

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71435/99

AT AUCKLAND

Before: E M Aitken (Chairperson)
P Millar (Member)

Counsel for Appellant: M Bell

Date of Hearing: 27 July 1999

Date of Decision: 30 November 1999

DECISION DELIVERED BY P MILLAR

This is an appeal from a decision of the Refugee Status Branch of the New Zealand Immigration Service (RSB) declining the grant of refugee status to the appellant, a national of the Republic of Peru.

INTRODUCTION

The appellant is a 31 year old married female from Lima, Peru. She is in New Zealand with her husband and their two children, a nine year old daughter and a seven year old son. The appellant first came to New Zealand on 14 April 1992 with her daughter and on 18 April 1992, applied for refugee status. On that same date their son was born. However she subsequently departed from New Zealand on 20 June 1992 with her two children and returned to Peru via Chile where she remained briefly. On 15 September 1994 she came to New Zealand for the second time with her husband and children and on 27 September 1994, the appellant's husband applied for refugee status, the family being included in that application. His application was declined by the Refugee Status Branch on 28 November 1995 and his appeal to the Authority was dismissed on 6 March 1997 (see Refugee Appeal No. 2511/95 (6 March 1997)). The appellant's husband then commenced proceedings in the High Court seeking review of the Authority's

decision but his application was dismissed by the Court in a judgement delivered on 9 October 1997. He then appealed to the Court of Appeal but this appeal was also unsuccessful being dismissed by the Court in a judgement delivered on 15 June 1998.

The appellant lodged her own refugee application on 14 March 1997 in which her husband and their two children were included as well as her 19 year old step-brother RQ, who arrived in New Zealand separately in December 1995. She was interviewed by the RSB on 18 January 1999 and in a decision dated 26 March 1999, the RSB declined her application. It is from this decision that she now appeals to this Authority. As the appellant's appeal is based on a fear of persecution because of her husband's background, it is necessary to summarise below the Authority's decision in Refugee Appeal No. 2511/95.

DECISION IN REFUGEE APPEAL NO. 2511/95

The appellant in Refugee Appeal No. 2511/95 (who will be referred to as the appellant in this part of the decision) was an officer in the Peruvian police force who, in April 1991, commenced working in a division concerned with the suppression of terrorism, including terrorist acts committed by the Sendero Luminoso ("the Sendero"). As part of his duties he was transferred from Lima to H, a rural city east of Lima, which was classified as an emergency zone and where he remained for 10 months. During that time he interrogated a number of persons suspected of being terrorists and on some occasions, resorted to methods of torture to obtain information from them. On 28 February 1992, while home asleep, 10 men gathered outside the appellant's house shouting slogans of the Sendero. They then fired on the house and the appellant was struck in the eye and, as a result, lost vision in that eye. The men slid an unsigned notice under the front door saying they would kill the appellant. The appellant then took his family to Lima to stay with his parents.

In April 1992, the appellant's wife and daughter left Peru to come to New Zealand, to get as far away from Peru as possible and with the intention of the appellant later joining them. In June 1992, the appellant received telephone calls from the "execution squad" of the Sendero in which they threatened to kill him. Consequently the appellant went to Chile where he called his wife and told her about the threatening calls. She became distressed on hearing this news and it was agreed she should join in him Chile. The appellant's wife and her two children

then left New Zealand on 20 June 1992 to go to Chile. While in Chile the appellant's father told him that threatening telephone calls continued to be made against the appellant by the Sendero. However, the family subsequently returned to Lima in July 1992 and stayed in C with a cousin. During this time the appellant's parents continued to receive threatening telephone calls.

In April 1993, after receiving financial assistance from the government to do so, the appellant and his wife went to Miami for the appellant to undergo an operation on his eye. The operation was not successful and the couple returned to Peru in May 1993. The appellant had sought an official discharge from the police prior to leaving for the United States but it was refused. However while the appellant was in the United States, no threatening telephone calls were received by the appellant's parents.

On return to Peru, the appellant and his family stayed in C and did not encounter any difficulties until 20 January 1994, when an anonymous letter containing a death threat was sent to the appellant's parent's home. A further letter in similar tone was subsequently received on 4 March 1994 at the appellant's parent's home. The appellant believed the arrival of these letters strongly suggested to him that the Sendero was "closing in" on him. Therefore from this time the appellant's family moved from place to place, spending one week each time in the areas of C, P or at the appellant's parents. Finally, on 4 June 1994, the appellant was fired on in his car by two men, whom he recognised from their demeanour as being from the Sendero. The appellant was struck by a bullet and was in hospital for two days. Following this incident, the appellant was finally discharged from the police force and on 15 September 1994, left Peru with his family and came to New Zealand.

