

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76303

AT AUCKLAND

<u>Before:</u>	B A Dingle (Member)
<u>Counsel for the Appellant:</u>	I Anand
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	9, 10 & 19 March, 14 July 2009
<u>Date of Decision:</u>	23 November 2009

DECISION

[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 Colombia.

INTRODUCTION

[2] The appellant is a single woman in her mid-30s who is of African-Colombian descent. She arrived in New Zealand in mid-2007, having been granted a student visa in Colombia and therefore being issued with a student permit on arrival in New Zealand. She has been granted subsequent student permits and visitor permits in the time leading up to the lodgement of her claim for refugee status.

[3] The appellant's claim for refugee status rests on her assertion that she and her family (particularly her father) have been subjected to threats, intimidation and harassment by *Fuerzas Armadas Revolucionarias de Colombia* (hereafter "FARC")

and other para-military groups. This harassment is the result of her family having collectively owned land in the Atrato region of northwest Colombia, an area prized for its natural resources and occupied by FARC since the late 1980s. The appellant also claims to have been threatened because of her involvement with a grassroots women's organisation from which FARC attempted to extort money. She says that if she returns to Colombia, she will again become the subject of threats and harassment and will suffer serious harm in the form of sexual violence or being killed.

[4] The issue to be determined in this case is whether or not the appellant's claim is credible.

THE APPELLANT'S CASE

[5] What follows is a summary of the evidence given in support of the appellant's refugee appeal. An assessment of this evidence will follow later in the decision.

[6] The appellant is the oldest of three children born to her mother and father. Her parents have never been married but have lived together for extended intervals throughout the appellant's life. Her father also has two children from another relationship, with whom the appellant has had close family contact.

[7] The appellant was born in the Y region of the department of Choco in western Colombia. Her parents were part of an Afro-Colombian community who held land and resources collectively and made their living from that land, in particular by mining and farming animals. The appellant's father worked in the mines and was a mine manager during the early years of the appellant's life.

[8] In the mid-1980s, illegal groups began to pressure land-owners in Y region to surrender the land so that the groups could control them and reap the financial rewards from the mines and farming. The appellant now understands that the illegal groups were FARC and other far right paramilitary groups.

[9] Between approximately 1984 and 1987, the appellant's father came under increasing pressure, including being subjected to death threats.

[10] In approximately 1987, two of the appellant's uncles (her father's brothers) were murdered in relation to the land disputes. Those murders prompted the

appellant's family to relocate to a town and abandon their land. After the family left, the appellant's grandmother was killed and a message was sent to the family that they were on a black list of people to be murdered.

[11] In 1987, the family moved to Q city.

[12] For the next 14 years, the appellant and her family remained in Q city. At various times throughout this period, the appellant was sent to live with relatives or friends of her parents so that she would not be the subject of threats, harassment or harm. It was also done so that her studies would not be disrupted by the frequent moves her parents made in an effort to avoid being harmed. At around the same time, one of the appellant's full sisters, NN, was sent to live in a religious community so that she would be out of harm's way. The appellant's younger brother remained with her parents and her two half-siblings lived with their mother in the same city.

[13] Between 1987 and 2001, the appellant's father continued to receive threats from un-named people or groups who appeared to be representing either FARC or other paramilitary groups. These threats would be delivered in the form of written notes, telephone calls or sometimes even by way of painted messages on the side of the family's house.

[14] Despite these problems, the appellant finished secondary school and, in 1996, began working at a travel agency. In 1997, she began tertiary study in business administration, but she did not complete the course.

[15] In 2000, the appellant's father received an anonymous letter in which the writers claimed to have again located the family and threatened them with murder. As a result of the threatening letter, the family moved to M city, which was further away from their home village. The appellant lived there with her family for approximately two and a half years, during which time the family continued to be subjected to ongoing death threats.

[16] In late 2001, the appellant embarked on study at a university on a part-time basis. She combined this study with a job in the travel industry. During this period, the appellant observed that her father had become quiet and somewhat withdrawn and she attributes this mood to his inability to find work in M city and the consequent stress about not being able to financially support the family.

[17] In 2003, the appellant's father returned to Q city in an effort to find work.

Her mother followed some months later. At that point, the appellant lived in rental accommodation in M city with friends for approximately two years.

[18] During her time living in M city the appellant also assisted the women's group (*Mujeres Cabeza Hogar*) that her mother had volunteered at for some time. The group was a support group for Afro-Colombian women who are the sole head of household due to absence of a husband/father. The appellant assisted the group with accounting matters and sourcing materials for the clothes and other items the group produced.

