

REFUGEE APPEAL NO. 2507/95 Re **JEAH**  
AT AUCKLAND

Before:	R.P.G. Haines (Chairman)	
	S. Joe (Member)	
Counsel for the Appellant:	A Chauca	
Appearing for the NZIS:	No appearance	
Date of Hearing:	12 March 1996	
Date of Decision:	22 April 1996	

## DECISION

This is an appeal against the decision of the Refugee Status Branch of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a citizen of the Republic of Peru.

## INTRODUCTION

At the commencement of the hearing of this appeal, the appellant tendered in evidence three press clippings taken from Spanish language newspapers published in Peru. Two are dated Sunday 11 June 1995, the other 6 December 1995. As this evidence had been given to the appellant's solicitor only a few days prior to the hearing of the appeal, leave was granted for the appellant to submit translations on or before 19 March 1996.

It should also be mentioned that at the conclusion of the hearing, counsel for the appellant was invited to reflect on the issue whether, on the evidence tendered by the appellant, it could be said that a Convention reason for the feared persecution was present. Counsel was given leave to file written submissions.

The translations and the further submissions were received by the Secretariat of the Authority on 19 March 1996 and they have been taken into account in the preparation of this decision.

Also at the hearing, counsel for the appellant told the Authority that the appellant's parents in Peru were trying to obtain further newspaper and magazine articles, but he (counsel) could not be sure that such information would be sent or, if received in New Zealand, submitted in support of the appeal. As at the date of delivery of this decision, no such additional information has been submitted, notwithstanding the clear opportunity to do so.

Finally, the appellant told the Authority that one of his three brothers had recently lost contact with the appellant's mother and father and this was causing the family some concern. The appellant was wholly unable to explain the significance of this development to his case even though he was questioned on the point by both the Authority and by his counsel. In the circumstances, the Authority is not prepared to assume, without more, that the unspecified "problem" concerning this brother has anything to do with the appellant's personal circumstances or with his claim to refugee status.

## THE APPELLANT'S CASE

The appellant's case is contained in a statement submitted with the refugee application which was filed on 13 December 1994. Although his account to the Refugee Status Branch and to the Authority contained a number of variations, they were minor in nature. The summary of his case which follows has been taken in the main from the appellant's statement. It has been supplemented, where appropriate, with detail taken from his appeal evidence.

The appellant is a 42 year old single man whose parents, three brothers and three sisters still live in Peru. The appellant holds a Bachelors degree in administrative engineering, and from 1979 to 1982 worked variously as an assistant to the operations manager of a mining company, a plant supervisor and then was in charge of administration for a transportation company. From 1982 to 1987, he worked for a large book importing company where he rose to the position of departmental manager. In September 1987, employing the experience gained in the book business, the appellant started up his own book business, trading principally in encyclopaedia. Initially one of his brothers was in partnership with him. Their main office was in Barranca City, but a short time later a branch office was opened in Lima. Some 30 persons were employed in total.

The business did well in its first year, making a moderate profit.

In March 1988, as the appellant was leaving a local Barranca restaurant, he was approached by a woman who told him that he (the appellant) should not be surprised if he received a message at his office suggesting that he support Abimael Guzman, the then head of the Sendero Luminoso (Partido Comunista del Peru), a violent terrorist organisation. The appellant never saw the woman again.

A short time later, the appellant received a letter or leaflet bearing his name and requiring him to pay the sum of US\$100 to the Sendero Luminoso. Directions were given as to the time and place of payment. The note carried a warning that he was not to inform the police. The initial sum was paid, but this was not the end of the matter. From that point on, the appellant received monthly demands for US\$100. He paid these sums faithfully as he feared that he would be killed if he did not. The appellant believed that many other businessmen in Barranca received similar demands.

In approximately mid-1991, the amount demanded was raised to US\$200. At the same time, the appellant's business began to falter and his brother withdrew from the partnership. The appellant fell deeply in debt. By November 1992, he dismissed most of his employees and suspended his payments to the Sendero Luminoso.

