

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75761

REFUGEE APPEAL NO 75759

REFUGEE APPEAL NO 75760

AT AUCKLAND

<u>Before:</u>	R J Towle (Member)
<u>Representative for the Appellant:</u>	The appellants represented themselves
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	27 and 28 March 2006
<u>Date of Decision:</u>	17 May 2006

DECISION

[1] These are appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the three appellants, all citizens of El Salvador.

[2] The appellants claim that if they were to return to their country, they would be harmed by pro-government militia groups because of political opinions imputed to the first appellant. They claim, also, that the state would be unable or unwilling to offer them protection from this harm. The determinative issues in these appeals are both the credibility and the well-foundedness of their claims.

INTRODUCTION

[3] The appellants arrived in New Zealand on 29 January 2005. Their claims to refugee status were filed on 15 April 2005 and they were interviewed by the RSB on 27 and 28 June 2005 and 2 September 2005. A decision declining their refugee claims was given on 31 December 2005 and they have appealed to this Authority from those decisions.

[4] The appellants accept that all evidence provided in relation to each of their appeals can be considered as part of the others and that their appeals should be heard conjointly.

[5] In addition, pursuant to ss141(b), (c) and (d) of the Immigration Act 1987, the first and second appellants are responsible adults for the third appellant, who is 13 years old.

THE APPELLANTS' CASE

[6] The following is a summary of the evidence presented by the appellants. The credibility of the evidence is considered later.

THE FIRST APPELLANT'S CASE

[7] The first appellant, who is in his late 40s, was born in the capital city, San Salvador. His parents separated at an early age and he has had little regular contact with his father ever since. His mother, who subsequently remarried, now lives in Australia. He has two adult children from a previous marriage who live in El Salvador.

[8] The first appellant attended school from 1964 to 1976. He showed a keen interest in business management and secured a job as a manager in a local company.

[9] In 1984, he changed jobs and was employed with one of the country's largest advertising companies, based in San Salvador. As a junior executive in the area of client development and advertising, the first appellant reported directly to the president of the company, AA. AA was a highly influential businessman in El Salvador and was involved in a wide range of business and political activities. He was also a high-ranking member of the right-wing political party, Alianza Republicana Nacionalista (ARENA).

[10] AA used his power and influence in the company to pursue both his business and political interests. He also encouraged employees to carry out work for ARENA during company time.

[11] As his direct supervisor, AA instructed the first appellant as to how he, should manage the accounts of pro-ARENA clients. The first appellant was required to develop a marketing campaign and to make presentations to clients, often in the presence of AA.

[12] The first appellant had some discomfiture in handling the affairs of a right wing political party but, because of the power and influence of AA, he felt he had no real choice. He was an aspiring young professional and realised that he had to follow AA's instructions if he wanted to advance his own career.

[13] During the five years that the first appellant worked for the advertising company, he was asked by AA to carry out many tasks of a professional and personal nature. He was asked to deliver documents, pass messages and do other assignments relating to AA's personal interests, including in ARENA.

[14] AA did not overtly pressure the first appellant into joining ARENA, but he made it clear that he expected the first appellant to comply with his assigned tasks and to show enthusiasm in his work relating to ARENA. During the lead-up to national and local body elections in 1984, the first appellant was asked to carry out more tasks relating to ARENA's political programme. He was asked to supervise ARENA ballot boxes during the elections and he worked on a marketing campaign for a newly formed anti-kidnapping unit whose objectives included, specifically, the protection of ARENA members.

[15] The appellant was not, himself, particularly interested in politics but he wanted to please his powerful supervisor and did not object to the many political tasks that were assigned to him. During this five year period, the first appellant and AA developed a close and friendly relationship and AA placed considerable trust in his judgment and professional expertise.

[16] While he was employed with the advertising company, the first appellant was assigned accounts in neighbouring countries in the region and he travelled frequently through central America, servicing the business and personal interests of AA.

[17] During this period, the first appellant moved gradually "up the corporate

ladder” to the position of a senior executive. By 1989, all of the client accounts that he managed were pro-ARENA companies or linked to right-wing business interests in El Salvador. At a personal level, the first appellant also helped AA to define a communication strategy for ARENA to better reach the ordinary people in the country.

[18] By 1989, the first appellant was becoming frustrated. Although he had reached a senior position with the company, his real potential and independence were being compromised. He had also grown tired of the continual pressures and demands made by ARENA clients and his performance was being judged by AA in an increasingly critical way. He felt he was being manipulated by AA and he decided to further his career in a non-political environment.

[19] In 1989, the first appellant left the company. After this, his relationship with AA was polite but cool. He met AA on a number of occasions socially but they largely kept their distance from each other.

[20] The first appellant found employment in another advertising company, XX. It was a similar position but more senior and better paid. Initially, the first appellant enjoyed the working environment because he was free of the manipulation and politicised pressure of his former employer.

[21] However, within a year, the situation began to deteriorate. One of the first appellant’s main clients was a bank for whom he was designing a marketing campaign. When the president of the bank, who was closely related to AA, realised that the first appellant was managing his bank’s account he began to block the first appellant’s work.

[22] The first appellant was also concerned that two employees, who had come to XX from the previous advertising company, were leaking secrets to AA and that this was damaging the first appellant’s career.

