

**0906906 [2010] RRTA 28 (19 January 2010)**

**DECISION RECORD**

**RRT CASE NUMBER:** 0906906

**DIAC REFERENCE:** N98000308

**COUNTRY OF REFERENCE:** Colombia

**TRIBUNAL MEMBER:** Ms Philippa McIntosh

**DATE:** 19 January 2010

**PLACE OF DECISION:** Sydney

**DECISION:** The Tribunal affirms the decision not to grant the applicant a Protection (Class AZ) visa.

## **STATEMENT OF DECISION AND REASONS**

### **APPLICATION FOR REVIEW**

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Citizenship to refuse to grant the applicant a Protection (Class AZ) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant, who claims to be a citizen of Colombia, arrived in Australia and applied to the Department of Immigration and Multicultural Affairs for a Protection (Class AZ) visa. The delegate decided to refuse to grant the visa and initially notified the applicant of the decision and his review rights by letter. As the matter was affected by the decision in the Srey case (*Chan Ta Srey v MIMIA* (2003) 134 FCR 308) the delegate renotified the applicant of the decision by letter.
3. The delegate refused the visa application on the basis that the applicant was not a person to whom Australia had protection obligations under the Refugees Convention.
4. He applied to the Tribunal for review of the delegate's decision.
5. The Tribunal finds that the delegate's decision is an RRT-reviewable decision under s.411(1)(c) of the Act. The Tribunal finds that the applicant has made a valid application for review under s.412 of the Act.

### **RELEVANT LAW**

6. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. In general, the relevant criteria for the grant of a protection visa are those in force when the visa application was lodged although some statutory qualifications enacted since then may also be relevant.
7. Section 36(2) of the Act, as in force before 1 October 2001, provided that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom Australia has protection obligations under the 1951 Convention Relating to the Status of Refugees as amended by the 1967 Protocol Relating to the Status of Refugees (together, the Refugees Convention, or the Convention).
8. Further criteria for the grant of a Protection (Class AZ) visa are set out in Part 866 of Schedule 2 to the Migration Regulations 1994.

### **Definition of 'refugee'**

9. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any 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.

10. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji Ibrahim* (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1 and *Applicant S v MIMA* (2004) 217 CLR 387.
11. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person. These provisions were inserted on 1 October 2001 and apply to all protection visa applications not finalised before that date.
12. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
13. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve “serious harm” to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression “serious harm” includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant’s capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
14. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors. However the motivation need not be one of enmity, malignity or other antipathy towards the victim on the part of the persecutor.
15. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase “for reasons of” serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
16. Fourth, an applicant’s fear of persecution for a Convention reason must be a “well-founded” fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a “well-founded fear” of persecution under the Convention if they have genuine fear founded upon a “real chance” of persecution for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A “real chance” is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.

17. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence.
18. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

### **CLAIMS AND EVIDENCE**

19. The Tribunal has before it the Department's file relating to the applicant. The Tribunal also has had regard to the material referred to in the delegate's decision, and other material available to it from a range of sources.
20. The applicant appeared before the Tribunal to give evidence and present arguments.
21. The applicant was represented in relation to the review by his registered migration agent.
22. Information provided by the applicant to the Department
23. In brief the applicant claimed that he had been a supporter of the UP, a political party in Colombia. In the 1990's he had witnessed a crime by (right-wing) paramilitaries in City B and gave information about it to the police. The perpetrators were jailed. They were released a few years later. The applicant was threatened and assaulted by them when they were released. A few years later he was involved in an accident which he believed was intended to kill him. The police did not act on his complaints. He left Colombia that same year and ever since had been in Australia. He feared further reprisals.
24. Details of these claims were as follows:
25. In biographical details on the protection visa application forms (completed in the 1990's) his age. He was born in Town A in the Province A in Colombia. He was ethnically a "Mestizo (Spanish and South American Indian)" and was a Pentecostal Christian. He was not married. He had no family members in Australia and had siblings in Colombia. He had undertaken a number of years education in Colombia and had a qualification.
26. From birth to the early 1990's he had lived at a single address in Town A in Province A. From then until a few years later he had lived at a single address in City B [approximately several hundred kms away]. From then to when he came to Australia he had lived at a single address in the town of City C in Province A [several kilometres from Town A].
27. *[Information about applicant's work history deleted in accordance with s.431 as it may identify the applicant].*
28. In a handwritten statement attached to the protection visa application forms he wrote that while he was working at Place A, a bomb exploded. He was injured. He recognized the people who planted the bomb, who were known to him personally and who he later identified as members of the local police force. These people were acting as members of a paramilitary group that was acting against the Place A owners, whom it was subsequently suspected were members of the drug trafficking Cartel B. Place A was a front as a legitimate business. He

