

**IMMIGRATION APPEAL TRIBUNAL**

Date of hearing: 16 June 2004

Date Determination notified: 03 August 2004

**Before**

**Mr N H Goldstein – Vice President**

**Dr A U Chaudhry**

**Mr A F Sheward**

**Between**

	APPELLANT
and	
Secretary of State for the Home Department	RESPONDENT

For the Appellant: Ms C Kearney, Legal Representative of Asylum Aid  
For the Respondent: Ms P Ramachandran, Home Office Presenting Officer

**DETERMINATION AND REASONS**

1. The Appellant, a citizen of Colombia, has been granted permission to appeal to the Tribunal against the determination of an Adjudicator (Mr R J Manuell), who in a decision promulgated on 11 August 2003 dismissed his appeal on asylum grounds.
2. In granting permission to appeal, the Vice President His Honour Judge N Huskinson, considered that the grounds of appeal raised arguable matters as to the sustainability of the Adjudicator's conclusion that the Appellant would not face a real risk of persecution on return.
3. The Adjudicator most helpfully and succinctly summarised the Appellant's account in paragraphs 12 and 13 of his determination that we set out below:

"12. In summary the Appellant said that he had been a member of M-19 and later of Corriente de Renovacion Socialista ("CRS"), both illegal left-wing opposition groups which were subsequently rehabilitated and absorbed into the mainstream political process. From 1993 onwards, the Appellant became implicated in legal proceedings brought under the 'Secret Justice System', intended to facilitate terrorist trials. He was accused of kidnapping. In 1995 the Appellant was arrested in company with FARC members and was detained for a year without charge having provided the police with a false name. After he learned his parents had been

placed under surveillance and had received anonymous telephone threats, he left Colombia in May 1997 on a false passport.

13. The "Secret Justice" proceedings continued in his absence, until 7th April 2002, when an Order was issued by the High Court in Bogota that the charges against the Appellant were revoked and the arrest warrant cancelled. The Appellant maintains that despite the relevant Order, he would continue to be at risk from the military who instigated the charges and also from the paramilitaries."

4. It is particularly noteworthy, that at paragraph 14 of his determination the Adjudicator made the following clear observation:

**"The Appellant said that his name still appeared in military reports, where it was said that he was a member of FARC.** The situation in Colombia was worse than when he left seven years ago. There was no reason for him to feel safer, especially given his past experiences of state organisations. He considered he would be unable to claim state protection. He believed that he would be detained and killed if returned." (The typed emphasis is ours).

5. At paragraph 20 of his determination the Adjudicator found that the Appellant was "an articulate and well presented man. He gave his evidence clearly and confidently." However the Adjudicator continued at paragraph 21 inter alia as follows:

**"In my judgment the Appellant's voluntary disclosure of the cessation of the "Secret Justice" kidnap proceedings against him was strongly persuasive in itself to demonstrate that he should be regarded as a credible witness, since that disclosure was tantamount to a declaration against interest and went to the heart of his claim. Moreover the Appellant's evidence as to past events was corroborated by a large number of mainly legal documents whose authenticity was not expressly challenged by the Respondent and also by evidence of Mrs Hernandez-Castro, who as the Appellant's former wife and the holder of Indefinite Leave to Remain would have had no interest in perjuring herself and would certainly not have wished to imperil her grant of Indefinite Leave to Remain in the process. The Appellant's testimony was in my view coherent, detailed and reasonably plausible."** (Our emphasis).

6. Significantly, the Adjudicator continued as follows:

**"I accept his evidence, as I have summarised it above at paragraphs 12 to 16 as reliable to the required standard of reasonable likelihood and so find."** (The emphasis is ours).

