[2002] UKIAT
Appeal No. HX54914-2000

Heard at **FIELD HOUSE** **MZ (PSG-Informers –Political opinion)**
Colombia CG [2002] UKIAT 02465
On 7th May 2002

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified

.....10TH JULY 2002.....

Before:

Mr. D. J. Parkes (Chairman)

Mr. M. L. James

Mr. A. G. Jeevanjee

BETWEEN

MISS MARIA DELFINA GARCIA ZUNIGA

Appellant

and

THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT

Respondent

DETERMINATION AND REASONS

1. The Appellant is a citizen of Colombia. She appeals against the determination of an Adjudicator, Mr. S. L. Batiste, promulgated on 2nd November 2001, dismissing her appeal against the refusal of the Respondent on 25th April 2000 to grant her leave to enter the United Kingdom. The Appellant had applied for asylum here but had been refused and she appealed to the Adjudicator upon asylum grounds only because the Human Rights Act 1998 was not in force at the date of decision.

2. Before us the Appellant was represented by Mr. D. H. Southey of Counsel instructed by Messrs. Glazer Delmar and the Secretary of State by Senior Presenting Officer Miss A. Green.

3. The Appellant was born in 1968, after completing her general education she first studied accountancy and then did a course in social work and finally worked in the factory owned by her family making gelatine until July or

August of 1998 when she went to live in Pereira in one of a block of four flats which had its own security officers and was situated in the middle class residential area of La Lorena. Not all the flats were occupied and the Appellant lived in her flat alone, she had a business selling high quality jeans to people of her acquaintance.

4. Soon after she moved into the flat the Appellant first met her neighbour from Flat 3, a Mr. Alcibiades who happened to be in the entrance to the building and introduced himself and explained that he was rarely at home because of his work. He passed the usual pleasantries that if there was anything that the Appellant required she had only to ask and he would assist. The Appellant herself was frequently away because of her work and so she met Mr. Alcibiades by chance on rare occasions.

5. One afternoon in August or September of 1998, said the Appellant, she happened to meet Mr. Alcibiades once again at the entrance to the building and there was a similar exchange of pleasantries and he asked if she could do something for him, that is to say by storing some boxes for him because his flat was already full. She explained that she was rarely at home and that access might be a problem for him if he wanted the boxes but he was content and he left 10 medium sized boxes with her. They were sealed, she had no idea what were the contents and she could not tell whether or not they were heavy. After they had been left in her flat for about 15 days she became concerned about how long they would remain there and asked Mr. Alcibiades whether he was soon going to take them away, but he said "not yet" and indeed persuaded her to let him leave yet another 5 boxes.

6. Things went on like this for some little while with the Appellant beginning to get anxious and when she asked what the boxes contained he simply laughed and said there was no problem and told her not to be afraid. The use of that word made her suspicious and about a week later she opened one of the boxes and found weapons which to her looked like rifles and ammunition and stationery which bore the logo of FARC. That is the Fuerzas Armadas Revolucionarias de Colombia, the Revolutionary Armed Forces of Colombia, a peasant self defence group formed in the 1950's but which emerged in 1964 as the Pro Moscow armed wing of the Colombia Communist Party. After various ceasefire agreements FARC returned, by late 1987 to a policy of "total insurrection" but in 1997 set out conditions for entering into peace talks with the government.

7. The Appellant had claimed that after her discovery of the contents of the boxes she waited for her neighbour told him that she knew what they contained and that he had been lying to her and that she needed the boxes taken away because she was in great danger. He became rude and threatening and told her that if the police came he would know that it was because she had informed them. Nevertheless he said he would take the boxes away but on the contrary two days later brought even another 4 boxes.

8. On 25th January 1999 the Appellant says that she went to visit some friends in another neighbourhood and when she returned found the block of flats surrounded by police and feeling this was because of the weapon boxes in her own flat and that Mr. Alcibiades would think that she had informed upon him and that the most powerful guerrilla group in Colombia would be after her she went to her friends to say that she needed money quickly and took a bus to Andalucia to her mother's home. That same week she claims to have received a telephone call there which was a mans voice who called her a Sapa which means an informer and he said that the matter would not end there. There was a second call taken by her mother who started crying and said that the Appellant had best leave. All this happened in January 1999. She had obtained a flight by the 3rd March 1999 to London where she arrived the following day and claimed asylum.