said that he did not know the bombers personally but recognised them because they lived near him.

29. He claimed that it was only when he gave information to the investigating police that he became aware that the bombers were police officers. Immediately after identifying the bombers he began to receive threatening telephone calls telling him to change his evidence, saying that he was mistaken and that he did not recognize any of the bombers. On a few occasions, all of which occurred within a few days of the bombing, he was picked up by a police patrol with a few officers, although the officers in each case were different. He was driven to the outskirts of town and threatened. They told him to withdraw his evidence against their colleagues or he and his partner, whose address they knew, would "suffer the consequences". On the last occasion he was physically assaulted.
30. He could not report these events to the police or make a formal complaint because it was the police who were persecuting him. His partner panicked and immediately went to Country Z. Their relationship ended.
31. He claimed that he began to change residence "regularly" He eventually found out that the paramilitary police had been "condemned", for other crimes, to 25 years in jail. After that things became calm again that he was not troubled until a few years later when the men were released from prison. By that time he had moved from City B to City C, although his bank accounts remained in City B under a City B address. A few months later he opened a bank account in City C using his City C address. These men must have traced him through it because soon after an incident occurred. He was returning home in his vehicle and had stopped at an intersection A man got out of a "secret service vehicle" which had stopped behind him and fired at least one shot at him. He fell to the ground then took his vehicle and fled. He was going so fast that he crashed into the back of another vehicle and lost consciousness. When he awoke he was surrounded by witnesses. They told him that men pulled up, got out of their vehicle and stood looking at him for a time. The witnesses thought they were going to take him to hospital as he was bleeding profusely but the men got back in their car and drove away. He realised later that they probably thought he was dead. He was taken to hospital by transport police. He remained there "for a time" after his wounds were treated. On his release he remained "in hiding" at his home. He then decided to come to Australia, using the visa he had obtained in case anything happened after he learned the men had been released from jail. [According to Departmental records, the visa was granted before this incident]. He left Colombia legally through the airport in City B.
32. He wrote that he was seeking political asylum because if he returned to Colombia his life was in danger.
33. He feared that as soon as he landed at the airport the men who tried to assassinate him would find out he was back. They would do so through the sophisticated intelligence network which existed among the paramilitaries, the police and other government authorities, and he would be tracked down and killed as a reprisal for not retracting his evidence, and because they feared he could give new evidence against them because of their last attack on him. The people he feared were the same men or their paramilitary colleagues who had previously attempted to assassinate him. He did not think the Colombian authorities could or would protect him if he returned because they would not protect anyone who was not a high government official or important person, and they protected their own comrades or ex-comrades.