[19] In 2005, the appellant began living in rental accommodation in M city with her sister, NN, and their younger brother, JJ. When NN returned to the religious community, the appellant's half-sister, YY, began living her and JJ.

[20] In late 2005, the appellant graduated from the university with a diploma in business administration. By this time she had taken up employment with another travel agency where she worked until she departed Colombia in 2007.

THREATS DIRECTED AT THE APPELLANT

[21] In December 2005 or January 2006, the appellant began receiving direct written and verbal threats. The first threat was in the form of a note that was delivered to her house and slipped under the door. The note threatened that if the appellant's father did not begin co-operating with the writers of the note, then she (the appellant) was at risk of being murdered.

[22] Soon after that, the appellant also received a call on her mobile telephone making similar threats. She terminated the call before the caller identified themselves and changed her mobile telephone number.

[23] In mid-June 2006, the appellant received a further note in which the threats were repeated. She reported this incident to the police who issued her with a certificate verifying her report but took no further action.

[24] In late 2006, the appellant received a third and final note which repeated the threats to kill her because of her work with the women's group and because of her association with her father and the land in Y region.

[25] In early 2007, while waiting at a bus stop, the appellant was approached by a man in a van who told her that her father's problems could be resolved if she

accompanied him to see his boss. Although he did not identify himself, she believed him to be a member of an illegal group who offered young women “security” for them and their families in exchange for sexual favours. The appellant ignored the man and after a few minutes he drove away.

[26] In March 2007, the appellant was issued a Colombian passport and approached an agency to assist her to get a student visa for Australia or New Zealand. She believed that was the only way she could escape the unwanted attention in Colombia.

[27] In approximately April 2007, the appellant was again approached as she waited for a taxi late one evening. She was abducted and suffered physical violence for which she sought medical help a few days later. She was not aware of the identity of her abductors but believes that the incident was related to previous threats. She has been unable to obtain medical reports relating to the incident because the medical centre will not release the documents until she pays her outstanding bill.

[28] On 11 June 2007, the appellant was issued with a New Zealand Student Visa. She departed Colombia without further incident and arrived in New Zealand on 24 June 2007. She began a three month English language course and was thereafter issued with various visitor and student permits in 2007 and 2008.

[29] On 5 August 2008, the appellant lodged her Confirmation of Claim to refugee status with the RSB.

[30] Since her arrival in New Zealand, the appellant has maintained contact with JJ and NN (via email and telephone) but she is not in contact directly with her mother or father. JJ gives her news about her mother but there is no news of the father and the family are concerned about his well-being.

OTHER MATERIAL

[31] On 3 March 2009, counsel submitted a Memorandum of Counsel and a bundle of country information. On the first day of the appeal hearing (9 March 2009), the appellant submitted a written statement with her signature, a partial copy of which had been filed with the RSB. She also produced translations of documents which had previously been filed including two “certificates” from friends of the appellant which purport to verify the fact that she has been the subject of

threats and intimidation, and a certificate from a district office of the National General Prosecutors Office which “certifies that a criminal investigation was carried out for the crime of death threats from illegal groups” against the appellant. The latter certificate notes that it has been produced at the request of the appellant.

[32] Under cover of a letter on 13 May 2009, counsel filed a further memorandum accompanied by: a psychiatric assessment report of the appellant (dated 12 May 2009) by Dr S. Weeks, clinical notes of the appellant from the Refugees as Survivors organisation and a further letter from Dr Tony Wansbrough identifying the appellant’s prescribed medications. These documents are discussed more fully below.

[33] Under cover of a letter of 10 July 2009, counsel submitted a copy of a further letter from Dr Tony Wansbrough updating information as to the appellant’s medication. Also submitted were further clinical notes from the Auckland Refugees as Survivors Centre.

[34] On 14 July 2009, counsel submitted a copy of the decision in *Refugee Appeal No 76289* (8 May 2009) which concerned a Colombian appellant and a copy of the Amnesty International 2009 Report – Colombia.

[35] Counsel also made oral submissions on the appellant’s behalf.

THE ISSUES

[36] 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.”

[37] 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

[38] Overall the Authority found the appellant to be a vague and mobile witness whose core account is undermined by significant inconsistencies and mobility in her evidence. In making that finding, the Authority has given careful consideration to the medical evidence and counsel's submissions but finds, for reasons set out more fully below, that they do not satisfactorily explain the nature and extent of the flaws in her evidence.