9. We set out that brief summary of the Appellant's account taken largely from her own statement simply in order to render this determination understandable. We do not pretend that it is a complete account, the Appellant mentioned other telephone calls and a document left at her flat by the police for example but the Appellant gave evidence orally before the Adjudicator and it is not necessary to this determination that we should go into every detail.

10. There are two issues in this appeal. The first is whether the Adjudicator was right to make a finding that the Appellant's account was in many respects not credible. The second is whether there is a Convention reason.

11. The Adjudicator concluded at paragraph 36 of his determination that taking the evidence as a whole and assuming the two letters from FARC were genuine his finding was that the police raided the block of flats where the Appellant lived to arrest a known FARC activist but they missed him. They left a search warrant in each of the four flats and would have searched all the flats if they could not find him in his own. They did not find boxes of guns and ammunition in the Appellant's flat because none were ever stored there.

12. So far as political opinion is concerned as a Convention reason Mr. Southey started with the proposition which we accept to be well established that it is sufficient if it can be shown that the Appellant was and would be in danger of persecution from FARC as a result of what that organization or those involved in the persecution perceived to be her political opinion. He referred us to the starred Tribunal decision in the case of Gomez promulgated on 20th November 2000. The Appellant in that case had investigated a victim of extortion from armed men as a result of which she claimed that she was in danger of being murdered or abducted by guerrillas whom she believed were members of FARC. Her appeal was dismissed but these cases depend upon their own facts and that is of no significance so far as this present appeal is concerned.

13. The Tribunal at paragraph 73 gave a summary of the main conclusions and we have been particularly referred to sub-paragraph vii which reads:

> To qualify as political the opinion in question must relate to the major power transactions taking place in that particular society. It is difficult to see how a political opinion can be imputed by a non-State actor who (or which) is not itself a political entity

14. Sub-paragraph ix reads:

> It is an error to try to rely on a fixed category of persons on the side of law order and justice. Reference, star wars style, to "dark horses" does not serve the interests of objective decision making. To the extent that Acero-Garces relies on such an approach it is not to be followed.

15. We were referred to paragraph 50 in which it is pointed out that Adjudicators should recognize that mixed motives, non-political and political may be involved.

16. We remind ourselves of paragraph 53 that it is also commonsense that although one may hold a political opinion, not everything one does is motivated by that political opinion.

17. We accept that the aims of FARC might be regarded, however unlawfully pursued, as political for we bear in mind, as is mentioned in paragraph 63 of Gomez, that for example in July 1998 the President elect of Colombia met with members of the FARC National Secretariat to explore ways of carrying on a fruitful dialogue.

18. Pertinent, in our view, is the view expressed at paragraph 73 xii of Gomez that even in cases involving criminal gangs or guerrillas, however, evidence of imputed political opinion cannot consist solely of the general political purposes of the persecutor. We appreciate that sub-paragraph xi points out that certain features of the current Colombian context make it more possible than otherwise that criminal elements or guerrilla organizations will view the words or actions of those they persecute as representing a political opinion. Even in a case, as is pointed out in sub-paragraph x where an Appellant can make out a Convention ground of political opinion he or she must still also establish that the persecution is on account of that political opinion.

19. There had been presented for the purpose of this appeal the judgment of the Court of Appeal in the case of Storozhenko in which a man who witnessed a motor accident in which a young girl was injured remonstrated with two drunken police officers and was injured sufficiently to need hospital attention for his trouble later received threats to withdraw his statement which threats persisted in the most sinister fashion was claimed to have been persecuted for his political opinion, that is to say that he was on the side of law and order. That submission was rejected with some force by the Court of Appeal.

20. Mr. Southey referred us to paragraph 8.3. of the Court of Appeal judgment in the case of Noune, C 2000/2669 to the effect that the motives of the persecutor may be mixed and they can include non-Convention reasons, it is not necessary to show that they are purely political.

21. It is relevant in this case to remember that the Appellant had spoken to her neighbour to the effect that she had discovered what was in the boxes and that she was afraid about them being left at her flat. It had nothing whatever to do with politics or any kind of opinion it was sheer fear of the nature of the items left in the boxes. The threats which were later received, if they were received, seem to us to be arguably at least simply that, "Do not interfere with our purposes or we can be very nasty to those who get in our way" we say using our own words to illustrate what was the nature of the threat. Put alternatively it was a threat of vengence that others might know not to cross this guerrilla group which admittedly has political aims.