34. Evidence submitted to the Tribunal
35. In a statutory declaration made by the applicant he reiterated many of these claims. However there were also some significant differences. Firstly, he claimed that he had been a sympathiser and supporter of the Patriotic Union party (UP) when he was younger and had attended many of their meetings and rallies. The party was the target of assassinations and killings by drug lords, proto-paramilitary groups and some members of the government's armed forces. The party eventually declined and virtually disappeared.
36. Of the bomb blast in the 1990's, he said that he and his partner, both of whom were working at Place A, were interviewed by police on several occasions. When asked if they had seen any "suspects" enter Place A that day, they told the police that said they had. This was "the person who used to attend UP meetings and we have seen him at such meetings a few times". They suggested the police contact the UP office for more information. As a result it was established that the person was from a paramilitary group and that he had infiltrated the UP.
37. This incident revealed to the applicant that the paramilitary group knew that he was a sympathiser and supporter of the UP, and also that he knew of the atrocities committed by the paramilitary group. He received threatening telephone calls from what he believed were members of the paramilitary group that he must shut up or would face the consequences. He and his partner reported these threats to the police but they disregarded them.
38. He claimed that the suspects were held in custody for a few years and released but were not charged and "seemed not to be convicted".
39. He further claimed that later he was abducted and taken to an unknown place, where he was asked to prepare a list of members and sympathisers known to him. He was beaten up and abandoned.
40. He claimed that as a result of this he gave up his job and moved to City C where he lived for a few years until coming to Australia. Meanwhile his partner moved to Country Z and the two lost contact.
41. He further claimed that later he was on his way home in a vehicle when he noticed another vehicle close behind him. In trying to avoid it he was involved in a head-on collision. He was hospitalised for a couple of weeks. The police did not catch the perpetrators and said it was an accident. The applicant believed by "intuitive feeling" that it was related to paramilitary groups. He said that witnesses to the accident told him that the people in the other vehicle were carrying weapons and "stretched their necks to see whether I was still alive". He thought they assumed he might have died so left in a hurry without bothering to take any further action.
42. He said that many years had passed but the fear is still haunted him. He feared he would be hit, kicked and killed if he returned to Colombia.

#### The Tribunal hearing

43. The applicant gave oral evidence that his siblings were both now living in City C They were each married and had their own families. [*Information about siblings' employment deleted in accordance with s.431 as it may identify the applicant*].
44. He had no other close family members in Colombia.

45. He gave his accommodation history as follows. He was born in the town of Town A in City C and lived there for quite some time. He had then moved to City C to and had lived there for a few years. He then moved to City B and lived there. In City B he had lived at a couple of addresses in succession, the first for about several months and the second until his return to City C. On his return to City C he had lived with his sibling for several months in Town A, until "the last attempt against" him. He had a job in Place B and had lived on the premises, but had stayed at his sibling's place on weekends for about more than a year.
46. As to why he had written only one address in City B on the protection visa application form he said that that address was the second one at which he had lived. As to why he had also written that he was living in City B until a certain time he said he was not sure which date was right.
47. *[Information about applicant's work history deleted in accordance with s.431 as it may identify the applicant]*.
48. As to whether he had earned money in any way apart from working in Place B after he returned to City C, he said he had not. As to why he had written that he worked in a different occupation, he said that he recollected he had also done that.

1990's bombing

49. The Tribunal asked the applicant what information he had given the police about the bombing. He said that he and his partner worked there. The police had interviewed everyone. When his partner was on duty one morning she recognised a person she had seen at UP meetings. The UP had separated from FARC, but there were still "rogue elements" who went to the UP meetings. He and his partner had not associated with him but had noticed him a few times. She was surprised to see him accompanying a guest that day, and had rung the applicant about it. They thought he might have been showing a militant around the city. The explosion went off that evening, when the applicant was on duty. The next day they found out that the guest's room had had the bomb in it. This was the account they told police.
50. He did not give evidence in court and gave no written statement. He was interviewed a few times shortly after the bombing, as were other staff. He and his partner said nothing to the director of Place B about recognising the man.
51. He did not know where the trial was held. The applicant just told police they should talk to the UP and the police had done so, as a result of which the applicant was told that the man was an infiltrator, a FARC person who wanted to discredit the UP. Although the press said that he was in the ELP, the UP told the applicant that he posed as a FARC person but was probably a member of the paramilitary. The applicant thought that he was probably in FARC. He never found out this man's name. He said that a couple of people were taken into custody - the above man and another person.
52. He said he had no documentary evidence that the bombing had occurred or that he had assisted the police.
53. He confirmed the Tribunal's evidence from other sources that there was a spate of bombings of places in City B at that time. He said he thought that the paramilitaries were responsible for them but were trying to lay the blame on FARC in order to justify the continued crackdown.