[23] During the two year period that he worked at XX, the first appellant met and formed a relationship with the second appellant, who was employed there as a media director.

[24] In 1990 or 1991, the first appellant was driving from his farm towards San Salvador when he heard shots being fired. He did not stop the vehicle and managed to escape without any damage to the vehicle or injury to himself. Although he did not have any direct proof, the first appellant suspected that this

attack was, in some way, linked to his resignation from the first advertising company and his apparent disloyalty to ARENA and AA. He did not report the incident to the police because they were corrupt and there were many highway robberies being carried out in El Salvador at the time. Frequently, the police were linked to the hijackers.

[25] In 1992, the first appellant left XX and joined another business, KK. The appellant was responsible for developing an “in-house” advertising and marketing campaign for the company.

[26] After a year, he began to have problems. The general manager of the company was also a friend of AA and both were closely involved in ARENA political affairs. Things came to a head when a marketing team from his first company came to KK to make a presentation and realised that the first appellant was working there. Thereafter, the general manager of KK began to make him feel unwelcome. Again, the first appellant believed that this was due to the influence of AA, who had not forgiven him for the disloyalty he had shown in leaving his first employment and abandoning his support for ARENA clients in 1989.

[27] The second appellant, by this time, also stopped working at the company because she was due to have a child, the third appellant, who was born in late 1992.

[28] The first and second appellants then turned their attentions to establishing their own publicity agency, ZZ. They signed a legal guarantee for the company and were granted a licence by the Salvadoran Association of Publicity Media. The licence was required before any advertising companies could set up their own business.

[29] The appellants’ family business made a promising start. They had a number of small clients and two large accounts, both of which were associated with ARENA.

[30] Not long after the business was established, a friend of the first appellant introduced him to a client who had recently established a small political party.

[31] The Movimiento de Unidad (Unity Movement, MU), which was launched in early 1993, was a Christian-based party derived from an Evangelist Christian church in El Salvador.

[32] The first and second appellants obtained the party's marketing account in mid-1993. Although the appellants did not join the party, they were attracted to the party's principal objectives of social justice and to remove corruption that was endemic to Salvadoran political life. They hoped that the MU would provide them with a regular source of work and income with which to establish their new business. However, as soon as the two major pro-ARENA clients realised that ZZ was handling the account of the MU, they withdrew their business. Thereafter, the first and second appellants dedicated much of their attention to developing a political campaign for the MU. The first appellant attended a number of political party meetings and created an advertisement campaign in the newspapers.

[33] As part of the advertising strategy, the first and second appellants' published advertisements in local and national media that exposed the corruption in big business and which were generally critical of the ruling ARENA party.

[34] In October 1993, the first and second appellants married.

[35] In addition to providing professional services to the MU, the first appellant also submitted his name as a candidate for the local council list in his municipality in San Salvador.

[36] During the election in 1994, ARENA emerged as the decisive winner. The MU failed to achieve the minimum number of votes required by the Electoral Commission and was disbanded in early 1994. The first appellant's own candidacy in the local municipal elections also failed.

[37] Following the election, the former left-wing rebel movement, Frente Farabundo Marti (FMLN), made overtures to leading figures in the MU and other small political parties to establish a loose coalition in opposition to the ruling ARENA-dominated national government.

[38] Not long after the anti-corruption advertisements were published in the media, the first and second appellants experienced another incident on the road from their farm to San Salvador. In the middle of the afternoon, a number of armed and uniformed militia stopped their vehicle and ransacked their possessions. They stole money and belongings of the second appellant. During the search, one of their assailants made oblique references to the first appellant not contributing to ARENA's cause. The first and second appellants were then released and allowed to proceed without further harm. They did not report the

incident to the police because they perceived that the police were either ineffective or complicit in much of the banditry and criminality that occurred in El Salvador at the time.

[39] After the general election in 1994, the ARENA clients of the appellants' business deserted them and the business began to collapse. The MU was defunct, and the appellants were unable to renew their advertising licence with the media association because, ostensibly, ZZ had failed to reach the minimum receipts required for registration. In fact, the appellants believe that they were refused a licence because of pressure being brought to bear by ARENA and AA. A leading official in the media association was a sponsor of ARENA and a close associate of AA.

[40] Following the collapse of their main business, ZZ, the appellants set up a small "billboard" business. They were able to secure some work illegally by invoicing their few remaining clients through a friend's agency but the business was sporadic and not profitable. The appellants felt that their business opportunities were constantly blocked by big businessmen who knew of the first appellant's association with the MU and his "betrayal" of ARNEA in 1989.

[41] After the MU was dissolved in early 1994, the appellants had no further involvement in political issues. However, they still met several of the former leaders of the MU at the church where they were regular parishioners. They met on a number of occasions socially but the appellants did not do any political work or business for them.

[42] Between 1994 and 1998, the first appellant did not have any other problems as a result of his falling out with ARENA or AA. However, his wife began to receive many threatening telephone calls.

[43] The telephone calls started in 1995 or 1996. At first they occurred at their office during working hours. The first appellant was never there when the calls came but his wife told him that the callers said threatening things like "We are going to finish with you, we're going to kill you, kidnap you". On one occasion, the callers called the first appellant a "traitor".