[39] The Authority's specific credibility concerns are set out below. They are followed by a detailed consideration of the medical evidence and submissions relating thereto.

Threats against the appellant

The appellant's evidence about the threats against her was contradictory in two significant respects.

[40] In her written statement, she stated that in 2006:

"I began receiving anonymous letters stating that they knew where I lived and that if my father didn't give them the land, then I would be the next one to be murdered."

[41] She confirmed in oral evidence to the RSB that the notes she received in 2006 were anonymous. She speculated that they were either from FARC or from paramilitary groups but she did not know which. In contrast, to the Authority she stated that each note was signed by people representing FARC. She subsequently affirmed the evidence in response to a series of related questions.

[42] When asked to explain the discrepancy in her evidence, the appellant suggested that the refugee status officer had asked her to specify which individual person had signed the note and that now she was indicating the group who had

signed, impliedly asserting that her answers were not therefore contradictory. The Authority rejects this explanation because she was asked by the refugee status officer to identify who the note was from and she did not identify an individual or a specific group. Further, when asked by the officer who the note was from, she is recorded as answering "They never sign it they just leave a written note." Moreover, the evidence that FARC signed the notes contradicts her written statement and RSB evidence where she refers to anonymous letters. Indeed the evidence to the Authority that the notes were signed by FARC contradicts the entire flavour of her previous written and oral evidence in which she claimed not to know specifically who was threatening her or why.

[43] The Authority finds it implausible that, had she genuinely been threatened by FARC over a period of months, she would forget that fact and assert in her statement and to the RSB that she did not know who was threatening her.

[44] On a subsequent day of the Authority hearing, some four months after her initial evidence about the notes (outlined above), the appellant changed her evidence again and said that although she believed FARC had written the notes, they were not signed. When reminded of her previous evidence to the Authority (that they were signed), she then claimed not to remember the detail of the notes. When the Authority suggested that she could reasonably be expected to recall the author of the notes if they were signed, the appellant then said that she thought at least one of the notes was signed by FARC. Again, the Authority does not accept that this significant detail about the threatening notes would, if genuine, be forgotten by the appellant. The evidence is rejected. The Authority finds that the appellant has not received threatening notes from FARC or any other group.

[45] Similarly vague and mobile was the appellant's evidence as to *why* she was being targeted for threats. At any one time in her RSB interview and at the Authority hearing, she variously suggested that she was being targeted by: FARC (in relation to her father and the family's land in Y region); paramilitary groups (for unknown reasons); individuals who wanted her to be their girlfriend in return for payment or financing her education; or FARC because of her association with the women's group. In relation to the latter three assertions, the appellant was unable to be any more specific as to why she would be threatened. Nor did the latter assertions make sense of her (occasional) assertions that the threatening notes referred specifically to her father and were signed by FARC.

Threats against appellant's father and family

[46] When initially asked about the threats against her father in Q city, the appellant told the Authority that she was not aware of any threats against him after 1988. In response to further specific questions, she then said that he had suffered threats and intimidation throughout the 1990s but that she was unaware of any specific problems after 2001, including the two year period 2001-2003 during which she lived with him. However, later in the hearing, when the Authority was again examining her about the reason she had been targeted for threats, she asserted that he had continually received threats against him and the family as a whole for the entire period from 1987 until her last contact with him in 2006. She could not explain her inconsistent evidence.

[47] Furthermore, the appellant was unable to explain why her father and the family had been pursued by FARC for more than 20 years after they surrendered their land. She confirmed that her family's name was not recorded on any title and that they had taken no action to oppose the FARC who occupied their land in the 20 years since they had abandoned it. At one point in the hearing she suggested that FARC wanted her father to "give up the land" and that was why they continued to pursue him. However, when the Authority pointed out that he had given up the land without opposition and therefore had nothing left to concede to FARC, she could not explain why her father continued to be pursued. At one point she also stated that FARC were seeking to gain formal title over the land from her father. However, when questioned further, she conceded that there was no formal title over the land and that the land had been held in unregistered interests by the Afro-Colombian community before it had been surrendered in the 1980s.