54. The Tribunal reminded the applicant that in his protection visa application he had stated that he recognized the bombers because they lived nearby, but that he did not know they were police officers. Asked to explain why he had not mentioned recognising anyone from UP meetings, he said that he had given the details in his statement through an interpreter, so was planning to explain about the UP at the interview with the Department. He conceded that it was an important matter to omit from his written claims. He said he had not planned to apply for a protection visa and did not know refugee law.
55. The Tribunal told the applicant that because there was no mention of the UP in his written statement to the Department at all, it was difficult to believe this aspect of the story. The Tribunal offered him a brief adjournment to consider his explanation. On resumption of the hearing the applicant told the Tribunal that the truth was that he had not belonged to the UP. He had gone to a few meetings but that was all. He was only a sympathiser.
56. He went on to say that it was true he had worked in Place A and the incident had happened. He and his partner had given information to the police that she knew who was responsible. The police caught the culprits, and did tell them the applicant and his partner were the source of their information. While both were still working there, his partner received threatening telephone calls, and the applicant himself received one such call. The callers said "keep your mouth shut or we'll kill you", and told the applicant that they knew about his family and all about him. After this there were no telephone calls.
57. Later he was abducted and threatened, but was not beaten up. He remained at Place A and nothing else happened.
58. About a couple of years after the incident, they found out that the bombers had been released, so became really scared. People were being killed at that time, so because his partner had friends in Country Z she moved there that year. The applicant was reluctant to go immediately, in part because he considered that Country Z exploited Colombia.
59. He said it was his view that the bombers had been paramilitaries. In his opinion if they harmed him it would be for revenge. He was unsure if they were aware he supported the UP.
60. The Tribunal put to him that ever since the bombers became aware that the applicant had given information to the police, they could have sent someone to harm him, despite the bombers themselves being in detention. He agreed that they could have done so and that they had not.
61. He said that he had changed jobs, then had gone back to City C from City B The accident had happened later.
62. Invited to describe the accident, he said he was in his vehicle and was heading home. There was another vehicle behind him. He changed lanes but the vehicle kept "pushing up" behind him. The driver was putting people at risk. There was an intersection ahead. The applicant decided to get ahead of them, but had a head-on collision with another vehicle. He was flung several metres from his vehicle and was unconscious. People told him that the people in the other vehicle had weapons. The occupants had looked at him and then driven off. He was then taken to hospital.
63. He agreed that if the bombers had wanted to kill him, they could have done so at his home or somewhere else private at any time over the years.