In January 1993, he was visited by two men who asked for an explanation as to why he had stopped making his monthly payments. The appellant explained that he was going bankrupt and had no possibility of paying. Then men replied that the appellant had no choice but to keep paying. They said that he was to think of the payments as a tax. When the appellant repeated that he was going bankrupt and had to pay debts to the government, one of the men told him that he (the appellant) did not have to pay tax to the government as the payments that the appellant was making to the Sendero Luminoso were "the real tax to the new nation". The appellant was not harmed but the men spoke to him firmly and gave him two weeks to get the money together. The appellant was told that if he went to the police, he would be killed.

On the appointed date, the appellant gave the two men half the money but said that he had no more. A few days later, his business premises were vandalised. Sendero Luminoso slogans were daubed on the walls, the contents of the office were taken and everything else destroyed. This was on or about 14 or 15 February 1993. The appellant immediately closed his business and returned to Lima. There he closed the branch office.

Prior to leaving Barranca, the appellant arranged for a relative to visit the landlord of the former business premises in order to pick up mail and messages. He also stated (at the Refugee Status Branch interview) that he (the appellant) had placed on a request-for-credit form issued to his customers a direction that cheques be sent to the appellant at a particular Lima address. At this address, lived the appellant's grandparents.

For the first month following the closure of the business, the appellant lived at his parents' home in Lima. However, after receiving information from the Barranca relative that two men claiming to be from the Sendero Luminoso had been making enquiries as to his whereabouts, the appellant moved to the Lima address at which his grandparents lived. For four months, he experienced no problems. However, one day, while waiting at a local bus stop on his way to a supermarket, he

noticed that three or four metres away four people dressed as students were alighting from a motor vehicle. They did not notice the appellant. He saw that they walked off in the direction in which his grandparents lived. The appellant recognised one of the "students" as being one of the men who had spoken to him in Barranca in January 1993 about the non-payment of money to the Sendero Luminoso. The appellant left immediately and went to his sister's address in Callao, a port city situated a short distance from Lima. There he learnt from his grandparents that that morning two persons dressed as students had been asking for the appellant. The appellant's grandparents had told these people that the appellant was not living at the address and that they were unaware of his whereabouts. The two "students" then left.

From the time of this incident (July 1993) until the appellant left for New Zealand in March 1994, the appellant continued to live with his sister in Callao. During this eight to nine month period, the appellant encountered no further difficulties. Nor was there any report of enquiries being made about him by the Sendero Luminoso in Barranca or in Lima.

After obtaining a passport in November 1993, the appellant obtained a New Zealand visa from the British Embassy in Lima on 6 January 1994. He eventually left Lima on 18 March 1994 and arrived in New Zealand on 20 March 1994.

It was not until 13 December 1994 that the refugee application was lodged. The appellant's explanation for the delay is that he was unaware that he could apply for refugee status and it was only when he was interviewed by an immigration officer on 9 November 1994 that he came by this information.

The interview by the Refugee Status Branch took place on 17 June 1995. In a decision delivered on 4 December 1995, the application was declined on the principal ground that the appellant's fear of persecution at the hands of the Sendero Luminoso was not well-founded. In the voluminous country information made available by the Refugee Status Branch to the appellant for comment, the Refugee Status Branch found ample justification for the conclusion that the threat from the Sendero Luminoso had greatly declined in recent years and it concluded that the Government of the Republic of Peru offered effective and meaningful protection to the appellant and there was accordingly no real chance of harm were he to return to Peru. In the alternative, the Refugee Status Branch found that relocation was a viable alternative and reference was made to the fact that the appellant had spent some eight or nine months in Callao without incident.

Acknowledging the force of the Refugee Status Branch conclusions, counsel expressly noted in his memorandum (p 3) that:

"The information which is available from different sources about Peru clearly indicates that the situation of terrorist violence taking place in that country has considerably diminished."

