

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 1481/93

J S G & G P S L

AT AUCKLAND

Before: S Joe (Chairperson)
L Tremewan (Member)
A Wang Heed (UNHCR Member)

Counsel for Appellant: Ms A Jack

Representative for NZIS: No Appearance

Date of Hearing: 12 June 1996 & 4 July 1996

Date of Decision: 20 March 1997

DECISION DELIVERED BY L TREMEWAN

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellants, nationals of Peru.

INTRODUCTION

Although the application filed for refugee status in respect of this appeal was in the name of the appellant husband, the claim was also intended to include his wife, and children. This appeal has therefore been dealt with as a joint appeal, covering both the claims of husband and wife. It was appropriate, in the circumstances, to deal with both cases simultaneously, since they had virtually identical claims, and, moreover, since the wife's stated fear of persecution is based on her husband's situation. Both gave evidence before the Authority at the hearing. It is recorded that the appellant husband gave the primary evidence, and that the appellant wife remained outside while that evidence was being given.

While it is accepted that both the appellant and his wife are to be treated as joint appellants, in the interests of clarity, for the purposes of this appeal decision, we shall refer to the appellant husband, JSG, as 'the appellant' throughout this decision.

Before turning to the appellant's case, the Authority would like to express its regret for the length of time it has taken to release this decision. The reasons for this include the fact that the Authority has been endeavouring to receive updated country information concerning the level of threat presently posed by the Sendero Luminoso, in Peru. This has taken some time. Further, the Authority has been aware that there has been more than one appeal being dealt with around the same time, involving the extended family of the present appellants. Indeed, some of the same members have been involved in the relevant cases. While each case must stand or fall on its own particular circumstances, nevertheless, the Authority has been making some effort to deal with the cases from the same family, where possible, simultaneously.

THE APPELLANT'S CASE

The appellant is 30 years of age, and his wife is 29. They have two daughters, aged 11 and four. The elder daughter was born in Peru, the younger in New Zealand.

The appellant and his wife were both born and raised in L. The appellant attended polytech and obtained a trade certificate in tool-making in 1985. After this, he worked as a tool-maker from mid-1986 until he left Peru in November 1991, working for the same company. The appellant's wife received training in the travel industry and worked in that industry for several years prior to their departure.

The appellant was one of five children, although the eldest two children are only half-siblings of the younger three. Of the five, the eldest, AS, is now a New Zealand citizen, having married an Australian citizen many years ago. AS lives in New Zealand with his family. The second eldest of the family, E, lives in Peru.

The appellant's two full brothers are both living in New Zealand. ES arrived in New Zealand on 9 September 1989, and applied for refugee status which was granted by the RSB. The appellant's other brother, GS, has also made application for refugee status and recently had an appeal heard before this Authority. The decision in respect of that appeal has now been published (Refugee Appeal No 2511/95 Re GSG (6 March 1997)). It is noted that the appellant there was found

to have a well-founded fear of persecution at the hands of Sendero Luminoso. However, he was, nevertheless, excluded from the protection of the Convention on the particular facts, under Article 1F(a) of the Convention.

Since the appellant's claim is significantly related to the circumstances surrounding that of his brother ES's case, and since ES gave evidence before this Authority in support of the appellant's claim, it is appropriate at this juncture to outline the circumstances of ES's having left Peru. It is noted that the problems which ES suffered all pre-dated the appellant's own problems.

ES entered the Police Academy in Peru in 1983, specialising as a detective with DIRCOTE, the anti-terrorist squad. In 1985, ES was involved in a particular investigation which culminated in the arrest of eight high-profile members of the Sendero Luminoso. ES was specifically responsible for the arrest of Sylbia Arredondo de Arguedas, a prominent Sendero Luminoso ideologist. Unbeknown to ES, at the time when he was arresting Sylbia Arredondo de Arguedas, a photograph was taken of the arrest, clearly showing ES in the process of making the arrest, with two other members of DIRCOTE flanking him.