[44] The telephone calls generally came at least once or twice a week. They always came to the business premises that was below their house. The first appellant was never in the office when the calls arrived because he was either

upstairs in the house or away on business. He does not know why, during the dozens of telephone calls that his wife received between 1995 and 2001, that he was never there during any of them, apart from a single call one night in 2000.

[45] The threatening calls had a devastating affect on the second appellant. She became nervous and deeply insecure. By the end of 1998, on the advice of their lawyer, the family decided to change houses, telephone numbers and routines. They moved from San Salvador and hired a number of security guards to look after them. Unfortunately, the threatening telephone calls continued at the new address.

[46] Although he had no direct proof, the first appellant believed that ARENA and AA were behind these threatening calls to his wife. They had labelled him as a traitor to ARENA because of his support for the MU party in 1994.

[47] By the end of 1998, the family's fortunes were poor. They had no regular sources of income and the second appellant was becoming increasingly insecure because of the telephone threats.

[48] In late 1998, the first appellant travelled to Guatemala where he was employed as a marketing executive for a tourist hotel just over the border. He also helped the hotel manager with the business administration. At the time, the hotel was in some difficulties. Its owners were involved in a dispute with local people over the hotel's plans for expansion and had been the target of a number of death threats.

[49] One of the first appellant's first tasks was to dismiss a number of staff and to find alternative employees, to reduce the incidence of robbery and theft. Because of the absence of reliable workers in Guatemala, the first appellant employed security guards from El Salvador.

[50] However, problems at the hotel continued: fires were lit and witchcraft was practised around the pool area, particularly when the first appellant's family visited him at weekends.

[51] The first appellant believes that ARENA and AA were behind these threats because, after he returned to El Salvador in 1999, he was told that the two security guards he had employed were ARENA supporters.

[52] In mid-1999, the first appellant resigned from the job in Guatemala and

returned to El Salvador.

[53] Not long after his return, his wife's son was involved in a failed kidnapping attempt. The first and second appellants were in their apartment when they heard shots. Several minutes later, the second appellant's son came in and said that he had escaped from a number of unknown armed people who had tried to harm him. The appellants believe that this was a failed kidnapping attempt and was further proof that the threatening callers were prepared to carry out their threats.

[54] On his return to El Salvador, the first appellant found employment at a quarry site about 100 kilometres from San Salvador. He travelled there three or four times per week and sometimes stayed there overnight. Not long after he started, one of the senior employers tried to persuade him to engage in corrupt practices but he refused because these were unethical. After that, he started having problems with his machine which, he believes, was tampered with by people working on the site. His vehicle was damaged and this had serious financial consequences for his newly-established business.

[55] One night in 1999, when he was at the quarry site, the first appellant heard a knock on the door. Unknown voices told him that his son was waiting outside in a car. He knew this to be false because his wife and son were not coming to the site at that time. He called local security guards who were able to avert any serious consequences for the first appellant. He believes that the problems at the quarry site were caused by ARENA supporters and, indirectly AA, who was determined to "psychologically kill me because I had betrayed him".

[56] The first appellant was told by his wife that the threatening telephone calls had continued unabated throughout the time he was in Guatemala and after his return to El Salvador. Although they were not as frequent as in the past, the callers now made threats that his family would be kidnapped or killed.

[57] In early 2001, at three o'clock one morning, the first appellant was stopped on the road from San Salvador to the quarry site by eight to ten armed and masked men. He was searched and threatened. They stole money and he was then released unharmed. The first appellant assumed his assailants were associated with AA and the ARENA party because they were dressed in militia clothes and must have been linked to some political group.

[58] By this time, the second appellant's mental health was suffering. At around

three o'clock in the morning, while the first appellant was travelling to the quarry site, she received another threatening telephone call and collapsed. She had some form of psychological breakdown and was unable to walk or eat after this.

[59] The family decided that the second and third appellants should travel to Australia where the first appellant's mother was living, and get medical treatment.

[60] They obtained Australian visas and the second and third appellants left the country in early 2001. Several months later, the first appellant renewed his own Australian visa and joined them in Australia. At the time of his departure, he did not intend to leave El Salvador permanently. His intention was simply to get medical treatment for his wife and to return to El Salvador with the whole family once she had recovered.

Events in Australia and New Zealand

[61] After he arrived in Australia, the first appellant saw the positive changes in his wife. The family reflected on its predicament and decided to remain in Australia and to apply for refugee status. In the meantime, the first appellant's older son was taking care of the family's business interests which continued to deteriorate because of the loss of its business.

[62] The three appellants applied for refugee status on 16 July 2001. They were interviewed by the Australian Refugee Review Tribunal (RRT) on 27 September 2002 and their claims were declined in a written decision of 14 August 2003.

[63] While they were still in Australia, in 2004, the first appellant heard from his oldest daughter (from his former marriage) that she had been involved in a carjacking incident. Her possessions were stolen but fortunately she escaped any physical harm. His daughter reported the incident to the police but was told that little could be done. The relationship between the police and the car thieves was very close. She did not know who was responsible for the incident.

