

AJB
Heard at Field House
On 9 September 2002

APPEAL NO CC00848-2001
Up-FARC [2002]
UKIAT05736

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

.....10 December 2002.....

Before:

Mr C M G Ockelton (Chairman)
Mr D K Allen
Mrs A J F Cross de Chavannes

Between

GERMAIN HENAO – RENGIFO

APPELLANT

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

RESPONDENT

DETERMINATION AND REASONS

1. The appellant is a citizen of Colombia who has been granted leave to appeal to the Tribunal against the determination of an Adjudicator, Mrs C Bart-Stewart, who dismissed his appeal against the respondent's decision of 9 December 2000 refusing leave to enter, asylum having been refused.
2. The hearing before us took place on 9 September 2002. Ms S Naik for Pullig & Co appeared on behalf of the appellant, and Mr J McGirr appeared on behalf of the respondent.
3. The appellant claims to fear persecution and/or breach of his human rights on return to Colombia on account of his membership of the Union Patriótica (UP) and collaboration with and implied association with Fuerzas Armadas Revolucionarias De Colombia – Ejército del Pueblo (FARC). He had been detained twice on this account and also been present at a shooting incident where two of his associates were killed.

4. The appellant was detained in 1996 and 1998 whilst at UP demonstrations, but was accused of being a member of FARC. He was released following intervention by his lawyer. The Adjudicator found this claim to be credible. The lawyer confirmed that the reason for arrest was suspicion of involvement with the FARC, rather than membership of UP. On the occasion of the first detention, the appellant said that he was beaten and threatened with death, though on the second occasion he was held for ten days, but not mistreated.
5. He claimed to have left Colombia on account of a shooting incident. In a statement dated 5 February 2001, he said that he attended a meeting on 17 October 1998 in Cali at the Education Ministry, which was attended by various officials of his party and also the Dean of the Institute, the head of the District Educational Council and the Minister of Education for Palmira. Also, the education secretary of the entire province was there. He said that after he left the meeting, together with two of his party members (from the UP) people armed with handguns started to shoot. He managed to hide between cars and did not know what to do and both of his friends died on account of the shooting. He left Colombia soon afterwards.
6. He produced a death certificate relating to his brother, and also death certificates concerning the colleagues killed on 17 October 1998. The Adjudicator had serious doubts as to whether the certificates were genuine. She gave her reasons for this and they were not challenged in the grounds of appeal, nor by Ms Naik before us. The Adjudicator concluded that there was no Refugee Convention reason since the appellant had left Colombia in what appeared to be a single isolated incident, and it could not be said with certainty that he was a specific target. Nor did she consider that his claim engaged the United Kingdom's obligations under the Human Rights Convention. She dealt with this matter briefly and gave no consideration to the Article 3 point, though it had been raised in the grounds of appeal before her. No doubt she was also in error in stating that it could not be said with certainty that the appellant was a specific target in the shooting incident. That misstates the proper standard of proof. The grounds of appeal also rightly criticise her with regard to her description of the nature of Article 3 of the Human Rights Convention. As ground 3 of the grounds of appeal points out, Article 3 is absolute and unqualified and there is no question of an apparent breach of Article 3 being showed to be justified by the Secretary of State. She also misstated the standard of proof, as is criticised at paragraph 3 of the grounds of appeal. There is no reason however why these matters cannot be properly considered by us.
7. Ms Naik invited us to accept that, on the proper standard of proof in asylum and human rights cases, given that the appellant was leaving a political meeting when the shooting took place, the state or paramilitaries were reasonably likely to have been the perpetrators of this incident. There is evidence, for example at page 1 of the US State

Department Report on Colombia for 2001 in the final paragraph that members of the security forces in Colombia collaborated with paramilitary groups which committed abuses. She argued that as a consequence there was an insufficiency of protection. It was not argued that the appellant was a specific target, but there was a campaign of violence against FARC. The UP were a lawful political party, but were the political wing of FARC and therefore, the appellant was at risk of being identified with FARC, as could be seen from the reasons for his two arrests and detentions.