64. The Tribunal put to him that, having considered this account, it appeared that he had suffered no intentional harm since his alleged abduction and that the accident was simply an accident. The applicant said that he agreed with this interpretation of events.
65. Of his current circumstances, he told the Tribunal that he had been living with his partner in Australia since the 1990's. However she was not a permanent resident. He said that he has worked in several positions in Australia. He had worked hard in Australia.
66. He said he had not been involved in any political activities in Australia. As to whether he would want to become involved in politics if he returned to Colombia, he said he did not intend to do so and that the UP was "dead".
67. Invited to add anything further he wished, he said that when he first arrived in Australia he knew of some other Colombians who had applied for protection visas. They had given "fake documents" to the Department and had been granted protection visas.
68. Evidence from other sources
69. Colombians who witnessed or were victims of paramilitary violence
70. The 2009 Human Rights Watch (HRW) annual report for Colombia states that the victims of the paramilitary, along with other human rights and advocacy groups, are "frequently the targets of threats". No reports were located by Tribunal researchers regarding the situation for individuals who gave evidence against paramilitaries an extended period of time ago. Reports indicate however, that right wing paramilitaries continue to commit human rights abuses and killings in Colombia (Amnesty International 2008, *'Leave us in peace!' Targeting civilians in Colombia's Internal Armed Conflict*, 28 October, pp. 13-18 <http://www.amnesty.org/en/library/asset/amr23/023/2008/en/65b11bee-a04b-11dd-81c4-792550e655ec/amr230232008eng.pdf> – accessed 3 November 2009; International Crisis Group 2008, *Correcting Course: Victims and the Justice and Peace Law in Colombia*, Crisis Group Latin American Report No. 29, 30 October, p.13 [http://www.crisisgroup.org/library/documents/latin\\_america/recting\\_course\\_\\_\\_victims\\_and\\_the\\_justice\\_and\\_peace\\_law\\_in\\_colombia.pdf](http://www.crisisgroup.org/library/documents/latin_america/recting_course___victims_and_the_justice_and_peace_law_in_colombia.pdf) – accessed 3 November 2009; UN Commissioner for Human Rights 2008, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Colombia*, United Nations General Assembly A/HCR/7/39, 29 February, pp. 17 & 19; Human Rights Watch 2009, *World Report – Colombia*, 14 January [http://www.hrw.org/sites/default/files/related\\_material/colombia\\_0.pdf](http://www.hrw.org/sites/default/files/related_material/colombia_0.pdf) – accessed 3 November 2009; Freedom House 2009, *Freedom in the World – Colombia (2009)*, 12 January <http://www.freedomhouse.org/template.cfm?page=22&year=2009&country=7587> – accessed 3 November 2009; US Department of State 2009, *Country Reports on Human Rights Practices 2008 – Colombia*, 25 February, introduction).
71. An Amnesty International report from 2008 states that 10% of demobilised paramilitaries have "qualified for inclusion in the Justice and Peace process, which grants them significantly reduced sentences as well as other procedural benefits in return for disclosure ("full" confessions) about their involvement in human rights violations and reparations to their victims" The report states that individuals seeking redress for paramilitary violations through the Justice and Peace process have been subject to intimidation and murder. The report states that "at least 15 people associated with the Justice and Peace process have been killed and around 200 threatened". The report also states that in September 2007 "the government

created a protection programme for victims and witnesses participating in the Justice and Peace process” (Amnesty International 2008, pp. 15, 17-18).

72. An ICG report from 2008 comments on the situation for victims of the paramilitary who have participated in the Justice and Peace process, saying that “threats against victims are rising” and that “five victims have been killed since July 2005 because they denounced crimes committed by former paramilitary groups” The report states that in August 2007 a victim protection program was established but that “victims’ scant trust in security forces in various regions is likely to hinder progress”. According to the report “victims have filed 256 individual requests for protection” (International Crisis Group 2008, p.13).
73. Paramilitary groups are still active in the form of criminal gangs. Some of these criminal groups undertake “traditional” paramilitary operations, some undertake drug related activity and others operate both drug and traditional operations. NGOs estimate that there are between 3,000 and over 6,300 combatants involved in armed groups. The report states that “despite government claims that these are simply criminal gangs, the evidence suggests that the victims of such groups are the same human rights activists, trade unionists and community leaders targeted in the past by paramilitary groups” (Amnesty International 2008, pp. 13- 14).
74. The 2009 HRW annual report for Colombia reports on the continued targeting of civilians by paramilitary successor groups. The report provides the following information:

Successor groups to paramilitaries, which never fully demobilized, appeared increasingly active, threatening and killing civilians, including trade unionists and human rights defenders.

...Colombia’s paramilitaries are responsible for crimes against humanity and thousands of other atrocities. They have also amassed enormous wealth and influence, in part through mafia-style alliances with members of the military, politicians, and businesspeople.

...The Uribe administration claims that paramilitaries no longer exist. While more than 30,000 individuals supposedly demobilized, Colombian prosecutors have turned up evidence that many of them were not paramilitaries at all, but rather, civilians recruited to pose as paramilitaries. Law enforcement authorities never investigated most of them.