He rightly submitted that the real issue in the appeal is whether, on the available information, it could be said that the facts of the case establish a real chance of persecution. It was reasoned that because the Sendero Luminoso remain in existence and remain active, there is a real chance of the appellant's persecution at their hands. Particular reliance was placed on a newspaper article published on 16 May 1995 reporting a Sendero Luminoso killing in Chacchos, which lies north east of Huaraz. In this incident, a man and his wife were shot dead in front of their seven children by men claiming to be from the Sendero Luminoso. The article states that the couple were killed because they had refused to continue paying "taxes" to the Sendero Luminoso. The article reports that this was the third time that such killings had taken place in the district, and that this particular incident had occurred by way of "commemoration" of the commencement fifteen years earlier of "the armed struggle" by Sendero Luminoso.

Other press clippings relied on by the appellant show that units of the Sendero Luminoso continue to be active and armed clashes with the security forces occur from time to time. These press clippings are entirely consistent with the country information relied on by the Refugee Status Branch and with more recent information which will be discussed shortly.

## 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 the context of this case the four principal issues are:

1. Is the appellant genuinely in fear?
2. Is it a fear of persecution?
3. Is that fear well-founded?
4. Is the persecution he fears persecution for a Convention reason?

In this regard we refer to our decision in Refugee Appeal No. 1/91 Re TLY and Refugee Appeal No. 2/91 Re LAB (11 July 1991).

In the same decision this Authority held that in relation to issue (3) the proper test is whether there is a real chance of persecution.

## ASSESSMENT OF THE APPELLANT'S CASE

Notwithstanding minor discrepancies in the appellant's account, his credibility is accepted. We find that he has a subjective fear of persecution.

The appellant fears death at the hands of the Sendero Luminoso for failing to pay the "taxes" extorted from him under threat of death. Clearly a sentence of death imposed by a non-state agent for failure to pay a sum or sums of money extorted by that agent is the severest of penalties, and thus the consequences feared by the appellant are of a persecutorial nature.

The two principal issues in this appeal are, however, whether:

- (a) The appellant's fear of persecution is well-founded.
- (b) Whether the persecution feared by the appellant is **for reason of** one of the five Convention grounds.

## Whether Fear of Persecution Well-Founded

As previously mentioned, it was accepted by counsel for the appellant that the level of terrorist violence in Peru has considerably diminished. It was further accepted (Memorandum p 4) that the Government's efforts at combatting terrorism and the economic incentives that have been put in place must be acknowledged "as creating a positive impact on the whole population". It is equally common ground that the Sendero Luminoso have not been entirely eliminated. The extortion of "taxes" continues and as the May 1995 press clipping establishes, there are recorded instances of people being killed for refusing to pay taxes to the Sendero Luminoso. The scale on which these incidents occur must, however, be kept in perspective.

For example, in the Department of State Country Reports on Human Rights Practices for 1994: Peru (February 1995) 480 it is reported at p 481 that in 1994, "the threat from Sendero greatly declined". The report does not claim that the Sendero Luminoso have been entirely eliminated. It

records at p 482 that this terrorist group continued to assassinate civilians, including peasants, farmers, villagers, indigenous people, civil authorities and public servants, as well as 40 members of the security forces. It records, however, that:

"... the number of people murdered by Sendero declined significantly from 516 in 1993 to 215 in 1994, as the security forces continued to capture terrorist leaders."

An article from *Le Monde* reproduced in the *Guardian Weekly*, May 7, 1995 at p 16 under the title "Peru's mountain capital breathes again" reports that in the former Sendero Luminoso stronghold of Ayacucho life is returning to normal as exemplified by the record number of visitors during Easter week to this provincial capital. The author of the article expresses the opinion that the grim years of terrorist and counter-terrorism that claimed more than 8,000 lives in the region since 1970 are now over. In spite of a Sendero call for an "armed boycott" of presidential polls, no less than 80% of the town's 100,000 residents voted in the April 9 presidential election. In 1990, only 35% of registered voters cast their ballots. The following passage is of relevance:

"With its leader arrested, the movement split up. Guzman, who was given a life sentence, changed tack and proposed suspending the 'people's war' and opening peace talks with the government. That led to more than 6,000 rebels giving themselves up (2,700 more are in prison today).