On 18 April 1985, a large reproduction of the photograph appeared in a popular publication, together with an article about the arrest. The particular publication, "Caretas", is a magazine which has, according to its front cover, many thousands of sales. The Authority had a copy of the magazine article produced to it. The photograph in the article very clearly depicted ES, easily recognisable as the person who appeared as a witness before the Authority. Although ES's name did not appear in the article, it appears that some time after the publication, his details were ascertained by Sendero Luminoso.

ES received a telephone call containing a death-threat, in 1986, at work. It was ES's evidence to this Authority, (and apparently also his evidence to the RSB in support of his own successful claim for refugee status), that it had taken Sendero Luminoso some time to ascertain who he was, but that, once they had established his identity, he was at great risk.

In 1986, ES received another death-threat and, at this time, asked his superiors to transfer him from DIRCOTE to the police laboratories. It was ES's evidence that he would have preferred to leave the police altogether. However, it was not permitted for officers to leave the force at that time (because, he stated, so many

would have left, due to the number of death threats and killings against the police by Sendero Luminoso, that it would have resulted in a crisis). ES then worked with the police laboratory section for two years, until 1989. ES knew that even though a considerable amount of time had passed since his involvement in the arrest of Sylbia Arredondo de Arguedas, it was also not unusual for Sendero Luminoso to wait for a period of time passed before exacting revenge. He did not, however, consider, up until that time, that Sendero Luminoso had information relating to his home address, or at least if they had had, they had never made their presence felt at that address.

In May 1989, however, *pintas* (terrorist graffiti) was painted on the outside of the family home, which caused ES to become concerned that Sendero Luminoso may well have located his home address. In mid-September 1989, a letter containing death threats was left under the door of the family home, and it was at this time that ES left Peru for New Zealand, obtaining refugee status after his arrival. It is noted, in terms of the narrative of ES's account, that, after his arrival in this country in September 1989, he received news that Judge Caesar Ruiz Trigoso who had presided over the court case of Sylbia Arredondo de Arguedas, and who had sentenced her to a substantial term of imprisonment, had been assassinated by Sendero Luminoso. This assassination was covered in a publication of "Caretas" (dated 19 November 1990), a copy of which was produced to the Authority.

After the departure of ES for New Zealand, the appellant and other family members also began to receive calls from Sendero Luminoso. At this time, the appellant, his wife, and their daughter, and, as well, the appellant's parents, all lived in the one family home. The appellant's other brother, GS, although still in Peru, primarily stayed with his fiancée in another part of the city. It is noted that he also worked for the police.

The appellant stated to the Authority that, while he had always been concerned about the problems his brother, ES, was having, prior to his departure from Peru, at the same time, he did not in fact know many of the details of these problems. Neither did the appellant have much 'inside knowledge' being a tradesperson, rather than someone with the detailed police background that his brothers ES and GS had. The appellant saw himself as "just a normal citizen". He considered that, while it was upsetting for the family for ES to be having the problems that he was, once ES left Peru matters were expected to quieten down.

Three months after ES's departure from Peru, however, the appellant himself received a telephone call from the Sendero Luminoso. This came as a shock, since the appellant had never considered himself to be a target, and had thought, he now considers somewhat naively, that the problems would go away with ES's departure.

The first call that the appellant received from Sendero Luminoso indicated that family members of ES could expect to be killed " ... because of the life of Sylbia Arredondo de Arguedas". The appellant did not say anything to the caller, but felt extremely upset by the call. After this, the family continued to receive further calls. It is noted that the appellant produced a copy of a police report, together with a translation, which indicated that in December 1989, a complaint was made with respect to telephone calls having been received by the family from Sendero Luminoso.