7. We have decided to allow the appeal.
8. It is apparent that the Adjudicator made the clearest possible finding and accepted the Appellant's account of his name still appearing in military reports referring to him as a member of FARC. However at paragraph 23 of his determination the Adjudicator made inter alia the following observation:

"The Appellant said that he had been recorded as a FARC member, but his fear of future difficulty because of that on his return to Colombia seems to me entirely fanciful, since his somewhat colourful left-wing political past was well-known to the authorities and the Appellant was never charged or prosecuted for FARC membership despite years of legal proceedings. Additional charges in the Appellant's absence could have been brought as the fact of the continuation of the other proceedings in his absence shows. It is almost inconceivable and certainly highly unlikely that any such proceedings would now be commenced. If they were commenced the Appellant could defend them as he denies FARC membership."

9. Ms Ramachandran informed us at the outset of the hearing that it was clear that the Adjudicator had made an error in law by making two different findings. She however asked for a remittal not least because of what she described as an "inconsistency" in the Adjudicator's findings in this regard.
10. We were not persuaded that there had been inconsistent findings. Indeed it was apparent to us that the Adjudicator at paragraph 23 was in no sense contradicting his earlier finding that the Appellant's name still appeared on military reports where it was said that he was a member of FARC. All that the Adjudicator was doing was expressing his view as to the reasons why the Appellant notwithstanding his earlier finding, would not be at risk on return. Indeed our view in this regard is reinforced by the Adjudicator's observation at the outset of paragraph 22 of his determination that:

"The conclusions properly to be drawn from that evidence are however another matter entirely."

11. Consistent with the decision of the Court of Appeal in **Oleed [2002] EWCA Civ 1906** the Tribunal are permitted to examine the threat to the Appellant after the date of the Adjudicator's determination where there is something wrong with the

determination. We indeed find the Adjudicator was wrong to conclude, not least in the light of the objective material that was before him as well as his clear findings, that the Appellant would not be at risk on return in circumstances where his name appeared on military reports showing him to be a member of FARC.

12. The Tribunal has this appeal before it and must determine this matter, in the light of the current available country material. Indeed, in [2004] UKIAT 00032 **DD (Croatia)** a starred Tribunal decision chaired by the President, it was held that the Tribunal is not required to find, in order to allow an appeal that the Adjudicator was plainly or obviously wrong in the appraisal of the background material as compared to an appraisal of the Appellant's testimony. The President pointed out that the reference in **Oleed** was the need to show that a decision was plainly or obviously wrong to the degree of error necessary for interference with findings of fact in the absence of further evidence which related to the credibility and personal circumstances of a claimant. It did not concern itself at all with findings and conclusions in relation to the assessment of country conditions and risk on return where consistency and the Tribunal's guidance was important.
13. Ms Kearney vigorously opposed the notion that the appeal should be remitted and in so doing rightly submitted that the Tribunal were entitled to reach its own findings on the country information bearing in mind the very clear findings of fact and strong credibility findings made by the Adjudicator. She rightly submitted that someone perceived to be linked to the FARC, such as the Appellant would be at risk on return from the military and indeed paramilitaries.
14. Ms Kearney rightly rejected the further submission of Ms Ramachandran that one purpose of remittal would be to attempt to garner further information as to whether or not the Appellant was truly recorded as a member of FARC, in circumstances when the Adjudicator had clearly accepted that he was so recorded.
15. We were persuaded by Ms Kearney's submission that the fact of no legal action having been taken against the Appellant as a FARC member whilst he was in Colombia did not in any way undermine the issue of risk on return, because as found by the Adjudicator, persecutory legal action had already been taken against the Appellant on the very serious charge of kidnapping under the "Secret Justice" system. The mere fact that further charges were not taken against the Appellant did not in any way mean he would not be at such risk on return.

16. We agree with Ms Kearney that a key point in the Appellant's particular circumstances, is that he was subjected to persecutory action between 1993 and 2002 which demonstrates clear and strong interest in the Appellant even when he was out of the country between 1997 and 2002.

17. In such circumstances, we agree with Ms Kearney that there are no grounds for believing that interest in the Appellant on the part of the military would simply fall away because those proceedings had collapsed. The fact that they had collapsed might, as Ms Kearney submitted, cause the military to take expedited action against the Appellant once they were made aware of his return.