But the others, led by Oscar Ramirez Duran, the only member of the movement's executive committee to have escaped capture so far, decided to continue fighting. The arrest last month of 'Commander' Margie Clavo Peralta and a few minor figures caused the collapse of plans to disrupt the presidential election.

The hundreds of rebels who haven't yet laid down arms are working with drug traffickers in the Upper Huallagua valley in central Peru or in the Apurimac and Ene valleys not far from Ayacucho. But the level of terrorist activity has dropped to what it was in the 1980s - a total of 150 rebels, soldiers and civilians killed in February and March, according to the authorities."

To similar effect, see the following extracts taken from "Glimmering Path" *The Economist* July 29th, 1995 p 30:

"In 1992, when Abimael Guzman, the guerillas' leader, was captured, his movement faded with surprising speed. For a decade, its seemingly unstoppable campaign of killings, sabotage and car bombings had left governments tottering. Yet a year after his capture, Mr Guzman, from his solitary confinement at a naval base, called on his followers to lay down their arms in a peace deal with the government.

Many obeyed, several thousand surrendering to the army under a 'repentance law' that provided for them to go free after a spell of military service. Others simply lay low. Much of Peru began to relax. Young people again went out at night, businessmen dispensed with their bodyguards, bombed buildings were repaired.

But a hard core led by Oscar Ramirez Duran (alias 'Feliciano'), rejected what they saw as Mr Guzman's treason. Now there are worrying signs that this rump has regrouped. Two months ago, an early morning bomb killed four workers at a smart hotel in Lima. In the first half of July, five policemen and soldiers were killed in attacks on police posts in the Amazon region; a trade union leader and a mining geologist were murdered; and another car bomb narrowly missed killing Victor Joy Way, a leading figure in Mr Fujimori's party. Then, on July 20th, 16 soldiers and 20 rebels were killed in a clash in the Huallaga valley.

Is the dark night of terrorism returning? Not necessarily. Guerilla attacks are running at only around a 5th of the rate of three years ago. 'The rump of Sendero can kill a few people, but it no longer has the capability to damage the government, nor to grow territorially or politically' argues a senior analyst at Peru's National Intelligence Service. Of the 25 members of the movement's pre-1992 central committee, 12 have been detained, five killed and only eight are free, he says;

on his (probably optimistic) reckoning, the Maoists are reduced to under 350 armed militants, most of the them in the Huallaga valley, from whose cocaine industry they derive their funds.

Unlike Mr Guzman, 'Feliciano' is said to base himself in the countryside rather than Lima. That makes him harder to catch. Peru's fractured geography of endless mountains and vast forests means that the guerillas can probably survive in remote areas for decades. They may pose no great threat to the state. But they and the fierce counter-insurgency measures they inspire are clearly not finished yet."

In a much more detail article entitled "The dark side of the boom" *The Economist* August 5th, 1995 pp 19-21, Peru's rescue from near collapse by Alberto Fujimori is documented. It is now Latin America's fastest-growing economy. This of itself is testament to the decisive political defeat of the Sendero Luminoso and the dramatic withering of their power.

It is against this background that one must return to the salient facts of the appellant's case. The demand for the "taxes" was directed to him (never to his brother) due to the fact (on the appellant's explanation) that he was the person effectively in charge of the business and in control of its finances. It is clear that he was simply one of many businessmen in Barranca from whom money was being extorted. He has now closed that business.