On 12 July 1990, at around 7pm, the appellant was on his way home from work, having just alighted from a bus a few hundred metres away from the family home, when, while crossing a road, he was nearly hit by a car travelling at great speed. The appellant narrowly missed being hit because he had managed to leap out of the path of the vehicle. He noticed that it was a dark Toyota, with no registration plates. Initially, the appellant thought that the driver was, perhaps, drunk. However, he then saw the vehicle do a U-turn (against the correct direction of the traffic) and travel back towards him at great speed. At this point, the appellant realised that the driver of the vehicle was attempting to run him over. Again, the appellant, through swift action, managed to avoid being in the path of the on-coming vehicle, which, at this time, was driven away.

The appellant was, however, fearful that the car might return and ran to the nearby Catholic university, because he knew that police escorts would be on campus. He located two police officers and was escorted home. The appellant was extremely shaken following this incident. Once home, he then went with his wife to the offices of DIRCOTE and made a formal complaint. It is noted that a copy of the original complaint, together with an English translation, was produced before the Authority. The appellant indicated that the police, while they made a file pertaining to the incident, did not, as far as he was aware, pursue the matter in any real way.

The calls from the Sendero Luminoso still continued during the period following the 'car incident' as regularly as between once per fortnight to once every two months.

There were no further major incidents until 16 October 1991. On this occasion, the appellant was leaving the house, at around 9pm, to make a purchase at a nearby corner 'dairy'. He left the house by a side door, which would often be left open if a member of the family was going to the shop, since it was only a few doors down. The appellant was only one to one and a half metres through the door, facing in the direction of the road when, in his peripheral vision, he saw a light from inside a vehicle. Almost instantaneously, he heard a shot impact behind him. The vehicle, he could see, was a red Volkswagen. The appellant immediately ran back inside and could see, through the window, the vehicle, without registration plates, moving very slowly up the road. A police complaint was laid by the appellant and his wife, and an enquiry team visited the appellant's house the following day, to investigate the scene. During this investigation a bullet was extracted from the door frame of the door through which the appellant had just passed prior to the shot being fired.

Initially, following the shooting incident, the appellant and his wife both took leave from their jobs, since they were concerned about their safety in leaving the house each day to go to work. They subsequently resigned, however, believing that they had no choice but to leave the country.

Over the years since ES's departure, the appellant had kept ES informed of the continuing problems. Even before the shooting incident, ES had, himself, in New Zealand, made arrangements to have the appellant and his wife sponsored to come to New Zealand. Accordingly, the appellant and his wife and child left Peru on 5 November 1991, arriving in New Zealand on 11 November 1991.

The appellant stated to the Authority that he and his wife had considered travelling to Venezuela, rather than New Zealand, as his wife, being a travel agent, had travelled there previously. Ultimately, however, they decided that, although it would be reasonably traumatic in terms of uprooting the family, it was a safer option to travel as far away as possible, and to come to where ES had settled, in order to start a new and safer life.

An application for refugee status was submitted on 6 January 1992, that application being formally declined by letter dated 28 April 1993. It is from that decline decision that the appellant and his wife have appealed to this Authority.

The appellant stated to the Authority that, since his departure, Sendero Luminoso have continued to make threatening telephone calls to the family home. His elderly parents are the only people living in the family home. The appellant worries for his parents, who, it seems, refuse to leave because of their strong religious convictions. Apparently, they take the view that whatever happens, it is because of the 'will of God'. Indeed it appears from correspondence sent by them that troubles such as those the family has experienced are consistent with their view that the 'end is near'. The appellant believes that just because nothing has happened to them so far, it does not mean that they are safe. He considers that he, as a younger male member of the family, may have a larger profile in terms of Sendero Luminoso than they, but is unsure whether this is the case or not. Quite simply, having lived through two attempts on his life, the appellant does not believe it is safe for him to return to Peru.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 Re ELLM (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
2. If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Before we can deal with the issues posed, it is first necessary to assess the appellants' credibility. In doing so, we accept as truthful the evidence given by the appellant, his wife, and the appellant's brother, ES. It was our view that the evidence given was presented in a straightforward and frank manner, without elaboration. Their demeanour was entirely appropriate with the accounts given.