After arriving in New Zealand, the appellant contacted his parents in Lima who advised him that they had not had any problems except for one threatening telephone call received from the Sendero in February 1996 in which the caller asked for the appellant's whereabouts. The appellant believes that his parents have not had any further problems from the Sendero as they told the caller that the appellant was overseas.

At the appeal hearing the appellant's wife and his brother ES, a former policeman in Peru who now lives in New Zealand, also gave evidence which the Authority found to be largely corroborative of the appellant's account.

The Authority had some concerns about the appellant's credibility but gave him the benefit of the doubt on those matters and accepted his account as being truthful. The Authority, in reaching its decision as to the merits of the appellant's claim, noted that the appellant's brother ES was granted refugee status by the RSB but had a much higher profile than the appellant, ES having worked on an investigation involving the arrest of eight high profile members of the Sendero. The Authority assessed country information as to the threat posed by the Sendero and assessed the appellant's case in the light of that information. The Authority's discussion of this information is set out in more detail further below in this decision. However it is appropriate to record at this point that the Authority held that the appellant had a well founded fear of persecution but found that there were serious reasons for considering the appellant had committed crimes against humanity in terms of Article 1F(a) of the Refugee Convention. For those reasons he was excluded from the benefits of the Refugee Convention.

THE APPELLANT'S CASE

In the appeal now before the Authority, the appellant's case is based on a fear of persecution due to her husband's work as a police officer and she relies on the evidence put forward in relation to her husband's appeal. However, she also relies on an incident not mentioned at her husband's appeal hearing, namely, the shooting of her step-father in June 1995, an attack which she believes was carried out by the Sendero as revenge for her husband's work.

Before discussing this incident further, it is necessary to briefly record the following information about the appellant's family. In this regard, the appellant's own father died 21 years ago and one and a half years later, her mother commenced a de-facto relationship with a man the appellant referred to as her step-father. The appellant however regarded this person as her own father. He worked as a drummer in a band playing in various locations in the area of Lima. Her mother had one child from this relationship, namely the appellant's step-brother RQ. The appellant and RQ lived with their mother and step-father until 20 November 1989 when the appellant herself married. From that time she, her husband and RQ lived together in a different house in Lima.

In 1991 the appellant's mother went to Venezuela alone because of the problems the appellant's husband was having with the Sendero. The appellant's mother

chose to go to Venezuela as it was a country where Spanish was spoken and there were more work opportunities. Although the appellant's step-father would write to her mother while she was in Venezuela, neither he, the appellant, nor RQ ever went to Venezuela. The appellant's mother remained in Venezuela until she came to New Zealand on 5 October 1998.

RQ continued to live with the appellant until 1994 when the appellant and her family came to New Zealand. RQ then went to live with his father. The pair lived in the house of the appellant's grandparents in C some 15 to 20 minutes drive from Lima.

On either 6 or 7 June 1995, the appellant's mother-in-law called her and told her that her step-father had been killed after being shot while playing at a club at night in Lima. The appellant's mother-in-law was told of the incident by RQ who had commenced living with her from that time. To the appellants' knowledge, only her step-father was killed and although the police were called, the appellant did not know if they arrested or charged anyone in relation to the murder.

The appellant believes her step-father was shot by the Sendero as revenge against her husband and although they had been looking for RQ, as they could not find him, they instead killed the appellant's step-father. To the appellant's knowledge, her step-father never had any involvement with terrorists. No one saw who fired the shot and the appellant simply assumed it was the Sendero who had carried out the act as they had targeted her family previously.

After this incident the appellant approached an RSB officer to issue a visa to RQ to enable him to come to New Zealand. However she could not obtain a visa for him and she remained concerned for his safety until he finally came to New Zealand in December 1995.

In support of her claim, the appellant produced a death certificate, a copy of which appears on page 144 of the Authority's file. Counsel supplied an English translation at the appeal hearing according to which the appellant's step-father's death was caused by a "firearm bullet penetrating the head and causing cerebral death".

THE EVIDENCE OF RQ

RQ gave evidence in support of the appellant's claim.