Meanwhile, new armed groups often led by mid-level paramilitary commanders have cropped up all over the country. The Organization of American States (OAS) Mission verifying the demobilizations has identified 22 such groups, totaling thousands of members. The groups are actively recruiting new troops, and are committing widespread abuses, including extortion, threats, killings, and forced displacement. In Medellín, for example, after a steady decline in official indicators of violence, there has been a surge in homicides, apparently committed by these groups.

...Human rights defenders, journalists, local community leaders, and victims of paramilitary groups, as well as trade unionists, are frequently the targets of threats.

...

The Ministry of Interior has a protection program for journalists and trade unionists, and during 2008 it established a separate program for victims presenting claims in the context of the paramilitary demobilization process. In May the Constitutional Court demanded a thorough review of this program, which many victims’ groups consider ineffective (Human Rights Watch 2009).
75. The US Department of State report on human rights practices in Colombia for 2008 states that the AUC (United Self Defense Forces of Colombia) paramilitaries and “new illegal

groups” have continued to commit human rights abuses including the “subordination and intimidation” of witnesses. The report states that:

The AUC demobilization led to a reduction in killings and other human rights abuses, but paramilitaries who refused to demobilize and new illegal groups continued to commit numerous unlawful acts and related abuses, including: political killings and kidnappings; physical violence; forced displacement; subornation and intimidation of judges, prosecutors, and witnesses; infringement on citizens’ privacy rights; restrictions on freedom of movement; recruitment and use of child soldiers; and harassment, intimidation, and killings of human rights workers, journalists, teachers, and trade unionists (US Department of State 2009, introduction).

76. In 2008 *EFE News Service* reported that “a pair of armed men killed an Afro-Colombian community leader who was a witness in trials involving former commanders of right-wing paramilitary death squads”. According to the report the victim was “a witness in trials of ex-chieftains of the AUC militia federation”. The report states that the “Inter-American Commission on Human Rights had demanded that the Colombian government protect him” but that the commission claim bodyguards assigned to him were not present at the time of the murder (‘Colombian who testified against militias slain’ 2008, *EFE News Service*, 17 October)
77. Explosion at Place A in City B
78. No information was found by the Tribunal regarding an explosion or attack on Place A in City B.
79. Ex-UP supporters
80. The 2009 *Political Handbook of the World Online Edition: Colombia* states that the Patriotic Union (UP) was created in 1985 and acted as the “reputed political arm of the Revolutionary Armed Forces of Colombia (FARC)” Reports indicate that following its creation the UP was targeted by right-wing paramilitary units, who murdered between 2,000 and 3,000 members including political candidates. Garry Leech, the editor of the *Colombia Journal* stated that “by 1990 the Patriotic Union had basically been eradicated, the remaining members have either fled into exile or they’ve fled into the jungles and joined the FARC” (Banks, A.S., Muller, T.C., Overstreet, W.R & Isacoff, J.F. (eds) 2009, *Political Handbook of the World Online Edition: Colombia*; CQ Press, Washington, pp. 271 – 278 [http://library.cqpress.com/phw/document.php?id=phw2009\\_colombia&type=toc&num=40](http://library.cqpress.com/phw/document.php?id=phw2009_colombia&type=toc&num=40) – accessed 4 November 2009; ‘Colombia’s most powerful rebels’ 2003, *BBC News*, 19 September <http://news.bbc.co.uk/2/hi/americas/1746777.stm> – accessed 4 November 2009; ‘Betancourt: Bolivia’s Morales proof the left can reach power democratically’ 2008, *EFE News Service*, 6 December; ‘The FARC: Colombia’s armed conflict’ 2008, *ABC Radio National*: Rear Vision website, 20 April <http://www.abc.net.au/rn/rearvision/stories/2008/2218791.htm> – accessed 4 November 2009).
81. A *BBC News* report provides the following information on the UP:

The FARC did briefly flirt with a political route to power, establishing a political party, the Patriotic Union (UP), in the late 1980s. But the UP was decimated by right-wing death squads, sponsored by drug traffickers and with links to government security forces. Some 3,000 UP members were murdered, including the UP’s 1990 presidential candidate, Bernardo Jaramillo Ossa. The political route was therefore effectively closed to the FARC and they focused on the military route to power, which they are still following today (‘Colombia’s most powerful rebels’ 2003, *BBC News*, 19 September <http://news.bbc.co.uk/2/hi/americas/1746777.stm> – Accessed 4 November 2009).