The accounts were consistent with previous statements given and with one another's accounts. Furthermore, there was appropriate documentary evidence submitted in support of the appellant's claim. The appellant and his wife have obviously found it extremely difficult leaving Peru and relocating in New Zealand, yet they give the impression that they have taken these steps because of their situation.

In conclusion, we find that the appellant and his wife are credible witnesses and their account is accepted.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?

Before addressing this issue in respect of the particular facts of this case, it is relevant to turn to recent country information received, concerning the threat presently posed by Sendero Luminoso.

In the relatively recent decision Refugee Appeal No. 2507/95 re JEAH (22 April 1996) the Authority found that recent country information indicated that Sendero Luminoso had largely been defeated, however the Authority acknowledged that isolated acts of activity continued to occur, particularly in respect of persons of prominence.

Since Refugee Appeal No. 2507/95 re JEAH (22 April 1996) was published, the Authority has received more recent country information from a variety of sources. This information appears to confirm that Sendero Luminoso, while not as strong as in its heyday (in the 1980s and early 1990s), still poses a threat. The following extracts are from different sources.

The *Andea Group Report* published by the Business Monitor International in London (September 1996), highlights the fact that the Sendero Luminoso (or "Shining Path" movement) continues to pose a serious threat in the rural regions:

"Events in the second half of August clearly demonstrated that the guerrilla threat has not been eliminated altogether, despite the government's success in severely weakening the rebel movement, Shining Path, since the 1992 capture of the group's leader Abimael Guzman. Around 100 members of the Maoist organisation took control of Alomella Robles, a small village situated 345 miles north-east of Lima, killing one resident and taking a number of others hostage. The incident marks the latest setback to the government in its attempt to end the conflict with

the Shining Path in a war that has cost at least 30,000 lives and an estimated US\$25 billion in damage to the country's infrastructure since 1980.

However, despite fears of a return to the chaos of the 1980s when rural areas came under guerrilla control, threatening mining concerns and bringing the government to the verge of collapse, a repeat of such a scenario is unlikely. Not only do the terrorist movements lack the resources and numbers to stage a repeat of their earlier successes, but the guerrillas now find themselves fighting a far more formidable opponent than a government undermined by corruption and hyper-inflation."

In an article "Shining Path Makes Bloody Return" *Sunday Star Times*, 11 August 1996, it is stated:

"A spate of deadly attacks has shaken Peruvians, put security forces on alert and raised fears the Shining Path Maoist guerrillas are set for a bloody comeback.

But despite their renewed activity, analysts believe the leftist rebels are a limited threat compared to their violent heyday in the late 1980s and early 1990s.

"The guerrillas are fighting like an old boxer," said Carlos Tapia, a leading researcher on Peruvian guerrillas. "They can score well in one round but it does not mean they can carry on doing it."

In a series of high-profile attacks over the last few weeks, the Maoist guerrillas have killed six people, injured dozens and caused millions of dollars in damage to property. They set off powerful car-bombs at a police headquarters and outside the home of an army general in Lima and murdered a shantytown community leader.

In the provinces there were more killings, clashes with the army and the occupation of a whole town where the rebels sought to force their propaganda on local inhabitants.

Security officials say the new wave of attacks stems from growing control over the movement by its militant faction. It may also indicate Shining Path is recovering from the 1992 capture of its leader Abimael Guzman, which left a divided force unable to pose any challenge to the government.

"We have finished our restructuring," a Shining Path rebel said in a clandestine video interview with Peruvian reporters. "You'll see what we've got planned."

Peru's guerrilla war has killed at least 30,000 people and caused \$36.7 billion in damage since 1980. The latest offensive has left many wondering if they are witnessing the return of a movement that once held large rural areas, bombed and cut services at will in Lima and threatened to bring down the government.