22. We consider that the Adjudicator was entitled to the view, it was one which it was legitimate for him to reach that the threat to the Appellant was not by reason of any political opinion which she held or which she was believed to hold but against her as a person who was seen to have behaved in a way harmful to the terrorist activities of those involved.

23. Mr. Southey argues that the Appellant is a member of a social group of informers or witnesses. He refers us to the Tribunal determination in Montoya 00TH00161 which concerned whether a private landowner in Colombia facing threats at the hands of non-State agents was a member of a particular social group and in which the House of Lords judgment in Shah and Islam was considered. There is a basic human right he claims to act as an informer, it is part of the inherent obligation to bear witness and the status of informer is basic to the question of the protection of human rights. He points us to paragraph A 97 of the C.I.P.U. report to the effect that witnesses are not protected in Colombia. He reminds us of the principle in Shah and Islam that a social group is a group of persons all of whom share a common immutable characteristic. That characteristic must be either beyond the power of an individual to change, or so fundamental to individual identity or conscience that it ought not to be required to be changed. He refers us to a phrase in the Tribunal decision in Montoya to the effect that once one is an informer always an informer there is nothing you can do about it. That, of course, is no more than persuasive in the interests of consistency and it does not seem to us, in any event, that it was essential to the determination concerned.

24. We can understand that there are characteristics that cannot normally be changed. For example a woman in Pakistan will forever be a woman in Pakistan even if the laws for the protection of women or discriminatory against them are changed and even if the customs of that society radically change. The giving of information, however, may be a single act, it may never be repeated, someone who was willing at one time to inform or to

become a witness may become unwilling. It cannot be realistically argued, in our view, in regard to the actions of human beings that once they have acted in a certain way, still less that once they are believed to have acted in a certain way, they will forever be characterized as one of a group of those who have so acted. Whilst there are some events, such for example as becoming a Nobel Prize Winner, which might be viewed as if permanently in the present tense, - although the prize was won some years ago such a person might be referred to as a Nobel Prize Winner, - that cannot be applied in commonsense in our view to all the activities of life, to each event in the existence of each of us which makes us part of a social group with those to whom some similar event has occurred or who have been similarly involved. The world would be made up of social groups large and small by the thousands to many of which we would all belong or many of us would belong in varying numbers. We do not consider that the Adjudicator was disentitled to take the view that there was no social group such as that which was being urged upon him.

25. Finally there is the question of credibility. It is pointed out to us that the Appellant had been consistent in what she had alleged and that it was possible in the light of the country information and that the Adjudicator accepted those facts. The Adjudicator had made some positive findings of fact which was inconsistent, he suggests, with an unfavourable credibility finding in regard to those matters essential to the asylum claim.

26. We are mindful of the fact that the Adjudicator approached his task with reason. The fact that he made those acceptances illustrates that as did also the fact that at paragraph 33 of his determination he rejected the significance of two minor differences between what the Appellant said at interview and her written statement. They had been explained satisfactorily he concluded.

27. At paragraph 35 of the determination the Adjudicator set out 8 reasons why he considered that there were central issues in the Appellant's core account which undermined her credibility. Mr. Southey referred us to some of them and suggested that the Adjudicator's conclusions should not be supported. In making that submission, however, it seems to us that he said nothing more than what amounted to an expression of disagreement with what was entirely a matter of personal opinion with conclusions which upon the evidence in our view, at least, the Adjudicator was entirely entitled to reach.

28. Whether or not we are right upon the issue of Convention reason the Appellant fails in our view upon the Adjudicator's credibility findings.

29. Miss Green for her part addressed us upon the basis of the cases to which we have referred and the Adjudicator's findings and that is why we have not set out her submission at greater length.

30. We consider that Miss Green is in fact correct, this was a careful determination by the Adjudicator who in respect of the matters in issue before us and indeed in regard to the appeal as a whole came to conclusions which

upon the evidence he was entitled to reach. Having listened to Mr. Southey at his persuasive best he has in fact failed to persuade us that there is anything in the issues which he pursues sufficiently supportable to warrant interference with a determination properly considered and made upon the basis of the evidence. The conclusions of the Adjudicator are in our view sound and this appeal is consequently dismissed.

D. J. Parkes
Acting Vice-President