

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76031

AT AUCKLAND

Before: B Burson (Member)
Counsel for the Appellant: E Griffin
Appearing for the Department of Labour: No Appearance
Date of Hearing: 7 May 2007
Date of Decision: 29 August 2007

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellant, a national of Romania.

INTRODUCTION

[2] The appellant claims to be at risk fear of being persecuted if returned to Romania because of an official complaint he made in respect of an extortion racket being run by a corrupt local police officer which targeted his and other wealthy Roma families in his area.

[3] Before assessing the credibility of the appellant's claims in this regard, a summary of the evidence will be set out.

THE APPELLANT'S CASE

[4] The appellant is an ethnic Roma. He was born in X, a town of some four to five thousand people, in 1977. X is situated in Y county and had the largest concentration of Roma of any town in Y county. Of X's population approximately

80 percent were Roma. The appellant is the eldest sibling in his family. He has two younger brothers and a younger sister, all of whom continue to reside in X with his family.

[5] With the death of the appellant's grandparents in the late 1980s, his father inherited a number of pieces of land in the area surrounding X. On this land, the family raised livestock as well as growing various crops and produce for sale at local markets. The appellant's father was always interested in acquiring more land and, in 1995, purchased a further six hectares. Over the next decade, the family prospered still further to the extent they could afford to build a two-storey home and increase the number of livestock that they owned. Accordingly, they were considered a wealthy family in X.

[6] The appellant completed his schooling in X between the mid-1980s and early 1990s. At school, he encountered discrimination. Roma children were separated from the ethnic Romanian children. The ethnic Romanian children were asked more frequently to participate in class discussions. The appellant also suffered minor beatings on a reasonably frequent basis. For example, whenever something was stolen from the class or a window broken, the local police were called. They hit the stronger of Roma children, including the appellant, if the actual culprit could not be identified. The teachers also hit the Roma children on these occasions. On another occasion, a teacher threw a pen at the appellant causing a scratch below his eye and a cut on his eyebrow after a Romanian student had told the teacher that it was the appellant who had marked the teacher's jacket with a pen. The appellant was also stabbed in the foot with a knife by an ethnic Romanian pupil.

[7] In the early 1990s, the appellant undertook a cooking course in Y, the provincial capital situated approximately 30 to 35 kilometres from X. The appellant encountered discrimination on the course. The teacher told the other ethnic Romanian students that the appellant was dirty and that he would never be able to learn the technical skills required. The appellant was not allowed to practice the technical skills and was restricted to doing menial tasks. On other occasions, the appellant was hit with rulers in the class and was made to stand in the corner.

[8] Although the course was scheduled to run for a year, because of this discrimination and harassment, the appellant left after six months to work on the family land with his father. As a result of these problems, the appellant developed a nervous tic in his face. His father took him to a doctor who diagnosed that the

appellant had a problem with his eyesight and prescribed glasses. The appellant believes the tic developed because he was always scared as a result of the treatment that he suffered.

[9] From a young age, the appellant understood that the local police were corrupt. He noticed that the chief police officer for their area often came to their home, both in person and through a representative, and his father gave over money. The police also sometimes came to the farm and demanded that they be given livestock or crops. In particular, shortly prior to Christmas when the family had slaughtered pigs, the police usually turned up to demand they be given a pig for Christmas.

[10] Also, from a young age, the police began arresting the appellant on a regular basis. Occasionally, this was in response to a fight or a dispute that broke out within the community. More often, however, the police falsely claimed that he had stolen something or incited other children to break the windows of police cars as an excuse to arrest him. When this happened, his father came to the police station and, after paying some money to the police, the appellant was released without charge. The appellant quickly realised that this was a corrupt practice by the police and his false arrest was a means by which the local police extorted money from his relatively wealthy father.

[11] In the late 1980s, the appellant's father involved him in a Roma political party called the Roma Social Democratic Party. This was the party which represented Roma in the Romanian Parliament. Although the appellant continued to be a member throughout the remainder of his time in Romania, he was not greatly interested in it and only ever went to a couple of meetings.