"In no way are the guerrillas a spent force," a Western diplomat said.

Peru's security forces, embarrassingly caught off guard by the recent campaign, predict bloodier attacks to come. "As the increase in activity has achieved wide publicity, it is likely military operations will occur on a larger scale," a report said. - Reuters

To similar effect, we refer to the following extracts taken from "The Shining Path Comes Back", *The Economist*, 17 August 1996, page 35:

"Recent weeks have brought two car-bombs, attacks against three firms involved in roadbuilding in the Andean highlands, and the occupation of a town in the coca-growing upper Huallaga valley. Six people have been killed, and dozens injured. On August 7th police uncovered some 10,000 sticks of dynamite buried in sand dunes near a port north of Lima. Documents found by police contain directives to militants to intensify their recruiting of academics and students.

The worst incident was on August 2nd, when 200 guerrillas, disguised in army uniforms, blocked the road into Aucayacu, a town on the Huallaga river, and in

open daylight took over parts of it. Bursting into a radio station, they broadcast a call for residents to gather in the main square. Two people died.

...In the upper Huallaga region, guerrilla activity is entwined with drug trafficking- and it is unlikely to go away. Guerrilla recruitment there is based on a man's fighting qualities, though in some highland areas recruits are fed a purer ideological line. The question now is whether the Shining Path can re-create its reign of terror-for terror it was, and little more- in wider areas.

After Mr Guzman was captured, the Shining Path's organisation collapsed and thousands of militants fell into the hands of police. It has reorganised, as the recent incidents show. But recruitment is an uphill battle. The government has managed to create a culture that rejects the Shining Path, says Carlos Tapia, a sociologist who taught with Mr Guzman at a university in Ayacucho, the highland town where the Shining Path was born.

Though the Aucayacu attack mirrored many others during the Shining Path's 16-year old war, the movement is a shadow of what it was, he reckons: its activists may number 1,000 a tenth of the figure of 1990. Nor is there a single party line, as there was under Mr Guzman's firm hand.

...And now? In the field, the Shining Path is believed to be under the command of Oscar Ramirez Durand, "Comrade Feliciano," the only member of Mr Guzman's permanent committee still at large. Some analysts had pointed out that the "new" Shining Path appeared to be taking a less violent tack; it even at times admitted it had made mistakes, something that was never done in Mr Guzman's heyday. Yet early this year, it caught up with Pascuala Rosado, a community leader-and mother of eight-in a shantytown. She had put her life on the line to oppose the Shining Path. It killed her. The new attacks confirm that, though its claws may not be so sharp, the leopard still has all its spots."

In the 22 August 1996 publication of *Latin American Weekly Report* is an article "Re-appraising the Sendero threat - scope and pattern of recent raids indicate tactical shift'. It states that:

"The Peruvian government is beginning to take much more seriously the recent upsurge in activity by the Sendero Luminoso guerrillas, as it becomes evident that they have recovered the ability to stage major raids - and that they appear to have adopted entirely new tactics."

Extracts from the Peruvian news publication *Diario La Republica*, 7 March 1996, refer to the assassination of Pascuala Rosado, an "ex-leader and social worker" of some profile, who had reportedly been in exile in Chile since June 1993, only to be assassinated by the Sendero Luminoso upon her return to Peru, some three years later, in 1996.

According to various other extracts from Peruvian newspapers published around March and May 1996, incidents of bombing and assassinations by the Sendero Luminoso have led to continued periods of 'state of emergency' being imposed by the Government in many provinces and in Lima. (Refer 'Diario La República - Peru', 'Aja', 'Actualidad', 'Expresso', 'El Comercio Lima', 'OJO').

The influence of Sendero Luminoso (inter alia) in the Government's decision to maintain states of emergency in much of the country was also noted in the Amnesty International Report for 1996, at 248.

