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FJ (FARC- Convention Reason) Colombia CG [2002] UKIAT 03219

HX45998-01

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 9 May 2002

Date Determination notified:

29.07.2002....

Before:

Mr M W Rapinet (Chairman)

Mr D K Allen

Mr C P Mather

FRANCISCO ANTONIA JURADO

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation

For the appellant : Mr S. Khan, counsel, instructed by Nimal Jay & Co.

For the respondent : Mr A. Sheikh, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Colombia, appeals by leave of the Tribunal against the decision of an adjudicator (Mr J. Azam) dismissing his appeal against the respondent's decision to refuse to grant leave to enter and asylum. The grounds of appeal are in the bundle before us.
2. The appellant entered this country on 2 March 2000 and immediately claimed asylum. The basis of his claim is that he was a farmer who was approached by FARC and who required him to grow coca crops in order that they might manufacture cocaine. He refused to do this and handed over a part of his farm land

on which the guerrillas then planted their own coca crop which he subsequently destroyed. Because of his fear of the guerrillas he then fled the village and abandoned his farm to the guerrilla forces. He claimed that he fled to the town where his brother lived and that he was followed there by the guerrilla forces who in fact shot at him and his brother, killing his brother in the process. Subsequent threats were made by letters which were produced to the adjudicator at the hearing. He then decided to leave the country. The murder of his brother was reported to the police, as was the loss of his land.

3. The adjudicator has found that the death of the brother was not connected with the loss of the appellant's land to the guerrillas and that, having achieved their object in obtaining possession of the land, there was no further threat to the appellant were he to return.
4. The grounds of appeal maintain that the adjudicator has not properly considered the Tribunal determination in the case of Gomez (00/TH/02257) and that he has not made proper findings as to the authenticity of the threatening letters to which he was referred.
5. Miss Khan in her submissions, in particular attacked the adjudicator's failure to make proper findings with regard to the authenticity of the threatening letters. She submitted that FARC has a political agenda and drew our attention to certain objective material in support of this submission. The threats he had received indicate quite clearly that the appellant was targeted because of his refusal to cooperate with FARC and they thus imputed a political opinion to him. She submitted that the Tribunal should find that these documents are genuine and that following such a finding the Tribunal's determination in the case of Quintero (01/THE/01923) should apply. She submitted that relocation anywhere in Colombia was out of the question as FARC would follow the appellant wherever he might be in that country.
6. Mr Sheikh, in his submissions, pointed out that the object of FARC obtaining possession of the appellant's land was in order to produce coca for subsequent production of cocaine and that their motive was therefore entirely economic and criminal. It may well be that FARC as a guerrilla organisation does have a political aim but not within the context of this particular appellant, and then it could not be found, within the context of the Tribunal's determination in Gomez, that he has an imputed political opinion. We were referred to extracts of the Tribunal's determination in Gomez to which we shall refer hereafter. The objectives of FARC, so far as this appellant is concerned, have been achieved and therefore there is no reason why they should persecute him any further.
7. Mr Sheikh submitted that the adjudicator had made proper findings with regard to the death of the appellant's brother. He accepted that the adjudicator had made no clear findings with regard to the authenticity of the documents produced at the hearing and submitted that this was an error which the Tribunal can itself rectify. He submitted that the letters of themselves did not justify the appellant's claim that he

was persecuted for an imputed political opinion. He submitted that the objective evidence before us indicated that FARC does not control the whole of Colombia and therefore there were areas in that country to which the appellant could relocate.

8. We will deal first with ground 1 and the question of an imputed political opinion, and in this connection we have considered with care the Tribunal's starred determination in the case of Gomez. In that determination the Tribunal considered extensively the question of political opinion and imputed political opinion. The case of Gomez also related to a Colombian citizen who had been threatened by FARC. With regard to imputed political opinion, the Tribunal states:

‘The political opinion ground requires a broad definition but not so broad as to cover any opinion which a non-state actor may impute.’ (para (v) of the summary of conclusions).

9. In the following paragraph the Tribunal states:

‘To qualify as political, the opinion in question must relate to the major power transactions taking place in that particular society. It is difficult to see how a political opinion can be imputed by a non-state actor who, or which, is not itself a political entity.’

10. Further on in the same section of the determination, the Tribunal states:

‘Even in a case where an appellant can make out a Convention ground of political opinion, he or she must still also establish that the persecution is on account of that political opinion. It is commonsense under this nexus test that even where persecutors have political views about those they target, it may not always be the political opinion that motivates their action. As was said in Jeah, the mere existence of a generalised political motive does not lead to the conclusion that the persecutor perceives what the claimant has said or done as political.’