[64] On 10 December 2004, the three appellants were issued with new Salvadorian passports. They were also advised by the Australian authorities that they had to leave the country by the end of January 2005.

[65] During their time in Australia, the first and second appellants had become increasingly drawn to an Evangelical church and were re-baptised into the faith. Members of the congregation made contact with their counterparts in New

Zealand, who offered to provide them with assistance. The family were granted New Zealand visitor visas on 25 January 2005 and travelled to New Zealand later that month. They were given help from an Evangelical church in Auckland and lodged their refugee claims several months later, on the advice of local parishioners of the church.

[66] The first appellant is concerned for his family if they were to return to El Salvador. ARENA is still the main party in power and controls most of the country's business and industry. Corruption is as endemic as when they left in 2001. Blackmail, manipulation and killings continue to be regular features of Salvadorian life.

[67] Despite the fact that the FMLN has made some advances in local politics, ARENA and AA still hold significant power and influence.

THE SECOND APPELLANT'S CASE

[68] The second appellant, who is in her early 50s, was born in another city in El Salvador. Both her parents are deceased and she has no siblings. She has two adult children from a previous marriage.

[69] After she left school, the second appellant obtained a degree in business administration in 1988 and in 1990 began working for a major international corporation as a distribution manager. In 1990, she moved to an advertising company, XX, where she met the first appellant.

[70] She performed well in the company and became a media/communications director and a senior executive at a similar level to the first appellant. After a year, she left XX to work for a cosmetics company where she was employed as a marketing manager. She resigned from this position when her son, the third appellant, was born in 1992.

[71] In 1993, she joined her husband in establishing the family business, ZZ.

[72] The second appellant has never been involved, nor shown any interest, in politics. Unlike the first appellant, her work with clients in the advertising company was not compromised by political pressures from her employers.

[73] The second appellant's own difficulties began in early 1994 after ZZ started to manage the political campaign of the MU in September/October 1993. Their

business published the campaign for the MU in a number of local newspapers owned by ARENA, and it was clear to all that ZZ was handling the MU account.

[74] The FMLN and other political parties asked the appellants to organise an anti-corruption campaign against ARENA during the second round of the government elections in early 1994. Party officials from the FMLN and the MU came to their business premises on many occasions to discuss the campaign. They met with senior members of the MU party every week and members of the FMLN at their business premises at least once a month and discussed the publicity campaign.

[75] The first and second appellants' relationship with the representatives of these political parties started in 1994 and continued until 2001 when they moved to Australia.

[76] The second appellant believes that her family was the target of threats by ARENA party supporters because of their open support for the former MU and FMLN parties.

Threatening telephone calls

[77] The threatening telephone calls started in 1994 after the elections. At first, the second appellant did not take them seriously. The telephone calls came to their home telephone at night and the callers threatened to kill the second appellant, her husband and children.

[78] The second appellant did not recall any telephone calls being received at the office because the secretarial staff would have been there at the time.

[79] At first, the telephone calls were once a fortnight or month but became more frequent from 1995 or 1996. The telephone calls were always at night and very similar in tone and content. After 1996, the telephone calls increased to once or twice per week. The first appellant did not answer the telephone because it was placed on the second appellant's side of the bed and the first appellant "doesn't like talking on the phone".

[80] The threatening telephone calls continued until the appellants left the country in early 2001. In total during this seven year period, the second appellant received between 100 and 200 telephone calls. She believed that ARENA was behind the telephone calls because, on occasion, the callers said that the first

appellant was not “helping the cause”. On other occasions, the second appellant was called a “traitor” and the callers made specific threats to kill or kidnap her family.

[81] The second appellant did not go to the police on any of these occasions because the police were corrupt and their complaints would have been pointless.

[82] In late 2000 or early 2001, the second appellant was at home on her own. The first appellant was away on business when the telephone rang about three o'clock in the morning. Again it was a threatening caller. This time the second appellant suffered some kind of serious emotional collapse. She was unable to walk and was severely incapacitated.

[83] Her medical advisors were unable to treat her effectively in El Salvador and the family decided to go to Australia where they could take advantage of better healthcare and live with the first appellant's mother. She and the third appellant went to Australia in early 2001 and began treatment from an Australian doctor. This helped her considerably.

[84] While they were in Australia, the first and second appellants became Evangelical Christians. Prior to this, they had been practicing Catholics but were brought closer to the faith because of the teachings of the Evangelical church they attended in Australia.

[85] The second appellant attributes all of the family problems to AA who, despite his power and influence, would never forgive their family as traitors.

[86] The second appellant's health during her time in Australia and New Zealand has improved but she is concerned that it could deteriorate again if she were to return to El Salvador and be exposed to the threats she had experienced between 1994 and 2001.

THE THIRD APPELLANT'S CASE

[87] Evidence in support of the third appellant's appeal was provided by the second appellant. She said that her son, who is now 13 years old, has been affected by a number of the incidents that occurred in El Salvador before they left. Despite his young age, he had become used to having body guards. He witnessed two unpleasant incidents at the hotel in Guatemala and he witnessed the trauma of the second appellant's illness. The third appellant never answered

any of the threatening telephone calls but some of the threats were directed against him.