[12] On one occasion, the local leader of the Roma community in X, who was the appellant's uncle, asked him to go to a meeting of the party in its main office in Y city. The community in X had learnt that there was a government initiative which distributed free milk and pastries to children in schools but that this initiative had not yet happened in X. They wanted to be included and the appellant went to the meeting to represent the interests of X's Roma community. Representatives of other Roma communities in Y county were present at the meeting and together they discussed writing a letter to the relevant authorities. It was written by the representative of the party for Y county. This was the only real involvement the appellant had with the party and he did not think that he could do very much to protect Roma.

[13] In the early 1990s, the appellant's father decided to split the land he had inherited from the appellant's grandfather between the appellant and his brothers. The title to some of the land was put into the appellant's name. Also, in approximately 2002, at around the time the appellant turned 25, the appellant's father told him that when he turned 30, the appellant would be given responsibility for controlling all of the family's business and land and for deciding the apportionment of the land between himself and his siblings. The appellant's father told the appellant that he was not to get married in the meantime and to concentrate on the business.

[14] In late 1998, police practice with regard to the appellant changed. Although he continued to be arrested on false pretences in order that his father pay a bribe to secure his release, he now began to be asked by the local police to come to the police station to pay a bribe to secure the release of other members of his wider family who had been arrested. Although not sure, the appellant believes that the police knew that, as the eldest son, he would in time take over the running of the family business and were conditioning him to behave like his father had done as the future local leader of a wealthy Roma family.

[15] The appellant estimates that he has been detained by the police in X on approximately 40 or 50 occasions. Of these, 10 or 20 arrests took place in order that he paid money to secure the release of someone else. The remainder were times when he himself was arrested in order that his father attend to pay a bribe to secure his release.

[16] While detained on these occasions, the appellant was occasionally subjected to serious ill-harm. Although uncertain of the dates, the appellant recalls that on one occasion, he was wrapped in a carpet and beaten with sticks. On another occasion he was kept for a couple of days without receiving any food or water. His father was out of town at the time and he was detained until his father returned and paid the money to secure his release.

[17] The appellant experienced a more serious assault at the hands of the police in 1996 when he, along with his father and brothers, were taken to the police station in X along with the male members of the other wealthy Roma families in X. They were held for three days. The officers began to beat his father and when the appellant protested they stuck a sharpened screwdriver into his arm. The appellant was also cut with a knife.

[18] The most serious assault on the appellant while detained by the police in X occurred in 2003. He was held for three days as his father was away. During this detention the appellant had two batons tied beneath his arms, which were then raised. He was lifted by his outstretched arms and made to dangle by his arms between two tall cupboards with his feet off the ground. This placed the entire weight of his body through his shoulders which caused him much pain.

[19] When the appellant reached his early – mid twenties, he began attending meetings of the adults in the community where various issues were discussed. There, he overheard comments which led him to believe that other members of the community in X were being asked by the local chief police officer to pay a sum of money as a protection fee. He understood from these discussions that if the family did not pay the money to the police officer, the police would create problems for them. He had seen his father pay money to a policeman but the matter had never really been discussed between them. However, as he matured, this began to bother the appellant. He did not think it was fair and he did not like the fact that his father had to pay this money. In around 2005, therefore, the appellant asked his father if he was being required to pay this money and the father replied that he was.

[20] In late 2005, the chief police officer came to the farm to demand his money as usual. On this occasion, however, the appellant's father was not at the farm. The chief police officer told the appellant that the money the family now had to pay had been increased to 1,000 euros per month and he also wanted the family to sell his brother their harvest of corn at a price imposed by him. The appellant, who by now had enough of the harassment and harm of himself and his family at the hands of the local police, vented his anger. He told the policeman that from now on the family would not be paying the police any protection money. He also told the police officer that while the family was prepared to sell the corn to the police, they would only do so at a fair market price. The police officer left. When the appellant's father returned later that day, the appellant informed him what he had done. The appellant's father told him that they have to pay the protection money and that if they did not, the police could kill the whole family. The appellant, however, told his father that he should relax and that he would see what he could do about this.

[21] The appellant told the Authority that he had no prior plan to make his stand against the officer. He did not even know that the officer was meant to visit on that day. However, on the day, the appellant simply "snapped" and decided it was time

for him to begin taking some responsibility for the family business as his father intended.

[22] Thereafter, the chief police officer stepped up his campaign of harassment against the appellant. Each time the appellant went to the local market, the police stopped him and confiscated the goods in his car. The appellant was threatened on these occasions and told he should resume payment of the money. He refused. The police then began confiscating goods that his brothers were taking to the local market.