11. Again, at paragraph (xii) it is stated:

‘Even in cases involving criminal gangs or guerrillas, however, evidence of imputed political opinion cannot consist solely of the general political purposes of the persecutor.’

12. It is our view, and this view is supported by the Tribunal in Gomez, that FARC, although a guerrilla organisation employing criminal activities in pursuit of its aim, is a political entity, albeit a non-state actor. A study of the objective evidence can only

lead to such a conclusion and the activities of FARC, its political aims and the efforts it employs in achieving those aims, are well known to the Tribunal and well-documented in the objective evidence which is before us in this case and has been before other Tribunals.

13. It is not in dispute that this appellant is apolitical, and has no record of having opposed FARC in any manner whatsoever whilst in Colombia, save when FARC sought to compel him to plant coca on his farm, which he refused to do, but nevertheless, presumably by way of compromise, handed over certain acreage to FARC in order that they may themselves plant the coca. He subsequently destroyed that crop. It was at that point that he then fled the farm and has abandoned it to FARC.
14. We asked ourselves whether that action of his and his subsequent action in reporting the activities of FARC in relation to his farm and the death of his brother to the police can amount to imputed political opinion. This aspect of imputed political opinion has, as we have stated earlier, been extensively examined by the Tribunal in Gomez. It might be useful if we were to quote some extracts from that determination. The Tribunal referred to the case of Canada (Attorney General) v Ward [1993] 2 SCR 689 747.

‘The persecution stems from the desire to put down any dissent viewed as a threat to the persecutors. Grahl-Madson’s definition assumes that the persecutor from whom the claimant is fleeing is always the government or ruling party, or at least some party having parallel interests to the government. As noted earlier, however, international refugee protection extends to situations where the state is not an accomplice to the persecution but is unable to protect the claimant. In such cases it is possible that the claimant may be seen as a threat by a group unrelated, and even opposed, to the government, because of his or her political viewpoint, perceived or real.’

15. At paragraph 36, the Tribunal quotes from the case of Sanga v INS 103 F3DL482487 (9 CRII 1997):

‘In establishing any imputed political opinion, the focus of enquiry turns away from the views of the victim to the views of the persecutor. We consider, however, not the persecutor’s own political opinions, but rather the political views the persecutor, rightly or in error, attributes to his victims. If the persecutor attributed a political opinion to the victim, had acted upon that attribution, this imputed view becomes the applicant’s political opinion as required under this act.’

16. Prima facie, therefore, it would appear that there is a strong argument in favour of Miss Khan's contention that by destroying the coca crop and by subsequently reporting FARC activities to the police, FARC has attributed an imputed political opinion to this appellant.

17. At paragraph 52 of the determination in Gomez, the Tribunal states:

‘It is necessary at this point to record that even in a case where an appellant can make out a Convention ground of political opinion, he or she must also establish that persecution is on account of that political opinion.’

Later in the same paragraph, the Tribunal states:

‘Just because persecutors may in some cases attribute political opinions to victims or opponents, does not mean that they will necessarily do so in every case.’

18. At paragraphs 53 and 54 the Tribunal states:

‘53. It is also commonsense that although one may hold a political opinion, not everything one does is motivated by that political opinion.

54. Reflecting these commonsense notions, the Tribunal would categorically reject the idea that even in countries such as Colombia where the boundaries between the political and the non-political have been heavily distorted by the conduct of paramilitary bodies and drug cartels, every case where such a body persecutes must be on account of an imputed political opinion. We would reaffirm the point made in Quijano (10699) that where the concern of persecutors was not a political one but one to maintain their economic position through criminal activities and to that end intimidate, and if necessary eliminate, those that oppose the pursuit of that aim, then there would be no conflict based upon refusal to perform political acts but only criminal ones.

19. It is clear from the facts of this case which are not in dispute that the original threats made by FARC against the appellant were made for purely economic reasons i.e. the desire of FARC to improve its economic strength by the manufacture of cocaine illicitly and therefore by the planting of coca upon the appellant's land. Their action in planting the coca and in taking possession from the appellant of a portion of his land, and subsequently taking possession of the whole of his land indicates a purely

economic motive in relation to this appellant and his land. There was no political motivation on their part at that stage.