82. A transcript of an April 2008 *ABC Radio National* program provides the following citation from Garry Leech, the editor of the *Colombia Journal*:

Between 1985 and 1990, more than 2,000 members of the Patriotic Union were assassinated, including two Presidential candidates and four elected Congressmen. So by 1990 the Patriotic Union had basically been eradicated, the remaining members have either fled into exile or they've fled into the jungles and joined the FARC, and this is where that second wave of new generation of commanders in the FARC who are more urban intellectuals where they came from. That slaughter also led to the end of the peace process. By 1990 the ceasefire and the peace process was over, and the FARC again, throughout the '90s went back to waging war in the State again ('The FARC: Colombia's armed conflict' 2008, *ABC Radio National*: Rear Vision website, 20 April <http://www.abc.net.au/rn/rearvision/stories/2008/2218791.htm> – accessed 4 November 2009).

83. The UK Home Office *Operational Guidance Note for Colombia* from 2008 comments on the situation for individuals seeking asylum on the grounds of being a supporter or perceived supporter of a right or left-wing group and therefore fearing reprisals. It says that right wing paramilitary groups “continued to commit numerous unlawful acts and related abuses during 2007 including political killings”. It also states that the state’s capacity to offer protection is “limited due to the Government’s weak authority in some regions and inability to counter the influence in parts of the country of the FARC, ELN, and paramilitaries who refuse to demobilise” (UK Home Office 2009).

## **FINDINGS AND REASONS**

84. The Tribunal is satisfied, and finds, that the applicant is a national of Colombia and of no other country.
85. The Tribunal is satisfied that during the Tribunal hearing the applicant resiled from some elements of his previous account. The Tribunal is satisfied that the oral account he gave to the Tribunal after the brief hearing adjournment was a truthful reflection of his experiences and concerns, and has relied on it when considering whether he now has a well-founded fear of Convention-related persecution.
86. The Tribunal accepts that the applicant was working in Place A in City B and that, during a spate of bombings in the city during that month, Place A in which he was employed was the target of a bombing. That claim is consistent with the evidence from the Federation of American Scientists (undated) about bombings of places in the city at that time.
87. The Tribunal accepts that he, his partner and staff were questioned by police investigating the incident and that information given by the applicant contributed to the eventual apprehension of those responsible.
88. The applicant said that his partner received several threatening telephone calls, from which the Tribunal infers that she was seen by the callers as more of a direct threat to their interests as a source of information to the authorities than was the applicant. He does not claim that she was harmed in Colombia before her departure for Country Z, and the Tribunal is satisfied that she was not. However the Tribunal accepts that the applicant himself received one threatening telephone call and that, some few months after the bombing, he was abducted and threatened, although not assaulted.
89. It is not implausible that paramilitaries were responsible for the bombing and for all these threats. The Tribunal considers reliable the evidence that right wing paramilitaries were then

commit human rights abuses and killings in Colombia, and that they continue to do so (Amnesty International 2008). However the evidence from the other sources above indicates that they formed a network of individuals who acted co-operatively on many occasions. It is therefore significant that the applicant was able to continue working at the same place without any further incident of threat or harm either from the bombers or from their paramilitary associates, and that he continued to live in City B, at the address at which he had been living at the time of the bombing. Given the evidence of the paramilitaries' willingness to use violence as a first resort, and the fact that the applicant was very easy to locate, the Tribunal infers from this that he was of no interest to them after his alleged abduction.