[23] Approximately two months after he had had the argument with the officer about the protection money, the appellant was stopped once again on his way to the market. On this occasion, the police officer who stopped him began beating him and told him that not only were the goods going to be confiscated but they were going to confiscate his car. The appellant managed to run away.

[24] He decided, however, that it was time to take further action. He had learnt from a television programme that a new institution, the National Anti-Corruption Department (NAD), had been established a couple of years previously and that it had a branch in Y city. The appellant therefore went to Y city and, after composing a letter of complaint about the actions of the chief police officer in X, handed it in at the reception of the Y city branch of the NAD.

[25] The appellant was hoping that the letter would start an investigation into the actions of the officer and that he would be removed from his office. However, in January 2006, before the appellant had received any reply to his complaint, the chief police officer and ten other policemen came to the family farm. The appellant was not at home on this occasion but was staying with his girlfriend in Z as he was in the habit of doing on a regular basis. The chief police officer asked for the appellant and when the family said that they did not know where he was the police officer began beating the appellant's parents and brothers. The police also threatened some of his young nephews who were staying with the family at the time. During this visit, the police smashed things in the house. They "confiscated" goods and money. They also took the appellant's passport.

[26] On being told of this, the appellant told his father that he had made the complaint to the NAD. His father told him that was unwise and that they would encounter big trouble as a result. His father advised him that he should get another passport and think about leaving the country. The appellant did not return to live in X. Rather, he remained in hiding in Z staying with his girlfriend and with

four or five other people. With the exception of his girlfriend's house, he never stayed in the same place twice. He believed it was safe to stay with his girlfriend because their relationship was a secret one. She was an ethnic Romanian and her family did not know that they had resumed their relationship. After being told of this visit, the appellant travelled to X hidden in the back of a truck in order to speak to his family. He did not go to his family home but rather went to an uncle's house that was situated on the outskirts of X. He found out that his family were not at their home but rather had gone to other relatives' places to recover. He was in X for no more than 15 minutes and returned back to Z using a different vehicle.

[27] At the end of the following month, the chief police officer returned to the farm with other officers. The appellant was still hiding in Z with his girlfriend. The chief police officer asked for the appellant. The appellant's father replied that he did not know where he was. The chief police officer showed the appellant's father a document and told him that it was a warrant for the appellant's arrest. He told the appellant's father that he would put the appellant in jail and he would be killed. The chief police officer also informed the appellant's father that the family's livestock had been infected with bird flu and other diseases and needed to be confiscated and destroyed.

[28] Over the next three days, the chief police officer organised many trucks to come to the farm and take away all of the family's livestock. Thereafter, all of the crops were burned. Windows in the house were smashed. As a result of this incident, the workers employed by the appellant's father to work the land were too afraid to come to work and refused to do so.

[29] After this visit the appellant's father telephoned him in Z and told him to meet him at his same uncle's house. The appellant did so. His father told him to remain in hiding and that he would try and make arrangements for the appellant to leave the country. The appellant's father gave him some money and said that he would be in contact. Approximately a month later, the appellant's father told him that they had to travel to another city because he had managed to find someone who would help the appellant leave the country. The appellant is unsure of the exact details but understood from his father that a fee was arranged which would include the procuring of a false Czech passport, transport from Romania to Italy, accommodation in Italy and then travel from Italy to Tokyo.

[30] The appellant left Romania hidden in the back of the truck. On the way the truck stopped and picked up another person who was also being assisted to leave

Romania by the same agent. The agent drove the truck which took the appellant and this other person to Venice. The agent made all necessary accommodation and travel arrangements for the appellant and this other person and after some days staying in Venice they flew to Japan. The agent told them that rather than travel directly from Japan to New Zealand, they should wait for at least two weeks before making their onward journey to New Zealand. Although not sure, the appellant believes this was to increase the chances of them being admitted to Japan in the first place.

[31] The appellant and his companion stayed in Japan for a month. Their false passports allowed them a three month stay in Japan and they worked illegally for a month, by which time they secured sufficient funds to pay for their onward flights to New Zealand.