[48] Related to the preceding point, the Authority finds it implausible that the family was on a black list of people to be murdered and constantly harassed for 20 years and yet nothing actually ever happened to them. FARC and the far right paramilitary groups operating in Colombia are renowned for their vicious and widespread violence against those who oppose them. Had they genuinely pursued and wanted to kill the appellant's father, it is implausible that they would have continued to make threats over a period of 20 years without ever taking action. The threats claimed were almost always delivered to the father's house and therefore the perpetrators knew of his location and would have had no difficulty in capturing or killing him if that was their intention.

[49] The appellant also gave contradictory evidence about whether her younger

siblings had been subject to threats from FARC or other paramilitary groups. When first asked, she said that she was not aware that any of her siblings were threatened and she gave specific reasons as to why she was targeted and they were not. Later in the hearing, she claimed that her siblings had been targeted although she was unable to give specific instances.

Further inconsistencies

[50] The appellant gave inconsistent evidence about when she had last seen various members of her family and what contact she has had with them, both in Colombia and since her arrival in New Zealand.

[51] She gave inconsistent evidence about when she had last seen her sister, YY. To the RSB, she stated that she last saw YY in late 2006 in M city when YY had asked the appellant for help with university. In contrast, on the first day of the Authority hearing, she said that YY had lived with her from December 2006 until June 2007, when the appellant departed for New Zealand. On the last day of the hearing, she changed her evidence again and said that YY lived with her from June 2006 until January 2007 after which time she moved back with her (YY's) mother. When asked to explain the inconsistencies, the appellant's evidence became vague and mobile. First she changed her evidence again and said that YY had come in late 2005 for a few months and then she suggested that YY was moving between the appellant's house and YY's mother's house. When asked to explain her further changed evidence, the appellant could not. The Authority rejects the attempted explanations because they cannot be reconciled with the RSB evidence that the appellant had not seen YY since late 2006 and no sensible reason has been given for the mobility of the evidence.

[52] Further, the evidence as to NN's whereabouts in 2006-2007 was mobile. On the first day of the hearing, the appellant said that NN had, since age 12, always lived with a religious community and continued to do so. Later that day, she said that NN had lived with her from February 2005 until 2006, at which time she (NN) moved back to the religious community. On the last day of the hearing, she said that NN lived with her and JJ from April 2006 until she (the appellant) left for New Zealand in mid-2007. Despite being asked, the appellant was not able to provide an explanation for the mobile evidence. The evidence as to these living arrangements is not directly linked with stressful events and the appellant displayed no signs of being stressed or traumatised when she gave it. There is no

sensible reason why the appellant should be unable to recall which of her sisters was living with her and JJ when she left for New Zealand in June 2007. The Authority finds that this is another facet of a false account.

[53] The appellant's evidence as to contact with NN since coming to New Zealand is also inconsistent. To the RSB, the appellant said that she had only had contact with a friend and people from her work since arriving in New Zealand. It will be recalled that the RSB interview was in August 2008. In contrast, she told the Authority that she had had email contact with NN approximately once or twice a month since arriving in New Zealand in 2007 and throughout 2008 and 2009. When asked to explain the discrepancy, the appellant suggested that her contact was limited to "small details" and not the sort of contact that she would wish to have "so I don't consider it to keep in touch constantly". The appellant did not explain why she told the RSB she had no contact with NN. The Authority finds her explanation to be a weak and disingenuous attempt to mend the inconsistency. Her account is further undermined by her evidence to the Authority that she has also had regular email contact with JJ since arriving in New Zealand, contradicting her RSB claim not have been in contact with any family members.

[54] As to her father, she told the RSB that her last contact with him was in February 2007 when she spoke to him by telephone (she being in M city and he being in Q city). She said that he did not attend her aunt's funeral in X village because "[h]e was in another town travelling". To the Authority, she said that her father did attend the funeral along with her and her mother. She could not sensibly explain the inconsistency.

[55] While these matters are not necessarily at the core of the appellant's claim, they nevertheless indicate her willingness to fabricate her account about her life prior to coming to New Zealand.

REPORTS AND SUBMISSIONS AS TO APPELLANTS' MEMORY AND MEDICAL CONDITION

[56] It is not intended to reproduce here the detailed reports addressing the medical condition of the appellant. In essence, they summarise the self-reported mental state of the appellant and, on that basis, give the opinion that the appellant suffers from post-traumatic stress disorder and a depressive disorder.