As already stated, RQ lived with the appellant until she came to New Zealand in 1994. From that time he and his step-father went to live at RQ's grandmother's home in C. They remained living there until the shooting in June 1995. As concerns that event, RQ was called by a friend of RQ's father who told him that his father was in hospital in a very serious condition with a bullet in his head. RQ went to the hospital but his father died shortly after.

RQ was told that his father was playing with his band when someone came into the room at the club where they were playing and shot him. RQ does not know if a number of shots were fired, but, to his knowledge, nobody else was killed or injured. The other band members did not see who the gunman was and no one ever told RQ who was responsible.

RQ went to the scene of the murder the next day and saw blood on the floor and his father's drumsticks scattered around. RQ did not speak to anyone there about the incident then or at any other time. His father's death was reported to the police but he did not know by whom and the police did not interview him or talk to him about the matter. RQ thought the Sendero shot his father as the appellant's husband had problems with that group and they wanted revenge. He believed that the Sendero usually kill people by shooting them in the head and the Sendero knew the connection between his father and the appellant's husband. Apart from these comments, RQ did not have any evidence that the Sendero were responsible.

Following his father's death, he lived with the parents of the appellant's husband until he came to New Zealand. He did not have any further problems with the Sendero as he had discontinued his education and always remained inside the house.

He came to New Zealand in December 1995 and since his arrival, he has been unable to sleep because of the uncertainty of his status (not having a visa) and the shooting of his father. He has seen two different psychologists for these problems and stopped seeing them a short time ago as he simply wanted to be on his own. He was given medication to sleep which he sometimes took twice per week. At the appeal hearing, counsel submitted a report dated 4 June 1999 from M Castelino, counsellor of the Home and Family Society Counselling Services in

which that person stated:

"I am writing to you with regard to (RQ) who has been my client for counselling. I have been seeing (RQ) for issues related to depression and trauma that he has experienced in Peru. The thought of going back to Peru is causing great stress for (RQ).

It would help (RQ) in this situation if he were granted permanent residency on humanitarian grounds."

In April 1999, RQ married and has one child, a boy, born three weeks prior to the appeal hearing.

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 (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?

Because the issue of internal protection arises in this case, the decision of this Authority in Refugee Appeal No 71684/99 (29 October 1999) requires a third and final issue to be addressed:

3. Can the refugee claimant genuinely access domestic protection which is meaningful?

In particular:

- (a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

Before the Authority can determine the issues, an assessment must first be made of the appellant's credibility.

The Authority was concerned that the appellant had made no mention of the shooting of her step-father until responding to a letter dated 24 February 1999 from the RSB officer, sent after her interview with that person, in which she was asked whether any close family members were in New Zealand and how she knew the Sendero continued to look for her family in Peru if she was not in contact with any friends or family there. By letter dated 5 March 1999, her representatives on her behalf, for the first time, advised of the shooting. The Authority was concerned that the appellant would not have mentioned the shooting in her refugee application of 13 March 1997, supporting statements lodged in March 1997 by her former representative, Mr Chauca and, in January 1999, by her current representative, nor during her RSB interview in January 1999. Furthermore, there was no mention of the shooting by her or her husband during his appeal hearing in January and March 1996 for which they were represented by Mr Chauca.

When asked to explain why she had not mentioned this important matter, having had all of these opportunities to do so, the appellant responded that Mr Chauca had told her that as she was not in Peru when the incident occurred and had no proof that the Sendero carried out the shooting, neither she nor her husband should mention the matter. She claimed that although she engaged her current representatives in January 1999, who not only prepared the further supporting statement mentioned above but also represented her at her RSB interview, they

only held brief meetings with each other without an interpreter to assist and as she did not understand English very well, she had not been able to convey this information to her representative when the supporting statement was prepared, nor prior to and during the RSB interview. Furthermore she said she only answered what she was asked at the RSB interview and as she did not have proof of Sendero involvement in the shooting, she did not wish to discuss it in detail. For these reasons, the shooting was not mentioned until counsel's letter of 5 March 1999 in response to further specific enquires made by the RSB in its letter of 24 February 1999 referred to above.