20. We would quote from paragraph 67 of the Gomez determination:

‘Even where the non-state actor is a guerrilla organisation (like FARC), carrying out state-like functions in parts of the country, there will arise cases in which no political motive is involved. Such organisations for some if not much of the time may act for purely economic reasons. Their reasons for seeking retribution against victims may for some if not much of the time be purely criminal. Indeed the background evidence suggest that most of the kidnappings undertaken by FARC and ELM are financially motivated (1,985 in 1999) rather than politically motivated (372 in 1999). Deciding whether any kidnapping is purely financial or purely political or is for mixed financial and political motives will obviously therefore depend upon the particular circumstances of each case.’

21. We have no hesitation, on the facts of this particular case, in finding that FARC’s objective in threatening the appellant, in seizing part of his land, in planting it with coca, and in subsequently seizing the whole of his land, was purely financial, not a mixture of financial or political motives.
22. We then move to consider whether or not the disruption of the coca crop by the appellant and the report by him to the police of FARC’s activities upon and in relation to his land, can give rise to an imputed political opinion.
23. The action of the appellant was to seek police protection, which in all probability was not available, and to attempt, presumably, to regain possession of his land with the help of the state authorities. In paragraph 47 of the determination in Gomez the Tribunal states:

‘It also follows from this approach that it cannot be said as a universal proposition that those on the side of law and order and justice who face persecution from non-state actors, by the guerrilla organisations or political gangs or criminal gang, will have a political opinion imputed to them. If that is what Acero-Garces meant, then we must respectfully disagree. Rather it will depend on the particular country and its particular circumstances whether that is so. Thus in Storozhenko (19935) a Tribunal chaired by the President, it was held that those on the side of law and order in the Ukraine, would not have a political opinion imputed to them by criminals intent on persecuting the appellant.

24. In Storezhenko, the Tribunal states:

‘We do not regard Acero-Garces as authority for the proposition that any victim of crime who seeks redress but cannot because of police corruption or the power of criminal element, is entitled to the protection of the Convention ground because he may be perceived to be on the side of law and order. Normally, imputed political opinion will arise where there is perceived opposition to a policy espoused by the government or its agents. Since protection can be extended to cover those who are persecuted, not by the government or its agents, but because government is unable or unwilling to afford the protection from the persecutors, witnesses to crime may, if they come forward to help be properly regarded as coming under the umbrella of imputed political opinion. But we think that such cases would be rare and limited to situations such as existing in Colombia where no protection can be given because the criminals are in effective control.’

25. The final sentence in our quotation from the Storezhenko case has, in our view been dealt with by the Tribunal in Gomez in paragraph 67 from which we have quoted above.

26. For these reasons we therefore would find that the appellant has not been persecuted by reason of any imputed political opinion.

27. Turning to the question of the failure by the adjudicator to make any findings as to the authenticity of the documents, being ground 2 of the ground of appeal, the adjudicator has stated in paragraph 33:

‘As far as the remaining documents are concerned, I am unable to come to any firm conclusion about their authenticity.’

28. This does not of itself fatally flaw the determination and in fact does to some extent follow the guidelines of the Court of Appeal in the case of Karanakaran where their lordships stated that an adjudicator, if unable to come to any conclusion about any aspect of the evidence before him, he should consider the possibility that the event in question occurred. Their lordships did go on to indicate that the benefit of the doubt might well be given to the appellant in such circumstances.

29. The letters of which complaint is made are those quoted in paragraphs 19, 20, 21 and 22 of the determination. In our view, even if it was accepted that the documents were authentic, we do not consider that they strengthen the appellant's claim that

FARC persecuted him for an imputed political opinion. The first of such letters quoted in paragraph 19 makes it clear that the motive of FARC is entirely economic. It states:

‘Mr Francisco Jhirao we don’t want to harm you. Just hand over your land and everything will be OK, or else; you know that your life is at risk, FARC.’

30. That in our view clearly indicates that FARC is acting for economic reasons, and certainly not at that stage attributing any political opinion whatsoever to the unfortunate victim.
31. The remaining three letters quoted in paragraphs 20, 21 and 22 do not, in our view, further the appellant's claim that there is an imputed political opinion. As we have indicated earlier in this determination, leaning on the side of law and order does not impute a political opinion. The tenor of the letters makes it clear that threats arise out of the fact that the appellant drew the attention of the police to the FARC activities on his land. For the reasons which we have indicated earlier in this determination, this does not amount to the imputation of political opinion.
32. For these reasons the appeal is dismissed.

**M W RAPINET
VICE PRESIDENT**