On his return to Lima, he lived at his father's home for one month without encountering any problems. It was only after he moved to his grandparents' home that enquiries were made there by the Sendero Luminoso. This was a logical step for them to take as the grandparents' address was the forwarding address he had left in Barranca. But after moving to Callao only a short distance away, the appellant spent the next eight to nine months without being troubled by the Sendero Luminoso. Indeed, since leaving his grandparents' home in July 1993 down to the present time, no further enquiry has been made as to his whereabouts by the Sendero Luminoso. It is fanciful to suggest in these circumstances that the appellant is at risk of harm, particularly when the facts are viewed in combination with the dramatic improvement in the security situation in Peru. While there is evidence that the Sendero Luminoso remains active in isolated pockets of the countryside and from time to time might explode a bomb in Lima, this in no way contributes to the potential risk faced by this particular individual were he to return to Peru.

While the Authority cannot exclude every single remote and speculative possibility of the appellant being found by the Sendero Luminoso, this is not the appropriate test. As earlier mentioned, the issue is whether there is a "real chance" of the feared harm occurring. We are certain that there is no such chance and the appeal must fail.

Even were we wrong in making this assessment, we are of the further view that the appellant can relocate and find safety elsewhere in Peru outside Barranca and Lima. Clearly, the appellant would be unwise to return to his grandparents' home in Lima. But he has a wide range of alternatives available to him. As he has already demonstrated, he can live with safety in nearby towns. As the appellant told the Authority, Peru is a large and populous country. On the appellant's estimation, there are some 28 million persons living in Peru. The task faced by a debilitated Sendero Luminoso in tracking him down borders on the impossible. There are no impediments to his relocating outside of Lima and Barranca. He is a single man who possesses an engineering degree and he has specialised in both administration and logistics. He has held a number of senior positions in large companies, and has run his own business. With his qualifications and experience, he is well-equipped to re-establish himself in a new life. In these circumstances, the Authority is satisfied that the test for relocation set out in Refugee Appeal No. 523/92 Re RS (17 March 1995) 29 is satisfied, namely:

1. The appellant can genuinely access domestic protection which is meaningful.
2. It is reasonable, in all the circumstances, to expect him to relocate.

As earlier mentioned, we do not take into account the fact that one of his brothers has recently lost contact with family members. The Authority was given no meaningful detail of this

development even though the appellant was pressed on the point. In fairness, the appellant did not attempt to link this event to the Sendero Luminoso or to the appellant's earlier difficulties with this group.

It was suggested to the Authority by counsel that because the appellant is a Mormon by religion, and because the Mormon Church is a minority religion in Peru, the appellant would be much more exposed to identification and location than a citizen who belonged to the Catholic Church, the largest church in Peru. The Authority cannot see any merit to this submission. There is not a shred of evidence to suggest that the Sendero Luminoso is aware of the appellant's religious affiliation. They would therefore have no cause to seek out Mormon communities or Mormon congregations in search of the appellant, and the appellant conceded that there is nothing to suggest that his religious affiliation had anything to do with Sendero Luminoso interest in him.

In conclusion, the appellant's refugee application must fail by reason of the fact that there is no real chance of the feared persecution occurring. In addition, because he can reasonably locate within Peru and access genuine and meaningful state protection, New Zealand's obligations under the Refugee Convention are not engaged.

The appeal is dismissed.

We are of the view that in any event the appeal must fail for the additional reason that there is no Convention reason for the fear of persecution.

## Whether a Convention Reason Established

It is to be recalled that the Refugee Convention requires that the fear of persecution be **for reason of** one of the five Convention grounds. The only applicable ground here is that of political opinion.

The issue is whether the persecution feared by the appellant at the hands of the Sendero Luminoso is **for reason of** his political opinion. It is settled law that such opinion can be:

(a) the appellant's actual political opinion; or

(b) a political opinion imputed to the appellant by the Sendero Luminoso. It is irrelevant, in this context, that the agent of persecution is mistaken in imputing such opinion.

On the evidence given by the appellant, no political opinion whatever was involved in his failure to pay the "taxes" to the Sendero Luminoso. Having complied with their extortion demands for some period of time, he simply ran out of money when his business failed.