The very latest information available to the Authority comes from the United States Department of State Country Reports on Human Rights Practices for 1996: Peru (January 1997). As this information was received not from a published text, but from the Internet, the page references relate only to that source.

"Since 1980, much of the security forces' effort has been directed against the Sendero Luminoso and the Tupac Amaru Revolutionary Movement (MRTA) terrorist groups. They continue to pose a threat in some areas, but at a much reduced level than in previous years. ..." (p1)

"... Sendero Luminoso and MRTA terrorists were responsible of the vast majority of the killings and other violence. Sendero Luminoso used torture and other forms of brutality, infringed upon citizens' privacy rights, intimidated religious workers, and violated the rights of indigenous people." (p1)

"... Sendero Luminoso whose insurgency has led to the deaths of over 25,000 persons since 1980, continued to kill civilians. During the year, Sendero killed a total of 124 persons, including security force personnel and civilians, according to statistics compiled by Peruvian non-governmental organisations (NGOs). Among the civilians killed by Sendero was Pascuala Rosado, a community leader in Huaycan, known for her opposition to Sendero. On July 30, Sendero killed community leader, Epifanio Santarria in Los Olivos, near Lima. In February, Sendero killed a community leader and his sons in Angashyacu, Huanuco. On August 22, Sendero murdered the brother of the mayor of Delicias, Huanuco." (p2)

"... Many victims of Sendero Luminoso also showed signs of torture. Credible accounts indicate that Sendero tortured people to death by slitting throats, strangulation, stoning, and burning." (p3)

"... Although both the army and Sendero Luminoso committed serious human rights abuses in Peru's internal conflict, the latter was responsible for many more heinous acts. Sendero frequently used arbitrary violence against civilians and non-military targets. It continued to detonate powerful bombs in public places, indiscriminately killing and injuring bystanders, and persisted in its practice of entering villages and killing residents. Victims included unarmed women and children. Sendero Luminoso terrorists were responsible for 124 killings, including six current or former members of that organisation. A Sendero car bomb on July 26 killed one civilian and seriously injured a police officer in front of a police station in central Lima. A Sendero car bomb next to a Shell warehouse in Lima on May 16 injured 10 persons. In armed confrontations, Sendero never took prisoners or attended to the wounded. Sendero also practised forced military conscription of children. In Delicias, Huanuco department, Sendero terrorist forcibly recruited eight adolescents in August. There were also reports that Sendero forced Ashaninka tribesmen in the Satipo area of Junin department to join its ranks." (p7-8)

"Sendero Luminoso rejects religion and continues to threaten and intimidate religious workers. Members of the Mormon Church, in particular, continued to receive threats and were victims of extortion by Sendero. ... Sendero still occasionally tries to interrupt free movement within the country. Sendero

roadblocks were reported to be commonplace in sections of the Huallaga valley.” (p9)

“ ...Legitimate fears of physical attack by Sendero severely limited the ability of human rights monitors to carry out their work in some parts of the country. A human rights attorney fled Peru for three months early in 1996 due to threats that she received. ... Human rights groups repeatedly denounce Sendero Luminoso as the greatest violator of human rights in Peru, while simultaneously documenting violations by the security forces. Documentary evidence indicates the Coordinadora members have been balanced in their denunciations of abuses by both sides. In its annual report, the Coordinadora regularly reported and denounced political violence by Sendero as well as by the MRTA and has issued press communiqués denouncing violence by terrorist groups. ...” (p10)

“The number of those disabled (in Peru) is believed to have increased as a result of the years of violence during the Sendero and MRTA insurgencies. Although according to the 1993 census, 1.3 percent of the population (288,526 persons) are disabled in some form, nongovernmental experts believe that the figure is in reality much higher. ... Sendero Luminoso has been the most egregious violator of indigenous rights. At the end of the year, thousands of Ashaninkas in the central jungle area remained displaced, and many were in areas under Sendero control, although some displaced groups of Ashaninkas reincorporated into their original communities. Reports continued, however, of forcible recruitment of Ashaninkas by Sendero.” (p12)

From the available country information before us, it would appear that the relative strength and activity of the Sendero Luminoso is in something of a state of flux. However the general consensus from these most recent reports indicates that the Sendero Luminoso *may* be enjoying a limited resurgence in organisational capacity, although nowhere near to the same extent as previously. It could be inferred from these reports that the Sendero Luminoso continues to have the means to locate opponents it perceives to be of some significance or profile.