[88] The second appellant is concerned about the psychological scars these past experiences may have caused her son and she is worried that if the family were to return to El Salvador, there is a risk that the third appellant will be kidnapped, threatened or harmed by supporters of ARENA or AA.

OTHER EVIDENCE PRODUCED

[89] The appellants produced the following evidence in support of their claims:

- (a) Various photographs depicting the first appellant at work or involved in political affairs between 1984 and 1992;
- (b) Testimonials from the former president of the MU, a family member, a pastor in the appellants' church in El Salvador and a family friend;
- (c) Copy of a medical certificate from the second appellant's doctor in Australia attesting to her medical condition and treatment;
- (d) Copy of the decision of the RRT dated 14 August 2003; and
- (e) Bundle of country information obtained by the Authority and shared with the appellants at the hearing.

THE ISSUES

[90] 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 protection of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[91] 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?

Country of origin information

[92] During the 1980s, El Salvador was ravaged by a bitter civil war. This was the result of gross inequality between the small and wealthy elite, which dominated the government and the economy, and overwhelming majority of the population, many of whom lived, and who continued to live, in abject squalor. The war left around 70,000 people dead and caused damage worth \$2 billion, but it also precipitated important political reforms; see “Country profile: El Salvador overview” *BBC News* (25 February 2006).

[93] In 1992, the United Nations brokered a peace agreement that ended the civil war but, as El Salvador began to recover, it was hit by a series of national disasters. Most notable of these were Hurricane Mitch in 1998 and earthquakes in 2001.

[94] The economy of the country is still heavily dependent on remittances sent home by Salvadorians living in the USA. Poverty, civil war, natural disasters and their consequent dislocation of the population have left their mark on El Salvador society, which is among the most crime-ridden in the Americas.

[95] The United States Department of State *Country Report on Human Rights Practices 2005: El Salvador* (DOS report) notes that:

“El Salvador is a constitutional, multiparty democracy with a population of 6.7 million. In March 2004 voters elected Elias Antonio Saca of the Nationalist Republican Alliance (ARENA) as president for a five year term in generally free and fair elections. The civilian authorities maintained effective control of the security forces. Although the government generally respected the rights of its citizens, protection of human rights was undermined by widespread impunity, corruption among the security forces and other governmental authorities, and gang violence.”

[96] As to the performance of the police and security apparatus, the DOS report notes:

“[Their] effectiveness was undermined by inadequate training, insufficient government funding, and the lack of uniform code of evidence. Police corruption and impunity were widespread problems, although the police retained a high approval rating among the public and were perceived as comparatively non corrupt. Persons could report complaints about [police] abuses... to bodies which then investigate the case or they refer the matter to Attorney General’s office for further review... .”

[97] As to the issue of freedom of speech, the DOS report notes that the law provides for freedom of speech in the press and that the government generally respected these rights in practice. The independent media were active and expressed a variety of views without restriction. International media were allowed to operate freely.

[98] International NGOs generally commented positively on the status of press freedom in the country. A 2005 report by Freedom House entitled *Freedom of the Press El Salvador* (http://freedomhouseorg/inc/content/pubs/pfs/inc_country_detail.cfm?country=6731&pf) noted that:

“Salvadoran journalists are generally able to freely report the news, including reports critical of the government and opposition parties. At the same time press freedom hindered by lack of public transparency reflected in the absence of freedom of information legislation.”

[99] There is little information available on the MU. It was launched in February 1993 as a party that supported private enterprise insofar as this served societal objectives. Although a number of its founders were associated with the Assembly of God church, they insisted that the group was not based on religious orientation; see Banks, A. (ed) *Political Handbook of the World 2005-2006* (Q Press Washington DC, 2006).

[100] It is apparent that ARENA does not hold an undisputed power base at the national or municipal level in San Salvador. On 12 March 2006, the San Salvador elections resulted in a narrow and disputed mayoral victory for the FMLN and a new congress that fell short of President Saca's hopes for an absolute majority for his ARENA party.

[101] According to a report in Noti Cen: Central American and Caribbean Affairs: *Elections a Disappointment for Saca in El Salvador; Tight victory for FMLN in the capital* (16 March 2006):

“The FMLN, which has never won the presidency, has held the mayoralty of the capital since 1997. ARENA, which has never lost the presidency since the signing of the Peace Accords in 1992 has never come close to winning San Salvador. Analysts were quick to interpret the results as evidence of increasing polarisation in the electorate. In past several elections ARENA and the FMLN have bigger pieces of the electoral pie. The PDC, PCN and CD have experienced steady declines in their congressional delegations.

... The vote for deputies in the National Assembly was far less contentious but was an ARENA disappointment. Saca and the party had hoped for an absolute majority that would have given the president the kind of free reign seen in the US in the Bush administration until recently. Saca said, after seeing the results of March 13, that he would have to seek some kind of accommodation with the left... . I am president of co-ordination. I have been very close to all the political parties. This

continues. I have never ceased to negotiate, never ceased to converse, and we are ready as the ARENA to continue talking and it is what the Salvadorian people want. I call upon the FMLN and all the political parties to sit in dialogue to decide on the great issues of the country.”