However, in contrast to the appellant's account at the appeal hearing that her stepfather was killed in 1995 while RQ was in Peru, in her letter of 5 March, Counsel stated that the appellant's step-father was shot in 1997 while RQ was already in New Zealand. When asked to explain these comments, the appellant said that this information was conveyed to counsel over the telephone. She claimed that in view of her limited grasp of English, misunderstandings had caused this inaccurate information to be presented in counsel's letter. The appellant explained it was only after receiving the RSB decision that she then went and spoke to counsel with her brother-in-law who could speak English and the correct position was then explained to counsel.

Additionally, the Authority notes that on the death certificate produced, the person specified as being the wife of the appellant's step-father was not the appellant's mother. When questioned about this, both the appellant and RQ stated that they knew nothing about it and their step-father had not been involved in relationships with other women to their knowledge.

Notwithstanding all of these concerns, this Authority notes that the Authority presiding over the appeal of the appellant's husband found both the appellant and her husband were credible, the appellant's husband being given the benefit of the doubt on those aspects of his account which caused some concern. Furthermore, this Authority found both the appellant and RQ to be genuine and sincere in relating their knowledge of their step-father's death and overall the Authority is of the view that the appellant ought be given the benefit of the doubt. The Authority accepts as credible her and RQ's account that the appellant's step-father was shot in June 1995.

THE ISSUES

The Authority now assesses the appellant's case in terms of the framed issues.

The Authority notes that in a Minute published on 14 March 1997, the Authority presiding over the appeal of the appellant's husband stated that its finding that the appellant's husband was excluded in terms of Article 1F(a) of the Refugee Convention related solely to the appellant's husband and that the appellant's fear of persecution had not been separately considered by the Authority; the appellant, at that time, not having lodged a separate application for refugee status. Accordingly, this Authority is not prevented in any way from determining whether the appellant herself falls within the ambit of the Refugee Convention.

The Authority notes at the outset that there is no evidence that the shooting of the appellant's step-father was the work of the Sendero. Although RQ was living in Peru at the time, he was not present when his step-father was shot. Although the matter was reported to the police, it is clear from the evidence that whatever investigation was carried out, the perpetrator has not been identified and there is no evidence that the Sendero carried out the shooting or were responsible for it. However, as the assailant has not been found the possibility that the Sendero are responsible for the shooting cannot be ruled out. As the incident predates the last contact the appellant's family had with the Sendero, namely a telephone call to her father in law in February 1996, the Authority is willing to extend to her the benefit of the doubt and find that the Sendero were responsible for the shooting of her stepfather and that this incident was motivated by the Sendero's desire to harm her husband and is evidence that they, at that time, were pursuing him.

Having found no evidence of Sendero involvement in the shooting, it remains necessary to assess the country information concerning the Sendero and examine, once again, the risk to the appellant and her family on the basis of the matters put forward at the appeal hearing of her husband as to his service in the police and the incidents relied on by him as showing the Sendero wish to locate and harm him and his family including the appellant.

The most appropriate place to start is the decision of the Authority on the appellant's husband's appeal, namely, Refugee Appeal No. 2511. In its decision, the Authority accepted that at the time the appellant's husband left Peru in 1994, his fear of persecution at the hands of the Sendero was well founded as he had

been subjected to an armed attack just prior to his departure. The Authority referred to a previous decision of the Authority in Refugee Appeal No. 2507/95 (22 April 1996) in which it was held that country information favoured the view that the Sendero had largely been defeated over a wide area though, in isolated incidences, prominent people continued to be targeted. The Authority then went on to consider country information available to it at that time and concluded that the strength and activity of the Sendero was in a constant state of flux. However, the Authority was also of the view that the Sendero may have been enjoying a resurgence in organisational capacity, although nowhere near its strength of the 1980's and early 1990's. The Authority was prepared to infer from the country information that the Sendero continued to have the means to locate opponents if perceived to be of some significance and profile.

The Authority noted that although the appellant's husband's brother was granted refugee status by the RSB, he was a police officer engaged in an investigation which led to the arrest of eight high profile members of the Sendero and whose involvement had been widely publicised. The Authority then stated that it had a doubt as to the prospective treatment the appellant's husband would face but was willing to resolve the doubt in the appellant's husband's favour, in view of his role in the police force and that of his brother ES.

The Authority also referred to dicta made by the High Court of Australia in Chan vs Minister for Immigration in Ethnic Affairs (1989) CLR at 391 (High Court of Australia) ("the Chan case") to the effect that, where a claimant had a well founded fear of persecution at the time of leaving the country, evidence of a substantial change in circumstances was required to rebut the presumption of there being a well founded fear as at the date of determination of the claim. The Authority found that there was no evidence of any substantial change in circumstances since the appellant's husband left Peru and for all of these reasons, the Authority found the appellant's fear was well founded as regards the whole of Peru.