[32] Since arriving in New Zealand the appellant has remained in regular contact with his family. He has spoken to his mother and to his brother. His father is too afraid to communicate with him in case it causes further trouble. He has learnt from his brother and his mother that since his arrival in New Zealand the chief police officer has visited the home looking for the appellant on approximately eight to 10 occasions. On these occasions the policeman keeps asking where the appellant is and when the family do not reply, they are beaten.

[33] The appellant told his brother to have his father write a letter of complaint directly to the Romanian Parliament. Although his father did not want to, in the end, his father agreed to do so and wrote a letter of complaint. The appellant's father took this directly to the Parliament in Bucharest.

[34] The appellant is concerned that if he is returned to Romania he will be arrested at the airport and detained. The police officer has issued a warrant for his arrest. He believes he could be killed while in detention because he dared to complain. He does not believe he can avoid the problems by living elsewhere in Romania. While his problem with the chief police officer is a local one, wherever he goes in Romania he would always be treated as a Roma. He has no family members outside of X. They all live there. There is no one whom he could turn to for support.

DOCUMENTARY MATERIAL RECEIVED AND SUBMISSIONS

[35] In support of the appeal, counsel filed a written memorandum dated 1 May 2007. On 3 May 2007, the Authority received from counsel a schedule of

documents comprising a supplementary statement of the appellant and a copy of the letter the appellant's father wrote to the Parliament in late 2006. Country information was submitted as per the schedule of documents.

[36] In her opening submissions, counsel advised that the appellant was not advancing any claim to being at risk of persecution in Romania simply on the basis of the socio-economic condition of Roma in Romania. While this formed the broad social background upon which the events said to give rise to the claim arose, the claim he was advancing was limited to a fear of being persecuted because of his claimed actions in relation to the corrupt policeman. Indeed, the essence of the appellant's claim is that whatever the poor socio-economic situation for other Roma may be, his family were relatively wealthy and insulated from the deprivation this may bring. His claim on appeal will accordingly be assessed on this basis.

[37] On 24 May 2007, the Authority received from counsel further country information together with further written submissions. All of this material has been considered in reaching this decision.

THE ISSUES

[38] The Inclusion Clause in Article 1A(2) of the Refugee Convention 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 as a result of such events, is unable or, owing to such fear, is unwilling to return to it."

[39] In terms of *Refugee Appeal No 70074/96* (17 September 1996), the principal issues are:

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

ASSESSMENT OF THE APPELLANT'S CASE

CREDIBILITY

[40] The account the appellant gave of the problem he had with the chief police officer was consistent with his evidence before the RSB and with his statement and written reply to the interview summary. However, there were a number of issues in respect of the remainder of the appellant's evidence.

INTRODUCTION OF SIGNIFICANT NEW MATTERS

[41] In the course of his evidence before the Authority, the appellant gave a substantial amount of significant new information. In particular:

- (a) Contrary to his evidence before the RSB that he had no major problems at school, he told the Authority that he had suffered assaults and beatings simply because of his being Roma.
- (b) He introduced for the first time an account of being tortured and suffering serious ill-harm during his detentions by the police. At no stage prior to the hearing had he mentioned the incidents in which he was suspended by his arms above cupboards, beaten while being rolled up in a carpet, kept for two days without food and water, or the mass arrest in 1996 of the male members of his immediate family during which time they were beaten and he was cut with a knife and stabbed with a screw driver.

These are significant incidents which can be expected to have been recounted from the outset, if true.

[42] Further, in his statement in support of his refugee application, the appellant asserts "My problems began in 2005." It is incomprehensible that a person suffering the 1998–2004 mistreatments that he claims would overlook it.

[43] He did not, moreover, mention these events in his RSB interview or in the lengthy statements he wrote in reply to the written summary of the RSB interview. The appellant's explanation that there was so many incidents in his life and he was only concentrating on the particular incident which caused him to flee is unpersuasive. While this may go some way to explaining why he did not mention problems in school, it fails to convincingly explain his failure to mention the various acts of police brutality he now claims to have taken place.

[44] The appellant told the Authority in explanation that the reason he had the argument with the chief police officer was because years of being terrorised by the local police had triggered his unplanned outburst in late 2005. In other words, these incidents of claimed serious mistreatment in detention form part and parcel of the reason why he now claims to have taken a stand. If so, it is all the more surprising that they were not mentioned earlier, if true, particularly as he has been represented throughout his claim by two experienced refugee law practitioners.