18. Ms Kearney continued there was indeed present conflict between the military and left wing groups in Colombia. Under the current government there had been an increased clampdown by the military supported by the government against those thought to be connected with or members of FARC or other guerrilla groups.

19. Ms Kearney submitted that the reality was that if the Appellant were simply returned to any area within Colombia, questions would be likely to be asked as to his identity, where he had come from and his background. She submitted that there were currently in Colombia, a network of informers working with the paramilitary groups who had clear links to the military.

20. Ms Kearney's submissions in this regard were indeed supported by the objective material to which we were referred.

21. The BBC News report of 6 May 2004 quoted a local councillor in the town of Saravena near Colombia's frontier with Venezuela as stating as follows:

"And worst of all is the fear. People dare not even complain, because they know there are informers everywhere."

22. A member of the local Human Rights Body was quoted as stating:

"The authorities round people up and then get informers from the right-wing paramilitary groups, wearing hoods, to identify guerrilla sympathisers."

23. More particularly we note that the Amnesty International report of 2004 under the subheading "Government Seeks Accommodation with Paramilitarism" states as follows:

"There was also concern that many of the 'demobilized' paramilitaries could be allowed to join private security firms, **civilian informer networks** and the army of 'peasant soldiers'." (The emphasis is ours).

24. It follows that in the light of such informer networks, as Ms Kearney submitted, information would get back to the police who apart from seeking to question the Appellant themselves would be likely to pass on the information to the paramilitaries.
25. Indeed we note that there was evidence before the Adjudicator and current evidence of strong links between the security forces, the police and the paramilitaries as exemplified by the Amnesty International report which refers to:
- "Credible reports pointing to the ongoing consolidation of paramilitary forces in heavily militarised areas and indicating strong collusion between paramilitaries and the security forces."
26. The report of the UNHCR of 13 April 2004 states, "Of particular concern were allegations regarding the continuing relationship between public servants and paramilitary groups, as well as continued impunity."
27. We further note that such reports are reinforced within the April CIPU Country Report where in making reference to the strong links between the military and the paramilitary refers to such links in terms of the sharing of information.
28. The US State Department Report released in 25 February 2004 talks of serious concerns on the issue of such collaboration and the consequences in terms of unlawful killings, stating:
- "Despite ceasefires declared in the context of demobilisation negotiations conducted by the AUC – an umbrella organisation of different paramilitary terrorist groups – with the Government, these terrorists continued to commit numerous unlawful and political killings, including of labour leaders, often kidnapping and torturing suspected guerrilla sympathisers prior to executing them."
29. The April 2004 CIPU Report notes at paragraph 6.2 that according to the Human Rights Watch report of January 2004, a new legislation approved in December 2003 gave:
- "... the military the power to arrest, tap telephones and carry out searches without warrants or any previous judicial order, taking Colombia a significant step backwards. It directly contravenes Colombia's international commitments as well as repeated recommendations made by the office of the UN High Commissioner for Human Rights."
30. Paragraph 6.3 of the same report CIPU notes that:

"So far, President Alvaro Uribe has failed to break continuing ties between units of the security forces and paramilitaries and has failed to ensure that the perpetrators of crime against humanity and serious human rights violations are brought to justice."

31. We agree with Ms Kearney that in such circumstances the increased powers of the military in Colombia are directly relevant to their ability to act against this Appellant in his particular circumstances.
32. Ms Ramachandran was most fair in recognising that if, as we are, the Tribunal were unpersuaded by her submissions in support of remittal, then she recognised that in the light of the objective material, not least that which was before the Adjudicator, his observations at paragraph 23 of his determination were not supported by the objective material, and that in the light of his earlier findings, the Appellant would, not least to the lower standard, clearly be at real risk on return.
33. For the above reasons, we find that the Appellant has discharged the burden laid upon him to the lower standard and has demonstrated there to be a reasonable chance or a serious possibility that he would be persecuted for a Refugee Convention reason if he is now returned to Colombia.
34. We therefore reverse the Adjudicator's decision and allow the appeal.

**N H GOLDSTEIN  
VICE PRESIDENT**

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