90. That perception is not changed by the later incident in City C in which he was seriously injured. It is understandable that he had some concern that this was a targeted attack on him, given the security situation in the country and the violence of the paramilitaries. Further, the Tribunal accepts that witnesses to the incident told him the vehicle's occupants were armed. However, given evidence that many private citizens in Colombia are gun-owners (2009, Sarria, N. "Small Arms in Latin America in the Aftermath of the NACLA Study", Council on Hemispheric Affairs (Washington, DC), 18 August, <http://www.coha.org/small-arms-in-latin-america-in-the-aftermath-of-the-nacla-study/>, accessed 19 January 2010), evidence which the Tribunal considers reliable, the Tribunal does not infer that the occupants were paramilitaries. There is nothing about the incident that might reasonably indicate paramilitaries were involved, and it seems illogical, if this was a planned attack, that it would have been conducted in this particular way. He agreed that if anyone had wished to harm him, having tracked him down to City C, they would probably have done so at his home there or at least in a less public setting. Further, there would be practical difficulties in the vehicles coinciding on a public road so that an apparent accident could be engineered. The applicant himself conceded that this was probably a genuine accident. The Tribunal is not satisfied that it was an attempt to harm him by paramilitaries or anyone involved in the bombing of Place A.
91. The Tribunal considers that the applicant was at considerable risk of serious harm then. However that is some years before he left Colombia, during at least some of which time paramilitaries wanting to locate and harm him could have done so with no difficulty. He does not claim that they ever approached his family members looking for him, nor that anyone identifiable as a member of the paramilitary or connected in any way with the bombers ever threatened him during those years. The Tribunal is of the view that he was not at risk of being seriously harmed by these people at the time he left Colombia.
92. It is now some years since the bombing incident and the Tribunal is satisfied that, if he returned to Colombia now, the chance of his being seriously harmed by anyone associated with the bombing would be remote.
93. The Tribunal considers reliable that right wing paramilitary groups continue to commit unlawful acts and related abuses, including political killings (UK Home Office 2008). The Tribunal also has regard to the evidence that UP supporters and members have been targeted for serious harm in the past because of their political opinion and, as he was a UP supporter (although not a member), has considered the applicant's circumstances from that perspective. The Tribunal considers plausible, and accepts, that he did support the UP in the early 1990s. However he told the Tribunal that the truth was that he had only attended a few UP meetings, and also that he did not know if the paramilitaries or the bombers knew he supported the UP at all. The Tribunal is not satisfied that they did, or that they have since become aware of it. The chance is therefore remote that he would be persecuted on return to Colombia because of a political opinion imputed to him arising from a perception that he once supported the UP.

94. The applicant has told the Tribunal that he has not been involved in any political activities relating to Colombia since his arrival in Australia, and that he has no intention of becoming involved in any political activities if he returns to Colombia. The Tribunal accepts all this to be the case and, as the party he supported previously is no longer active in Colombia, that his not being involved in political activities in future will not arise from a fear of being harmed, but rather reflects a choice he has made for other reasons.
95. The Tribunal is satisfied that there has been no change in his circumstances or in the political or security situation in Colombia since his departure, such that he now has a well founded fear of being persecuted there for the reason of political opinion or for any other Convention reason.
96. For the above reasons the Tribunal finds that the applicant does not have a well-founded fear of Convention-related persecution in Colombia.
97. The Tribunal notes the applicant's evidence that he has been residing in Australia for over a decade, has established work here and has a partner here. However these are matters outside the Tribunal's jurisdiction.

### **CONCLUSIONS**

98. The Tribunal is not satisfied that the applicant is a person to whom Australia has protection obligations under the Refugees Convention. Therefore he does not satisfy the criterion set out in s.36(2) for a protection visa.

### **DECISION**

99. The Tribunal affirms the decision not to grant the applicant a Protection (Class AZ) visa.

<p>I certify that this decision contains no information which might identify the applicant or any relative or dependant of the applicant or that is the subject of a direction pursuant to section 440 of the <i>Migration Act 1958</i>. Sealing Officers ID: PMRT01</p>
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