As counsel recognised, if this case is to succeed at all, it must be on the second limb, namely, an imputed political opinion. The evidence establishes that the money was extorted from the appellant (and others) in order to fund the Sendero Luminoso in their attempt to overthrow the state. But the mere existence of a generalised "political" motive underlying the terrorists' forced extraction of money from businessmen is inadequate to establish the proposition that the appellant fears persecution **on account of** his actual or imputed political opinion. In this regard, see Immigration and Naturalisation Service v Elias-Zacarias 112 S. Ct. 812, 816 (1992) and Bartesaghi-Lay 9 F 3d 819 (10th Cir. 1993). The evidence does not in any way even suggest that the terrorists erroneously *believed* that the appellant's refusal to pay the "taxes" was politically based. In short, there is simply no evidence that a political opinion has been imputed by the Sendero Luminoso to the appellant. The fallacy of the appellant's argument is that the mere existence of a generalised political motive underlying the terrorists' demand for money does not lead to the conclusion that the terrorists perceive his refusal to pay to be political.

Even were the case to be advanced on the social group limb of the Convention, the result is identical: Ram v Minister for Immigration and Ethnic Affairs (1995) 130 ALR 314, 318-319 (FC:FC).

The appellant prayed in aid of the imputed political opinion argument four earlier decisions of the Authority. Upon analysis, however, these decisions provide no assistance.

The first decision is Refugee Appeal No. 831/92 Re HNML (14 June 1994). In that case, the male claimant had made a brief foray into politics and, as a result, had received death threats from the Sendero Luminoso. Because of these threats, he retired from politics and opened a shop. A short time later, he received demands from the Sendero Luminoso to make "donations". Payments were made until the business took a downturn whereupon death threats were made. The distinguishing feature of the case, however, was that the claimant's wife worked in an anti-terrorism squad and it is significant that at page 4 of the decision the only imputed political opinion found was that attributed to the wife who, as a member of an anti-terrorism squad, was seen to be "opposed to the cause of the Sendero Luminoso". The male claimant succeeded because he and his children comprised a social group. That is, they were at risk because they were members of the wife's family. As to the extortion demands, the Authority observed:

"We think there is a possibility that the appellant is also endangered because of his failure to continue donations, but we are unable to detect from that any Convention reason."

This decision, therefore, if anything, undermines the appellant's case.

The next decision relied on by the appellant is Refugee Appeal No. 1599/93 Re EGDLA (22 November 1994). The claimant was a unionist whose job involved counteracting Sendero Luminoso infiltration of unions affiliated to his organisation. While he received anonymous telephone calls at work demanding payment of moneys, the case ultimately succeeded on quite a different ground. The Sendero Luminoso had called a strike but the claimant deliberately continued working and was seen as a strike breaker. As will be seen at page 7 of the decision, it was this action which led to the imputed political opinion, not his failure to pay the money. Because of the inevitable political overlay to the strike and the claimant's actions as a strike breaker, the Authority found:

" ... a Convention reason, namely, his actual imputed political opinion. The appellant has acted directly in conflict with the SL and their objectives, and in breaking the 'armed strike' he has openly defied them. "

On the facts, this decision is of no assistance to the appellant.

Then the appellant relied on Refugee Appeal No. 1590/93 Re WODLA (11 May 1995). The claimant in that case was a member of a political party known as APRA. He was also involved in trade union activities and was an office bearer. He too was subjected to a demand that he pay protection money to the Sendero Luminoso, but the finding by the Authority of an imputed political opinion arose out of quite different facts. In his capacity as a union leader, the claimant had been involved in negotiations with a major employer. Against a background of industrial arrest, he achieved what he thought was a settlement of the various industrial issues and, in particular, wage arrears. However, the employers resiled from the negotiated settlement, as a result of which the claimant became a target for serious criticism. It was alleged (wrongly) that he was a wealthy man and had all the time been in the pay of the employers. The Sendero Luminoso infiltrated the union and the claimant was assaulted, forced to resign and threatened with death. It was against this background that the Authority held that the claimant was:

"... regarded by the SL component of the Callao factory workforce as a class traitor .... "

The finding of an imputed political opinion (of a class traitor) followed. Because the facts of this case are very different to those of the present case, we find it of no assistance.