[102] There are reports of ongoing violence between militia groups supporting both ARENA and other parties. On 28 January 2006, 15 people travelling in an FMLN bus were injured in an attack by ARENA militants; see “15 injured in El Salvador as ARENA militants attack FMLN caravan” *EFE World News Service* (28 January 2006).

[103] In another incident in March 2006, FMLN supporters threw rocks and sticks at police during municipal elections; see “Former Salvadoran guerrillas win capital mayor’s office for fourth consecutive time” *America’s Intelligence Wire* (16 March 2006).

[104] FMLN gangs also attacked buses and demanded payments from bus drivers in a separate incident in February 2006; see “Salvadoran president links leftists to bus burnings” *EFE World News Service* (20 February 2006).

[105] Country information provides reports that AA is the Chief Executive officer of a large multi-national corporation in El Salvador; see Latin American Financial Publication *Directory of Latin American Banks* (August 1998).

[106] The serious situation of law and order and the endemic culture of violence and criminality in El Salvador are well-documented. The United States Department State Bureau of Consular Affairs *Consular Information Sheet – El Salvador* (27 July 2005) notes:

“[...] the criminal threat in El Salvador is critical. Random and organised violent crime is endemic throughout El Salvador. [...] Both violent and petty crimes are prevalent. [...] Many Salvadorans are armed, and shootouts are not uncommon. [...] Armed assaults and carjacking take place both in San Salvador and in the interior of the country, but are especially frequent on roads outside the capital where police patrols are scarce. Criminals have been known to follow travellers from the international airport to private residences or secluded stretches of road where they carry out assaults and robberies. Armed robbers are known to shoot if the vehicle does not come to a stop. Criminals often become violent quickly, especially when victims fail to cooperate immediately in surrendering valuables. Frequently, victims who argue with assailants or refuse to give up their valuables are shot.”

[107] Other reports indicate a growing concern in El Salvador over the increasing incidence of homicides. For example, in *EFE World News Service* “El Salvador moves to stem soaring murder rate” (11 February 2005) it is stated:

“[...] In all of 2004, authorities registered 2,754 homicides. El Salvador’s

population is 6 million. By way of comparison, New York City, with a population of 7.4 million, had just over 550 murders last year. This small Central American country's murder rate is approaching that of Rio de Janeiro, one of the most violence-plagued cities of Latin America. [...] Reports of killings – mostly with firearms – and of the discovery of dead bodies fill the local news media every day. [...] The rampant criminality, whose targets have included women and children, students, cabbies, bus drivers, clergymen and even members of the very gangs blamed for most of the mayhem, is creating a pervasive element of fear in El Salvador. The government's latest response is this week's announcement of the "plan for Protection of Life", which consists principally of getting detectives, uniformed police and prosecutors to better coordinate actions against killers."

[108] Violence and street gangs, known as "Maras" have been described by Prime Minister Saca as a "regional problem that requires regional solutions"; see "Country Profile: El Salvador" *BBC News* (25 February 2006).

Conclusion on country information

[109] From this country information, a number of conclusions can be drawn that are relevant to the appellants' appeals.

- (a) Compared to the serious violence of the civil war before 1992, the political landscape is now relatively peaceful and a multi-party democratic process is in place. The ARENA party has not fully distanced itself from its violent origins and is still supported by the army. However, given the rising power and influence of leftist politics in Latin America, ARENA is obliged to negotiate with FMLN which has largely rehabilitated itself from its own violent past during the civil war.
- (b) ARENA and FMLN militia groups are engaged in sporadic attacks against each other.
- (c) FMLN holds the balance of political power in the capital city San Salvador, where the appellants reside.
- (d) AA is an influential and senior executive of a multi-national corporation in El Salvador.
- (e) The independent media functions without significant interference and there is public discussion on political matters without widespread threats of intimidation for those involved.
- (f) The principal concern of all political parties across the spectrum is the endemic incidence of criminality and corruption. This is of deep concern to

the general population and is a problem which, at present, the authorities seem to be inadequately prepared to resolve.

ASSESSMENT OF THE APPELLANTS' CASE

[110] Before considering whether the appellants' claims to persecution are well-founded, the Authority must first assess whether the claims are credible.

[111] The Authority found that certain areas of the appellants' evidence were compelling and truthful. It accepts that the first and second appellants suffered some difficulties because of their perceived betrayal of the ARENA party and AA until 1994 and that this had negative implications for their business in 1994. It also accepts that the appellants were the victims of several armed robberies and other threats that they have described in their evidence.

[112] However, the Authority does not accept as credible, the appellants' consistent claim that all of these incidents were linked, directly or indirectly, to ARENA party supporters and the ubiquitous hand of AA. Nor does the Authority accept the appellants' evidence insofar as it relates to the threatening telephone calls that were allegedly received between 1994 and 2001. Also not accepted is the second appellant's evidence that the first and second appellants were involved, behind the scenes, in supporting political opposition parties from 1994 until the time they left the country in 2001.

The threatening telephone calls

[113] The first and second appellants gave contradictory evidence as to the frequency, timing and location of the threatening telephone calls. The first appellant said that the calls were always received at the office during working hours and, apart from one call at night in 2000, he was never in the office at the time, either being away on business or in the house.