However, since the Authority delivered its decision, it would appear from country information before this Authority that any resurgence in organisational capacity by the Sendero has been short lived. According to country information available to the Authority at the time of the appeal hearing, police arrested four persons described as "top members" of the Sendero, in April 1998, including Pedro Quinteros described as the Sendero's second in command and right hand man of the Sendero leader at that time, Oscar Ramirez Durand (alias Feliciano) (See

“Three Shining Path leaders caught” Jane’s Intelligence Review 1 June 1998). Then, in October 1998, a woman described as the “number three leader” of the Sendero was captured in a remote north eastern jungle town by police having been turned over to them by her own followers (See “Peru police capture Shining Path leader”, Agence France Presse, 31 October 1998). Finally, in December 1998, police arrested Juan Carlos Rios described as the Sendero’s “top military leader in Lima” in a slum in Lima where he was in charge of organising workers and neighbourhood networks for the Sendero (See “Peru reports rebel leaders captured” AAP Online 4 January 1999). Generally these same reports indicate that the Sendero have never recovered from the capture of their former leader Alberto Guzman as well as the subsequent arrest of many of the group’s leaders and, accordingly, political violence has fallen sharply since 1992 (“Peru reports rebel leaders captured” and “Peru police capture Shining Path leader”). In addition, according to these reports, bands of Sendero rebels continue to roam remote areas of the Peruvian jungle and the Andes, in particular, Peru’s north and central jungle and Sendero agents have tried to rebuild their shattered networks in some Lima shanty-towns (“Peru police capture Shining Path leader” and “Peru reports rebel leaders captured.”).

In submissions lodged prior to the hearing, Counsel specifically referred to the following materials on the activities of the Sendero:

1. “Shining Path Makes Bloody Return”, Sunday Star Times, 11 August 1996, referring to attacks by the Sendero in August 1996;
2. “Leading Peruvian Militant Captured”, Financial Times, 23 April 1998, referring to the arrest of a leading militant from the Sendero but noting that small fighting bands survive in jungle areas and that the Sendero has been rebuilding a presence in the impoverished shanty towns around Lima and other big cities “setting aside their former strategy of coercion and cruelty” and taking up popular causes such as complaints about water shortages or electricity tariffs to win status as local leaders.
3. “Peru Police Capture Shining Path Leader”, AFP, 31 October 1998 already referred to above.
4. “A decision that worries the Agents in Charge of Fighting Terrorism”, Expreso, 5 February 1999, which, according to the partial English translation

supplied, refers to the continued existence of the Sendero and the officers in charge of the police unit handling terrorism not being prepared enough to face terrorism.

5. "Peruvian family living in Pender fears they'll be killed if sent back" Morning Star, 9 March 1998, relating to a former Peruvian policeman who served in jungle areas in anti terrorist units and fled Peru in 1989 after receiving threats by letter and over the telephone.
6. "Peru Human Rights since the suspension of Constitutional Government" Amnesty international, May 1993, pages 38-39.

Other country information contained on the RSB file, apparently put forward by counsel, refers to the Sendero executing the mayor of a town in the northern Amazon jungle ("Mayor Executed"; New Zealand Herald, 11 August 1998, page 182 of RSB file), an announcement by the Sendero of its intention to escalate conflict with the government and members being located in jungle regions ("SL vows escalation of conflict" United Communications Group, 3 September 1998, at page 181 of RSB file) and, finally, partial translations of articles appearing in a publication "Expreso", referring to Sendero activities in jungle regions (5 and 11 October 1998) and a warning from an unidentified person that while Sendero leaders had been arrested, members were still active (5 February 1999) (partial translations on pages 191 - 192 of the RSB file).

The Authority has considered all of the country information put forward by Counsel prior to the appeal hearing. However, in the Authority's view, this country information does not contradict and, indeed, is very much consistent with the country information referred to by the Authority above, in that, overall, as a result of the arrests of top leaders of the movement, the threat posed by the Sendero is substantially reduced and its activities are confined to operations in jungle regions or the slums of Lima or other unspecified large cities where members are attempting to rebuild networks for the group.