Finally, the appellant relied on Refugee Appeal No. 1452/93 Re JLSL (8 February 1995). The claimant in that case had been a bodyguard to a prominent individual who was openly in conflict with the Sendero Luminoso. That individual was assassinated by the Sendero Luminoso and the claimant also received death threats. It was against this background that the Authority stated at page 10:



"The Authority has no difficulty in concluding that the harm feared by the appellant, namely death, is persecution, and further that it is for a Convention reason. Sendero Luminoso is a Marxist guerilla movement and whosoever stands against it is perceived by that organisation to have political views opposed to it. This is a Convention reason. "

Clearly, that case and the present are distinguishable on the facts.

The appellant nonetheless relied on the statement in the above quoted passage that the "Sendero Luminoso is a Marxist guerilla movement and whosoever stands against it is perceived by that organisation to have political views opposed to it".

We feel constrained to point out the danger inherent in taking an isolated passage from one decision of the Authority and citing it as a proposition of universal truth. It must be understood that every refugee case is unique. Much turns on the issue of credibility. Furthermore, because the focus of the inquiry is not so much on what has happened in the past as on what might occur in the future, each case has its own subtle nuances which are determined very much by the inter-relationship between credibility, the facts of the case, what is understood of the country conditions in the country of origin and, finally, by the forward-looking assessment of the risk faced by the specific claimant. In entering into this difficult field of inquiry (i.e., as to whether a particular set of facts establishes a well-founded fear of persecution), different panels of the Authority will be influenced by a range of factors, not all of them necessarily duplicated in superficially similar cases involving the same country of origin.

Furthermore, the weight to be given to an earlier decision of the Authority will obviously depend upon a number of factors. There may even be features of the earlier decision which positively discourage subsequent panels of the Authority from according the decision much weight. For example, in the case of Refugee Appeal No. 1452/93 Re JLSL, that particular panel of the Authority encountered severe problems with the credibility of the claimant. Inexplicably, the credibility issues were resolved in favour of the claimant. In addition, the passage upon which the present appellant so much relies is couched in over-general and sweeping terms. The decision cites no country information in support. In the result, the weight to be accorded to this particular passage is problematical, to say the least.

We therefore stress that the task of any decision-maker is to assess whether, on the particular facts found to have been established, it could be said that the appellant has established to the requisite degree that the persecution feared by him or her is **for reason of** the appellant's political opinion. If the appellant in fact holds no political opinion on the issue in question, the question is whether a political opinion has been imputed to the individual. If such opinion has been imputed, the jurisprudence of this Authority establishes that that is sufficient for a Convention reason to be established. It is our finding, on the facts of the present case, that there is no evidence establishing that a political opinion has been imputed to the appellant. Therefore, the harm feared by him at the hands of the Sendero Luminoso is not harm against which the Refugee Convention affords protection.

This appeal must accordingly fail for the additional reason that there is no Convention reason for the fear of persecution.

## CONCLUSION

In summary, our conclusions are as follows:

1. The appellant holds a bona fide subjective fear of returning to Peru.
2. The harm feared by him is of sufficient gravity to constitute persecution.
3. However, there is no real chance of the feared harm occurring were the appellant to return to Peru. His fear of persecution is not well-founded. In the alternative, as the appellant can access

effective protection in some part of his country of origin, and as it would not be unreasonable to expect him so to do, he cannot be said to be at risk of persecution.

4. The harm feared by the appellant is not connected with or related to one of the five Convention reasons.

For these reasons, 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.

**Chairman**