8. A difficulty we have with Ms Naik's argument is that it has not been shown in our view, to the proper standard of proof, that the attack was directed at all. There are very significant levels of violence in Colombia, which derive from a variety of causes. 3,700 citizens were estimated to have died in political and extra-judicial killings during 2001, according to the US State Department Report for 2001 at page 3. Of particular relevance in this context is the situation of the UP. It is the case that currently there are very few mentions of problems for UP members in the objective evidence. Clearly, the situation has been somewhat different in the past, and that could be seen as being evidenced by the appellant's previous history of two detentions as a UP member deemed to be associated with FARC. There is, however, nothing in the March 2000 United Nations Economic and Social Council Commission on Human Rights Report on Colombia concerning shooting of UP members. There is we think, force to the point we put to Ms Naik, that the fact that he was arrested twice previously and released as there was not enough evidence, would, in effect apply to any Colombian, who might be at risk of being arrested when there was no evidence, and then released.
9. We were referred by Ms Naik to the determination of the Tribunal in Torres (00/TH/00657). The Tribunal in this case, heard a Colombian appeal on 28 January 2000 and allowed it, and derived assistance from an expert report of Dr Pearce from the Department of Peace Studies at the University of Bradford. Among other things, Dr Pearce's report noted that 1,500 UP leaders had been killed between 1985 and 1994 and levels of political violence in Colombia had escalated since then. It was also said that most human rights observers would agree that persecution of the UP in Colombia had been systemic since the party was believed to have links with FARC. We bear in mind however, that this was a determination some two and a half years old and taking into account a report of similar age. It is true that the Tribunal in Clavijo – Hoyos (00/TH/02313) also allowed a Colombian appeal on 8 August 2000, and again taking account of a report from Dr Pearce.
10. We bear in mind that the evidence of Dr Pearce provided in respect of both of those appeals, is at least two years old. We have been able to find very little in the objective evidence to support the contention that members of the UP are at risk on any account today. There is nothing in the Amnesty International Report in the bundle, nor in the Human

Rights Watch Report. The only mention in the US State Department Report 2001 is to be found at page 12, where there is reference to the UP's 1996 complaint, charging the government with "action or omission" in what the UP term "political genocide" of the UP and the Communist Party. It is said that as part of the process, since June 2000, the government has provided protection through the Interior Ministry to surviving UP and Communist Party members, but despite these efforts, NGOs reported to the Inter American Commission on Human Rights, that at least 20 persons associated with the UP were killed during the year. We have had no evidence put before us as to what the current membership of the UP might be. We note also the section in the April 2002 Colombia Country Assessment by the Home Office. At paragraph 10, it is said that since 1999 the UP has faded from any position of political significance and has not featured as being active in any news report. That section of this document contains some information about the problems historically experienced by the UP since it was set up in 1985, but refers to no specific incidents since 1997. It is true that there are general statements such as that at the commencement of the Amnesty document concerning political killings in Colombia, but the evidence concerning the UP is no more than, as we have stated above.

11. In our view, this evidence does not show a real risk to the appellant on return. Clearly, there must be a slight risk that as somebody who has been a member of the UP, he might be harmed on return. We take that from the evidence concerning the 20 or so people who were reported to the Inter American Commission on Human Rights, to have been killed during 2001, and being people associated with the UP. Otherwise, the absence of references to problems for UP members, whether in their own right or as being associated with FARC, is clearly of significance. The position has improved significantly since the time when the Tribunal's considering these issues in Torres and in Clavijo – Hoyos. We do not consider that the evidence shows why it was that the appellant was involved in the shooting incident in 1998. Even if it were a case of identification of him and his colleagues as members of the UP, some four years have passed since then, and we consider that the objective evidence shows a significant change with regard to risk of UP members whether in their own right or through association with FARC. We see no real risk of persecution and/or breach of his rights under Article 3 for the appellant on return to Colombia. Nor do we see any real risk that any of his other human rights may be breached. As regards any breach of his Article 5 rights in particular, we note that he has experienced no more than two arrests and detentions at a time when UP and its association with FARC was very much more highlighted than it is now.

12. This appeal is dismissed.

**D K Allen
Chairman**