[57] The most comprehensive report (dated 12 May 2009) was prepared by Dr

Sara Weeks, (Psychiatrist at the Mensana Clinic, Auckland) for the purpose of providing a “psychiatric assessment and report with regard to her current mental state and her ability to give evidence before the Refugee Status Appeals Authority”. Dr Weeks interviewed the appellant (with the assistance of an interpreter) on 1 May 2009. The report does not state the length of the interview. The report is based on the self-reported mental state of the appellant, including the completion of a written self-report questionnaire.

[58] In the final section of her report Dr Weeks gives her opinion that the appellant

“... currently suffers from post traumatic disorder with accompanying anxiety and dissociation, and also from a co-existent major depressive disorder. The presence of these disorders will grossly impact upon [the appellant’s] ability to give evidence. Her concentration and memory are impaired – both as a consequence of the post traumatic stress disorder and of the major depressive disorder.”

[59] The report concludes that if the appellant took and responded to the recommended medication, Ms Weeks would expect her condition to be reasonably improved in about two months’ time and that

“... she would be in a better position to give evidence at that time, however I would still not expect her to be able to give a coherent and sequential account of her traumatic experiences.”

[60] In a letter dated 15 May 2009, Dr Tony Wansbrough (the appellant’s GP) confirmed the appellant had begun taking the first of two medications recommended by Dr Weeks – that intended to treat anxiety and to encourage sleep. She indicated that the appellant experienced improved sleep and less anxiety as a result. On 18 May 2009, at the outset of the third day of hearing, the appellant stated that despite her previous refusal, she wanted to start taking anti-depressants. She therefore requested a further adjournment so that the medication had time to take effect before she gave further evidence. On the advice of the medical professionals that the medication should be given two months to take effect, the Authority granted a further adjournment until 14 July 2009.

[61] In their respective reports, both Dr Weeks and Dr Wansbrough noted the difficulties which might arise if the appellant were asked to recount traumatic issues and urged the Authority to provide the necessary breaks in the hearing should she display symptoms of anxiety. The Authority did so.

[62] On the basis of the medical reports and opinions summarised above,

counsel submits that:

“The appellant’s evidence ought to be considered with reference to the disabling nature of her psychological state and with reference to its impact on her ability to provide cogent and coherent evidence.”

[63] Counsel went on to cite various Authority decisions where issues of mental disturbances or disability have been considered, and urged the Authority in this case to follow those decisions and to “lighten” the appellant’s burden of proof and afford her the benefit of doubt “if there are any lingering doubts about any part of her credibility”; para 13 counsel’s submissions, 13 May 2009.

[64] As to these submissions, and the medical opinions provided concerning the possibility of memory impairment due to trauma and depression, the following points are made. First, by the time of the third day of hearing, the appellant had been on medication for the two month period recommended by Dr Weeks. The Authority paid careful attention to the demeanour and presentation of the appellant during the entire giving of her evidence because matters of credibility were clearly in issue. Although there were points in the hearing where the appellant appeared to be showing signs of stress, these were noticeably related to the points in the hearing where the Authority was challenging the credibility of her evidence. In such situations, many appellants exhibit signs of stress and this does not, of itself, indicate that there is memory impairment or disability as opposed to a recognition that their evidence is under close scrutiny.

[65] As to the opinion of Dr Weeks that she could not be expected to recall in detail the precise chronology of events in relation to the most traumatic events (particularly the one in April 2007), the Authority notes that it did not require her to present any detail of that incident but simply asked her to confirm the evidence she had given at the RSB interview recorded in the INZ file, which she did.

[66] Regarding the opinion of Dr Weeks that the appellant may suffer from memory impairment of a more general nature as a result of trauma and depression, the Authority takes that opinion into account. However, it finds that, when weighed against its own observations of the appellant and her presentation of evidence over the three days in which she gave substantive oral evidence, Dr Weeks’ opinion does not displace the Authority’s credibility concerns for the reasons which follow. First, the appellant’s evidence was presented in a coherent and ordered manner in that she answered the questions asked and was able, within a series of related questions, to put the details of her life events into a

logical and chronological order. The appellant was reminded by the Authority that if she did not know the answer to a question, she should just say so, which she did at times. The appellant was also able to refer to detailed evidence she gave in her written statement and at the RSB interview, indicating that she is able to accurately recall details from the past.

[67] The Authority has also reminded itself that an issue of interpretation arose in the hearing. At the end of the first day, the appellant expressed concern about the word “manager” being interpreted as “leader” which she thought might have led to confusion for the Authority. This matter was immediately clarified to her satisfaction. At the outset on the second day of hearing, she again raised the issue of interpretation because the interpreter spoke with a different accent from the appellant. However, when asked to specify instances where there had been actual difficulty, she conceded that it was only with regard to the word “manager” dealt with the previous day. No further difficulties were brought to the attention of the Authority during the course of the hearing or since.