Against this background the Authority must consider the fact that the appellant's husband's last encounter with the Sendero was over five years ago and the most recent evidence put forward that the Sendero have any interest in him is a telephone call to his father in February 1996. Although the appellant maintained that no further calls were made as her father in law told the caller that the appellant's husband had left Peru, given the Sendero's presence in Lima is

confined to shanty towns where they are, without resorting to violence, attempting to rebuild their “shattered” networks, the Authority has some doubts as to whether the appellant’s husband would still be of interest to that group and whether the group could locate him if he now returns to Lima. However, given both his and his brother’s past work for the police, the Authority is willing to extend a very liberal benefit of the doubt to the appellant and find that there is a real chance that her husband will be located and persecuted by the Sendero. In view of the serious nature of past encounters her husband and other family members had with the Sendero, the Authority can not rule out the possibility that the appellant could also be harmed in any attack on her husband or even targeted because of her association with her husband should she return to Lima. Accordingly, although the Authority regards such a possibility as remote the Authority is willing to extend the benefit of the doubt to the appellant and find that there is a real chance that in view of her association with her husband she will suffer persecution if she returns to Lima. However, as regards the rest of Peru, the Authority is of the view that since the appellant and her husband left Peru there has been a substantial change in circumstances as referred to by the High Court in Australia in the Chan Case, and, as discussed below, the Authority does not accept the appellant’s fear is well-founded for the whole of Peru.

The Internal Protection Alternative

At the time of the appeal hearing, the Authority discussed with the appellant the issue of relocation as that principle is discussed in Refugee Appeal 523/92 (17 March 1995). According to that decision, the Authority must decide whether the appellant can genuinely access domestic protection which is meaningful in another part of that person’s country and whether it is reasonable, in all the circumstances, to expect the appellant to do so. Since the conclusion of the appeal hearing, the Authority has reviewed its approach on this matter, and released its decision in Refugee Appeal No. 71684/99 (29 October 1999) in which the Authority adopts the internal protection alternative, a principle comprised of the three issues specified above. By letter dated 11 November 1999, the Secretariat forwarded a copy of the Authority’s decision in Refugee Appeal No. 71684/99 to counsel and invited her to comment on the availability of the internal protection alternative to this appellant. Counsel provided comments in submissions dated 19 November 1999 and these are dealt with below.

In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?

At the appeal hearing the Authority put to the appellant that, in the light of the country information referred to above and as her husband's last encounter with the Sendero was five years ago, there was not a real chance that her husband would be located by the Sendero if the family lived in another part of Peru away from Lima such as the southern part of the country. The appellant could only reiterate the history of her husband's problems with the Sendero in the past and said she would not be safe anywhere in Peru. The appellant also claimed that the government only mentions people arrested and not the real number of people killed, as the government did not wish to alarm the public. In support of this claim, counsel referred the Authority to the decision in Refugee Appeal No. 1945/93 (14 December 1995) in which the Authority stated that the Peruvian government controlled the media and that the claims made by the government that the Sendero had been crushed were not confirmed by independently reported facts. The Authority notes this decision is now almost four years old and the recent country information available to the Authority shows that the Sendero has been substantially weakened as has the threat posed to civilians by that group.

In her written submissions lodged at the conclusion of the appeal hearing, Counsel referred the Authority to a number of the Authority's previous decisions concerning Peruvian appellants who had been granted refugee status on the basis of a fear of persecution by the Sendero. Three of these decisions were published in 1995 and another in December 1996, all well before Refugee Appeal No 2511/96, the decision in respect of the appellant's husband's appeal which was published on 6 March 1997. Accordingly the Authority prefers the analysis of the country information in Refugee Appeal No 2511/96, being more recent in time. The only remaining decision referred to by Counsel was Refugee Appeal No 2498/95 (20 March 1997). However, this decision was subsequently quashed by the Authority in Refugee Appeal No. 70708 and 70710/97 (17 November 1998). Also, the decision in Refugee Appeal No 2498/95 is well over two years old and this Authority has the advantage of being able to consider the most recent information on the Sendero.