[114] The second appellant said that from 1994 to 2001, she received between 100 and 200 telephone calls. Most of these calls were made to her home, not at the office, and usually during the night. She told the Authority that she answered the telephone because it was on her side of the bed and that her husband had always been reluctant to answer the telephone. When these inconsistencies were put to the appellants, neither was able to provide any explanation for the

significant discrepancies between their accounts.

[115] The Authority found that the second appellant's account was not only inconsistent with that of her husband but it was also inherently implausible. Had she been inundated with the telephone calls and had her husband been beside her when they were received, she would have asked him to protect her from the trauma that these were causing her. Her explanation that her husband never liked answering the telephone is, in the circumstances, implausible. It is also implausible that the second appellant would not have taken any steps to disconnect the telephone, file any complaints with the police or make any other arrangements to ensure that she was not intimidated during the night, particularly while her husband was away on business.

[116] The Authority also finds it implausible that ARENA party supporters or AA would subject the second appellant to such frequent telephone threats when:

- (a) the first appellant, himself, received no threatening telephone calls at all and yet he would have been the primary target for their dissatisfaction;
- (b) neither the first nor the second appellant had been involved in political affairs after early 1994 and the collapse of the MU party; and
- (c) the first appellant had no political profile or importance after early 1994 and posed no threat whatsoever to ARENA or AA's political or financial power base after that time.

[117] For all of these reasons, the Authority does not accept as credible the appellants' evidence about the existence of the threatening telephone calls during the period 1994 until they left the country in 2001.

[118] The Authority accepts that the second appellant suffered a serious and debilitating illness in early 2001. In this respect, the Authority accepts the medical certificate provided on her behalf and the appellants' explanation that it was the second appellant's medical condition that led the family to move to Australia in 2001 to seek better medical treatment than was available in El Salvador. However, for the reasons given above, it follows that the Authority does not accept that this trauma or stress was caused by any threatening telephone calls.

Links with political opposition parties, MU and FMLN

[119] The Authority accepts that the appellants secured the advertising account of the MU in mid-1993 and established a business relationship with leading members of the MU. However, their evidence as to the nature and duration of the relationship with the MU and FMLN after 1994 differs significantly.

[120] The first appellant told the Authority that, in the run up to the 1994 elections, he and his wife provided many ideas to the MU leadership on a promotion campaign, including a strategy to denounce the ARENA for its corrupt practices. He said that after the election, when the MU was dissolved, neither he nor the second appellant was involved in any way in supporting the MU or the FMLN and its coalition partners. He said that their association with MU leaders was confined to social interaction at church and was of a strictly apolitical nature.

[121] The second appellant provided a completely different and contradictory account. She told the Authority that, leading members of the MU came to their office premises on a weekly basis and that officials from the FMLN came on a regular but less frequent basis for a number of years after the election in 1994. She told the Authority that, during these regular meetings, she and her husband discussed political strategies and advertising campaigns with the parties' leadership.

[122] In explanation of this discrepancy, the first appellant believed that his wife was mistaken in her recollection of events. The second appellant gave no explanation as to the cause of the inconsistency in their evidence.

[123] These discrepancies are significant because a central platform of the appellants' claim is that the ARENA and AA still perceived them as being disloyal and acting in support of opposition political parties even after their business collapsed and the MU was dissolved in 1994.

[124] The Authority prefers the evidence of the first appellant to that of the second appellant. His evidence about the collapse of his business, the dissolution of the MU and the end of his interest in political affairs coincide in a logical way that is internally consistent and matches independent country information. From 1994 he pursued other business interests that were devoid of any political content. On the other hand, the second appellant's evidence, which is rejected, suggests that the appellants were actively involved in political affairs for a number of years after 1994. None of the second appellant's account matches the rest of the evidence presented.

[125] The fact that the appellants' business began to fail markedly after the elections in early 1994 is not surprising. The MU was dissolved because it did not meet the minimum number of voters required by the Electoral Commission and the MU never produced the revenue that the appellants expected for their business. Their two other major clients, who were pro-ARENA, withdrew their accounts as soon as they realised the appellants were in a conflict of interest. Their actions were entirely predictable and can be explained as a normal business decision. The deregistration of the appellants' business is also readily explained by their falling financial receipts, rather than any malignant intention to harm them by the president of the media association, ARENA or AA.

[126] In this aspect of the appellants' evidence, the Authority finds that neither appellant was involved in any significant way with the MU leadership or any other political party, including FMLN, after early 1994 and that their contacts with the MU leaders were confined to church. By 1994, it would have been abundantly clear to ARENA supporters and AA, that neither the first nor the second appellants posed any threats to their political and financial base of power.

[127] It is clear that after 1994, the appellants turned their hand to a number of other business ventures that had no political connotations. The second appellant continued a billboard advertising business through a friend and the first appellant worked, first in Guatemala and then, on a quarry site outside San Salvador.

[128] In all of those circumstances, the Authority finds it implausible that AA and ARENA would pursue the appellant's family in such a systematic and prolonged way in El Salvador and Guatemala for a further seven years.

Links to other misadventures

[129] The appellants have described a number of misadventures that they suffered between 1994 and their departure in 2001, including armed robbery on two occasions and the employment of security guards to protect their family following a failed assault on their son. They have also described strange events that occurred at the hotel in Guatemala in late 1998, early 1999.