We consider it very relevant in assessing the merits of the case before us to note that the basis of the claim has a direct link to that of the appellant’s brother, ES, whose case was accepted by the New Zealand authorities in the first instance. In other words, when ES arrived in New Zealand and made application for refugee status, the authorities (within the New Zealand Immigration Service) accepted that, although ES himself had really suffered no incidents or events of a life-threatening nature, there was, nevertheless, a real chance of persecution, given his extremely high profile in having arrested Sylbia Arredondo de Arguedas, and seven other high-ranking Sendero Luminoso figures. The fact that there was widespread publication in a popular magazine clearly depicting ES in the throes of arresting Sylbia Arredondo de Arguedas doubtless gave weight to there being a real chance of his being persecuted.

Clearly, the appellant and his wife have a fear of assassination at the hands of Sendero Luminoso, due to a reprisal because of the appellant's close relationship with his brother, ES. Further, the appellant considers that if he were to return to Peru and not be assassinated, but rather subjected to on-going death threats and even further attempts being made on his life in light of the assassination attempts previously made, this, he submits, also amounts to persecution.

The Authority accepts that the appellant was targeted in a consistent way by Sendero Luminoso, following the departure of ES for New Zealand, with two serious attempts on his life having been made and persistent and on-going telephone calls of a threatening nature, including death threats, having been received by him. While we accept that these were made some time ago now, we are prepared to accept that on the particular facts of the case before us, there is a real chance of persecution.

We are inclined towards this view because we are satisfied, on the evidence before us, that the appellant's brother, ES, had an extremely high profile as far as Sendero Luminoso were concerned, so much so that ES was granted refugee status in the first instance by the New Zealand authorities upon his arrival, despite the fact that he had not, in fact, yet suffered persecution. We find that the same, or a similar level of risk, which ES faced is now faced by the present appellant. While he was not within the police or security forces fighting Sendero Luminoso, he has, it would seem from the evidence, been associated with ES and targeted by them, following the departure of ES for New Zealand. As mentioned, two attempts on the appellant's life have been made and we are satisfied that this is because of the reprisal sought to be effected because of the appellant's relationship with his brother, ES.

We are further of the view that the risk faced by the appellant would be present throughout Peru and that there would be a real chance of persecution, no matter where the appellant went. We make this finding on the particular facts of this case, since we are satisfied that the profile of ES has been so unusually high and the present appellant's case has been linked to ES's in the eyes of the agent of persecution, namely Sendero Luminoso.

This is not to say that "any" applicant will henceforth merit being granted refugee status based on the recent information obtained concerning Sendero Luminoso. Each case is unique and turns on its own quite separate facts, and must therefore

be considered in light of an assessment of the country conditions prevailing as at the date of determination (Refer Refugee Appeal No. 2507/95, re JEAH (12 March 1996) at pages 17-18).

CONVENTION REASON

It is necessary now to address the issue of Convention reason. We find that such Convention ground exists. The ground is the particular social group to which the appellant and his wife belong, namely immediate family members of ES.

CONCLUSION

In summary, we find:

1. There is a real of the appellant being persecuted if he returned to Peru.
2. The reason for that persecution is that the appellant is a member of a particular social group being family members of his brother, ES, a very high profile figure in terms of his anti-Sendero Luminoso activities.

For these reasons, the Authority finds that the appellant is a refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is granted. The appeal is allowed.

.....

Member