Following the conclusion of the appeal hearing, by letter dated 21 October 1999, counsel provided further country information which she submitted demonstrated that the Sendero continued its activities and that there was a real chance that the

appellant and her family would suffer persecution if they returned to Peru. The articles enclosed were in Spanish and only partial English translations were provided. Included were five articles dated 10 October 1999 from "El Sol", "El Comercio" and "El Peruano" referring to the attack on 5 October 1999 by Sendero forces led by "Comrade Alipio" on a number of Peruvian Military Personnel in a remote jungle region and also the continued operations of "terrorist criminal columns" in jungle regions. Also included were partial translations of articles from the same publications referring to the difficulty experienced by the government in arresting Comrade Artemio, another Sendero leader.

After receiving this information, the Authority had further searches conducted of available information on the position of the Sendero in Peru and further country information made available to the Authority refers to the arrest in a remote jungle area of Oscar Ramirez Durand, alias Comrade Feliciano, a former member of the Sendero Central Committee and Comrade Artemio becoming the Sendero leader following Durand's arrest ("Artemio takes control of Sendero", Latin America Regional Reports; Andian Group; 27 July 1999). A further report refers to the death of "Comrade Manuel" in a jungle province in the north-east of Lima, this person being described as one of a "dwindling" number of Sendero rebel leaders and the right hand man of Comrade Artemio ("Shining Path Leader killed by Peruvian Military Units"; The San Diego Union Tribune; 18 August 1999). Another report refers to Comrade Artemio as being accompanied by a column of about one hundred men moving about villages in Huallaga in central Peru ("Paper names new leader of Shining Path Rebel Group"; BBC Summary of World Broadcast; 18 September 1999). Further reports refer to the ambush by the Sendero of an army column in a jungle region of west Peru ("Shining Path Ambush, MRTA attack mark return of rebel violence in Peru", Agence France Press; 5 October 1999, this appears to be the same attack as that referred to in the country information supplied by Counsel) followed by a reprisal attack by one thousand soldiers from the Peruvian army ("Landmine injures ten Peruvian soldiers"; Xinhua News Agency; 9 October 1999) leading to the arrest of Comrade Alipio, the Sendero leader responsible for the ambush on 5 October 1999 ("Sources say Shining Path Commander arrested in military operations"; BBC Summary of World Broadcast; 19 October 1999).

Copies of this information were provided to Counsel by the secretariat by letter dated 11 November 1999 and in the same letter Counsel was also provided with copies of the following:

1. Extract from "Background Information on Foreign Terrorist Organisations"; Officer of Counter Terrorism; United States Department of State; 8 October 1999 according to which the capture of Sendero leader Abimael Guzman was a major blow to the group as were the arrests of other leaders in 1995, defections and the President's Amnesty Programme for repentant terrorists. According to this publication, the Sendero conducted fewer attacks in 1998 which were generally limited to rural areas with a few violent attacks in Lima.
2. Extracts from the United States Department of State "Country Reports on Human Rights Practices for 1998; Peru", April 1999, pages 738, 740 and 750 which provide that the threat posed by the Sendero in 1998 continued to decline in overall terms notwithstanding isolated attacks on a man in Lima in March 1998 and the murder of the Mayor of a town in Huallaga Province in August 1998. The report also refers to the Sendero occasionally interrupting the free movement of persons and constructing road blocks in the sections of the upper Huallaga Valley and in the Ayacucho area, which the Authority understands to be in Central Peru.
3. "Minister Denies Existence of "Terrorist Outbreak""; BBC Summary of World Broadcast; 13 October 1999, according to which the Peruvian Foreign Minister Fernando De Trazegnies said that the following the ambush on 5 October 1999 (as referred to above) the authorities must remain on alert but there has been no outbreak of terrorist activities.

In the Authority's view, this further country information only confirms that as time goes on, Sendero activities remain confined primarily to jungle areas, their leaders continue to be arrested and the threat posed by the Sendero to people such as the appellant's husband and the appellant herself continues to diminish significantly. In the Authority's view, this information clearly indicates that should the appellant and her husband return to Peru and live in a larger city or town, away from Lima, and, by way of example, in the southern part of Peru, there being no evidence before the Authority of Sendero attacks in urban areas in that region, there is not a real chance the Sendero will be able to locate them and subject them to persecution. The only evidence before the Authority to suggest that the Sendero may operate in urban areas in the south is the reference in one article "Leading Peruvian Militant Captured" (the Financial Times, 23 April 1998) which refers to the Sendero being present in the shanty towns of Lima and "other big cities" where

they are trying to re-establish networks through what appears to be political advocacy on behalf of the inhabitants of those places. In the Authority's view this sole reference to other unnamed cities does not mean the appellant cannot live safely in the south when balanced against all of the other country information before the Authority to the effect that Sendero activities are confined to jungle regions in the central, west and north of Peru and the shanty towns of Lima, Sendero leaders continue to be arrested and the organisation's networks are shattered and furthermore in the absence of any reports of attacks by the Sendero in urban areas in the south of Peru.