[130] Having carefully reviewed the appellants' evidence on all of these incidents, the Authority accepts that the events themselves took place but, for the following reasons, rejects as not credible the causal link that the appellants have consistently tried to make between these various incidents and the ARENA party

supporters and AA.

[131] The first appellant worked for AA from 1984 to 1989. He never joined ARENA and his involvement was confined to providing professional advice to ARENA business supporters. He was involved at a low level in the elections of 1984 and 1989. By contrast, AA is a person with significant power. Country information indicates that he is the president of an international corporation and a man of some influence in the country. Despite this importance, he showed no real vindictiveness towards the first appellant after he left his employ in 1989.

[132] The Authority accepts that AA may have been irritated by the first appellant's political support for a small and marginal political party in late 1993 and early 1994. However, this was five years after the first appellant had left AA's advertising company. In all the circumstances presented, the Authority does not find it plausible that the first appellant would be considered such a threat to AA's personal and professional business interests that AA would have embarked on a seven year persistent and systematic campaign of harassment and intimidation.

[133] The incident that occurred in Guatemala can easily be explained by the conflict between the owners of the hotel and the local indigenous people at the time. The appellant was, quite simply, caught in the middle. His attempts to link the acts of arson and witchcraft to ARENA, and ultimately AA, are far-fetched and implausible for the reasons given.

[134] The incidents on the road to the quarry site and at the site itself are also explained, readily, by the high incidence of kidnapping, extortion and criminality that exist in the rural areas of El Salvador. Country information clearly indicates that the police are unable or unwilling to prevent these kinds of criminal activities and may, on many occasions, be complicit themselves. The Authority does not accept as plausible the link between these incidents and AA and the ARENA party.

[135] The Authority finds that these various incidents were random and unrelated to AA or ARENA. They are symptomatic of the widespread lawlessness and criminality that pervaded Salvadorian society during this period. The Authority's conclusions are re-enforced by the country information relating to widespread criminality and impunity described above.

Trips outside El Salvador

[136] The Authority notes that the family left El Salvador on a number of occasions and travelled to Guatemala and to the United States of America. They also filed and obtained visas to travel to Australia in 2000, before the second appellant's emotional breakdown. These plans were resurrected in 2001 because Australia offered the second appellant the best prospects for medical treatment and recovery. Both appellants told the Authority that, at the time of their departure in early 2001, they intended to return to El Salvador as soon as the second appellant's health had improved. They left their house and faltering business interests in the hands of a relative in the meantime.

[137] The Authority finds that these actions are not consistent with those of a family trying to escape a persistent and systematic pattern of persecution against them. They had ample opportunity to apply for asylum in Guatemala and the USA, both of which are signatories to the 1951 Refugee Convention and yet the appellants did not seek protection or assistance in either country. Instead, they returned to El Salvador and resumed their lives. Their plan to visit Australia began well before the second appellant suffered her illness in early 2001.

[138] Although not in itself determinative of the appellants' claim, their actions and original motives for travelling to Australia are not consistent with a family intent on leaving to save their lives and avoid a systematic campaign of intimidation from ARENA and AA over a seven year period.

Assessment of supporting documents

[139] The Authority accepts the medical certificate provided by the second appellant's medical practitioner in Australia. It accepts that the second appellant suffered a serious and incapacitating illness in early 2001 which, thanks to medical treatment she has received in Australia and New Zealand, has largely been resolved. However, for the reasons given above, the Authority does not accept that ARENA or AA were the cause of the stress and emotional trauma that she suffered. In view of its adverse findings on the threatening telephone calls, the Authority is unable to speculate on the real cause of this illness.

[140] The various testimonials provided by friends and associates of the appellants confirm the incidents of robbery and attempted kidnapping, which the Authority has accepted as credible. However, apart from only general and oblique references, none of the testimonials provide any specific evidence linking these criminal acts to ARENA and AA.

[141] The Authority accepts the authenticity of photographs and a poster submitted by the appellants in support of their claim. These show that the first appellant ran as a candidate for the local body council and that he was linked to MU party members in 1993 and early 1994. However, for the reasons given, the Authority finds that, after early 1994, the first appellant's association with the MU and any other political parties, had ended. Again, there is no credible link between the criminal incidents of which they were victims, and the ARENA party and AA.

Conclusions on well-foundedness

[142] On the basis of the evidence accepted by the Authority, it is concluded:

- (a) that the appellants are no more at risk of kidnapping, extortion or robberies than other members of the Salvadorian population, which is a regrettable, but all too common feature of life in that society;
- (b) that the risk of any of the appellants suffering serious harm is remote and that there is no real chance of this occurring – *Refugee Appeal No 70074* (17 September 1996); and
- (c) that any harm they do fear is limited to criminality in Salvadorian society and is not linked in any way to one of the five grounds enumerated in Article 1A(2) of the 1951 Refugee Convention.

[143] For these reasons, the framed issues in [91] are answered in the negative.

CONCLUSION

[144] The Authority finds that none of the appellants is a refugee within meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined in respect of each claim. The appeals are dismissed.

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R J Towle
Member