AUTHORITY’S FINDINGS

[68] Having considered all these matters carefully, the Authority finds that the inconsistencies in the appellant’s evidence are not sensibly explained by the medical evidence but are the result of a fabricated claim presented for the purpose of supporting a false claim to refugee status.

CONCLUSION ON CREDIBILITY

[69] Considered cumulatively, the above credibility concerns lead the Authority to conclude that the appellant has presented a false claim for refugee status. Her account is not believed except to the limited extent that the Authority accepts that she is a female Afro/Caribbean national of Colombia and, for the purposes of this decision, her account of employment and her towns/cities of residence. The Authority does not accept that the appellant has been directly targeted in the form of threats, harassment or harm by FARC or any other paramilitary groups in Colombia. Nor does the Authority accept that, because of threats and harassment, the appellant has had to constantly move residence and is essentially an internally displaced person.

[70] In making this finding, the Authority notes the medical opinions summarised above which suggest that the appellant’s mental state is consistent with her claims

to have suffered incidents of trauma throughout her life. There is no credible evidence on which the Authority can make a finding in relation to the occurrence of traumatic events beyond those set out above (which have been rejected as not credible). In light of the credibility findings, the documents purporting to verify the occurrence of threats and harm against the appellant are given no weight.

[71] This decision now turns to consider her claim for refugee status based on the facts as found.

Risk on return to Colombia

[72] The appropriate question to be considered is whether an individual having all of the appellant's characteristics would face a real chance of serious harm for a Convention reason if returned to Colombia; see *A v RSAA* (CIV 2004-4-4-6314, 19 October 2005, HC, Auckland, Winkelmann J) at [38].

[56] The appellant claims to be at risk of being persecuted in Colombia for the following reasons:

- (a) she will be targeted by FARC and/or other paramilitary groups because of her association with her father and because of her involvement with a women's group;
- (b) she will be targeted for harassment and sexual violence because of her characteristics as a woman of Afro-Colombian ethnicity; and
- (c) she is part of a generally vulnerable group of women in Colombia because of her Afro-Colombian ethnicity.

[73] With regard to claim (a), there is no credible evidence before the Authority to support such a claim. The Authority does not accept that she has been a victim of threats or harassment in the past and there is no basis on which to make a finding that she is at risk of harm at the real chance threshold on that basis in the future.

[74] As to claim (b), there is no credible evidence before the Authority which establishes that the risk of serious harm to the appellant (as a young female Afro-Colombian) is anything more than remote or speculative. While the country information indicates that sexual violence and discrimination against women is an ongoing concern in Colombia (see United States Department of State *Country*

Reports on Human Rights Practices for 2008: Colombia (25 February 2009) p23), it is not at the level which would support a finding that a woman of the appellant's characteristics would, *per se*, be at risk to the real chance threshold. With regard to (c) and the implied submission that her socio-economic rights may be violated, the appellant's account is that she has had considerable tertiary education, stable professional employment and adequate housing. There is no evidence before the Authority to support a claim that she would be at risk of being persecuted on a socio-economic basis.

[75] The Authority also notes counsel's submission that "the central feature of the appellant's situation is her seriously impaired mental state, which puts her in a separate category from the majority, and which requires special consideration" (Memorandum 13 May 2009). It is not clear from that submission whether counsel is referring to the appellant's mental state simply in relation to her ability to give evidence or whether he is asserting that her claimed mental state exposes her to a well-founded fear of being persecuted in Colombia. As to the former, the Authority has considered the medical evidence in relation to the appellant's evidence in [56]-[68] above. Regarding the possible claim that her mental state itself may expose her to harm, the Authority does not have before it country information, evidence from the appellant or substantive submissions from counsel that her state of depression, anxiety or post traumatic stress disorder would, on its own, expose her to a real chance of being persecuted. That being so, the Authority is unable to consider the matter further.

[76] The Authority finds that, having regard to all the characteristics of the appellant, there is nothing which gives rise to a well-founded fear of being persecuted in Colombia.

[77] That being so, the first principal issue is answered in the negative. The second principal issue does not therefore arise for consideration.

CONCLUSION

[78] For the above reasons, 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.

"B A Dingle"

B A Dingle
Member