faced by opposition members of congress. Again, this is not relevant to the appellant's personal situation. He is neither a youth leader, nor a Member of Parliament.

[39] None of the country information refers to persecution of individuals similarly situated to the appellant. Counsel submitted that the information is not available because Bolivian politics other than the issue of coca growing is not a major concern to international agencies such as Amnesty International or Human Rights Watch which report on country conditions. The appellant also contends that the lack of information about mistreatment of MNR members by the MAS is due to government control of the media. Counsel submitted, citing the United States Department of State report for 2008, that journalists' access to detained people had been restricted and that NGOs accused the government of politicising state-produced media content. In addition, private media was faced with restrictions.

[40] The Authority advised the appellant that its own researches had not disclosed any country information which suggests that MNR members of a similar profile to the appellant are at risk of serious harm. The Authority referred the appellant to an article dated 30 May 2008 which reported on the accord reached between the MAS, MNR and National Unity parties designed to break the political deadlock (refer "*Ruling Party Makes Deal With a Lesser Bolivian Opponent*" World Markets Research Limited (30 May 2008)). The appellant's response to this was that there was no such entente between MAS and MNR supporters at street level despite such negotiations taking place among the leadership. The appellant contends that this information about suppression of the MNR is never publicised in the state-controlled media. When asked why there was no mention of this suppression in the reports of non-governmental agencies (NGOs) such as Human Rights Watch or Amnesty International he replied that these agencies were concerned with wider issues. He was then asked if MNR supporters had complained to organisations such as the abovementioned NGOs about the human rights abuses carried out against them. He replied that he supposed that they had

and offered to provide copies of emails detailing such complaints. Leave was given for the appellant to submit this but no such information has been provided.

[41] The Authority asked the appellant why he had not sought more information from his MNR colleagues concerning the predicament of MNR supporters. His response, that to do so would require him revealing the fact of having lodged an application for refugee status and thereby expose his family to harassment from his MNR colleagues, is not credible. If his safety is as important to his family as they profess it to be in their letters, they would be willing to tolerate the claimed harassment from his MNR colleagues in order to obtain information which would support his claim to refugee status. The certificate dated 4 December 2008 (see para [26]) refers to him having to leave his city, family and party but does not specify the reasons for this beyond stating “for reasons already known”. Had the writers of the certificate known that it was going to be used in support of a claim for refugee status, they could be expected to have been more specific as to the reasons for the appellant’s need to escape. Such information is very relevant to his refugee claim. The Authority does not accept that these, his colleagues and friends, would be reluctant to help the appellant had they known he was at risk of serious harm.

[42] The appellant claims to be on a blacklist of MNR activists. The only reference to a blacklist in country information provided by the appellant was in reference to a governor of Pando province (refer “Bolivia says Morales, Provincial Governors Reach Deal”, *CNN* (16 September 2008) at <http://addition.cnn.com/2008/world/americas/09/16/bolovia.governor.arrest/index.html>):

“...as news of Fernandez arrest spreads across the country, many citizens talked about who else would be on the government’s “blacklist”, as they were calling it.”

[43] The appellant does not have a political profile comparable to that of a provincial governor such as Fernandez. This does not support his contention that (even if there is a blacklist) it would contain individuals such as himself, a former MNR organiser at the district level.

[44] Against this country information, notably the significant absence of reference to MNR members suffering serious harm, it is necessary to weigh the claim of the appellant.

*Application of the country information to the claim*

[45] As to past events (which can be a good indicator of future risk), the Authority accepts that the appellant was a recognised MNR party organiser in his neighbourhood and other districts in Z. As a consequence of 'Black October', he was subjected to increasing abuse and harassment by opponents of MNR as his party's influence declined. This consisted of being insulted in public, having stones thrown at the family home and slogans painted on its walls. He felt intimidated in his neighbourhood and moved to other parts of the city where he lived reclusively.

[46] These events, however, fall well short of 'being persecuted'. They were regrettable and not to be condoned. Nevertheless, insults, stones thrown at a house and slogans fall well short of amounting to serious harm.

[47] It is also accepted that, on two occasions, he suffered minor physical injuries as a result of altercations in April 2006 and July 2007. They were not, however, anything more than random incidents, evident from their infrequency and the lack of any country information to establish that MNR members regularly suffer such attacks. The appellant was in the wrong place at the wrong time and there is nothing to suggest that the appellant will suffer any further such incidents. Certainly, the risk falls well below that of a real chance. He may well continue to be an MNR member as he was in the past but there is no independent country information or other credible evidence that this would place him at real risk of being persecuted on return.

[48] The Authority concludes that the appellant does not have a well-founded fear of being persecuted.

[49] The first issue raised by the Convention being answered in the negative, the second issue does not arise.

**CONCLUSION**

[50] For the reasons mentioned above, 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.

"J Baddeley"

J Baddeley  
Member