The Authority, through the secretariat's letter of 11 November 1999, invited Counsel to comment on the above country information. In submissions dated 19 November 1999, Counsel submitted that the further country information relied on by the Authority mentioned above indicated that the Sendero was rebuilding and would "eventually" target urban institutions and past and present enemies such as the appellant's husband. The Authority rejects this submission as the Authority must decide whether at the date of determination there is a real chance the appellant and her husband will suffer persecution. In view of the country information referred to, while the Sendero may still exist, the threat it poses is much diminished and Counsel's submissions that eventually the appellant's husband will be targeted are mere speculation and fall well below the level of a real chance.

Counsel submitted that Peruvian politicians, particularly the President, attempt to downplay the strength of the Sendero. However, these assertions are unsubstantiated and do not provide any sound basis on which to give the Authority the numerous reports referred to above which clearly indicate that with the arrests of its leaders the threat posed by the Sendero continues to diminish such that the appellant's husband is not at risk if he lives in the South of Peru

Counsel referred to comments in the report from the Department of State Office of Counter terrorism to the effect that the Sendero has been engaged in bombing campaigns and assassinations. However these comments are made as part of a general description of the group itself and Counsel ignores the comment made in that report that the Sendero has been weakened by the arrests of its leaders and conducted fewer attacks in 1998 which were limited to rural areas and a few attacks in Lima.

Counsel claimed that the appellant could not live in a rural area as although she would not be targeted by the Sendero because of her husband she would be the victim of a random attack by the Sendero. Even if this is likely (and the Authority is satisfied it is not) such claimed persecution cannot be said to relate to any Convention ground when the anticipated attack is random. The Authority is of the view that as the Sendero appears to be predominantly active in the jungles of the north, central and west of the country, the appellant could safely live away from those areas.

Counsel then submitted a number of articles which mainly refer to the attack by the Sendero on 5 October on a unit of the Peruvian military in a jungle region. Most of these articles had been previously submitted by her and have been referred to above. As concerns the attack on 5 October, as noted above, the military made a counter attack leading to the arrest of another leader of the Sendero who was also the person who led the initial attack on the military. Accordingly, these articles do not assist the appellant. The articles also refer to difficulties in apprehending comrade Artemio and an allegation made by a Peruvian congresswoman that "protecting terrorists became fashionable". It is not clear to whom this allegation was made. At any rate this matter and the fact Comrade Artemio remains at large, do not in any way lead the Authority to alter its finding that given the substantially weakened state of the Sendero as discussed above, there is not a real chance the appellant's husband will be pursued or located by the Sendero if he lives in a city in the south of Peru.

Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?

There is no country information before the Authority that in other parts of Peru, with the exception of jungle regions, where the Sendero remains active albeit on a decreased basis, that there exists any form of persecution or particularly serious harm which might give rise to the appellant being forced to return to Lima.

Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

As Peruvian nationals, the appellant and her family will have the benefit of access to the same basic norms of civil, political and socio economic rights, afforded to

any other Peruvian national. They will be accorded the minimal standard of effective protection by the Refugee Convention itself.

At the appeal hearing Counsel argued that it was not reasonable to expect RQ to live in another part of Peru in view of his emotional state following the shooting of his father. Whatever the emotional state of RQ, for the reasons given above, it is clear that the appellant herself can genuinely access domestic protection which is meaningful, by living in another part of Peru namely, the Southern region. Although the Authority does not need to determine the matter, in our view, on the evidence before it, for the same reasons, RQ can also genuinely access domestic protection which is meaningful by living in another part of Peru with the appellant and her family. RQ's emotional state does not rebut the presumption that the internal protection alternative is available to him.

CONCLUSION

The Authority concludes that because the appellant can genuinely access domestic protection which is meaningful, there is an internal protection alternative available to her within the Republic of Peru. It follows that she is unable to satisfy the Convention requirement that she not only have a well founded fear of persecution for a Convention reason, but also that she be unable or, owing to such fear, be unwilling to avail herself of the protection of her country.

We find that 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.

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Member