VAGUENESS AND MOBILITY

[45] It was often difficult to get clear answers from the appellant. His evidence was frequently vague and mobile when asked for details around key events.

[46] The appellant was vague, for example, as regards his conversation with his father in which they discussed the payment of the protection money by his father. He stated that his father had told him in 2005 that he was paying this money but could not recall whether or not he discussed his own concerns about his father making these payments. This is surprising as it is something which the appellant says substantially motivated him to stand up to the corrupt chief police officer. Moreover, by this time the appellant had, according to his account, been told by the father that he was the one to take control of the family business and land. Given the centrality of this issue to his claim and the intention of him to depart from his father's practice of paying the bribe upon taking control of the family business, it is a detail which the appellant can reasonably be expected to recount if his claim were true.

[47] The appellant was even more vague and mobile when asked whether his father knew he had been required to go to the police station to pay bribes to secure the release of the other relatives. When asked by the Authority he replied "I knew that, but he didn't know that, but he knew that". When asked to explain this nonsensical answer he replied "okay – he knew". This was symptomatic of his vague and glib evidence on this issue.

[48] Finally, in relation to his involvement with a Roma political party, the appellant told the Authority the reason he could not recall when or why his father had enrolled him in it was because he was not interested in it. However, he also told the Authority that he was the one chosen to be the party's representative for X town. When the Authority said it was surprising he would be chosen if he was not that interested, the appellant stated that he wrote a few letters for the party but as

not much happened he thought it was a waste of time. When asked to explain how he came to be the representative of the party for X, the appellant changed his evidence to say that he was only in fact asked to go to a meeting of the party, not as the party representative, but as the representative of the Roma community in X by the leader of the community on one occasion in 2005. The appellant also changed his evidence in relation to his writing letters stating, contrary to his earlier evidence, that he had not written any letters, but rather was there when they talked about writing letters. He then stated the letter was written by the main representative of the party but was unclear whether he signed it or not.

Implausibility

[49] Moreover, the appellant also told the Authority that he returned to Z on two occasions in early 2006 after learning of the police visits to the family home looking for him. On the first visit, he learned that his parents and brothers had been assaulted. On the second occasion, the appellant claims his father had been shown an arrest warrant and the chief of police had told his father that he would kill the appellant. Against this background, it is implausible that the appellant returned to X at all. His father plainly knew how to get hold of him as he telephoned the appellant after each of these visits. There is no suggestion that anyone was looking for him in Z where he was hiding. The appellant could offer no explanation why his father could not come to see him in Z or some other place rather than having him take the risk of travelling from his claimed place of hiding to X.

DOCUMENTARY EVIDENCE

[50] The appellant relied on a number of documents in support of his case including documentation regarding the family's production of various produce and the raising of livestock. As to his specific problems, the appellant relied on a letter from his mother and a copy of a letter said to be written by his father to the Romanian Parliament. The letter from the mother appears plainly contrived. In it she provides much unnecessary detail including naming the agent and describing the appellant's travel route from Romania to Italy. She even goes so far as to expressly name the police officer with whom the appellant argued. This is all unnecessary detail to provide the appellant in a letter that was genuinely written by a mother out of concern for her son. It is clear to the Authority that this letter has been written with the decision-maker here in New Zealand in mind. As for the copy of the claimed letter of complaint written by his father to the Romanian

Parliament, given the problems with the appellant's oral evidence and the contrived nature of the mother's letter, little weight can be given to this document either.

CONCLUSION ON CREDIBILITY

[51] As a result of these matters the Authority finds that the appellant's account to be not credible. The Authority notes that the appellant elected to give his answers in English. The Authority is satisfied that the problems in his evidence cannot be explained by his choosing to speak in a language that is not his first language. While his core claim has been consistently told, his evidence has been surrounded by the introduction of previously unmentioned claims of torture and other serious ill-harm, vagueness when asked to recount relevant detail and implausibility. The contrived nature of the letter from the appellant's mother further evidences the manufactured nature of the claim. When considered cumulatively, the Authority is in no doubt that the appellant's claim is untrue.

[52] There is no credible evidence before the Authority to establish that the appellant has a well-founded fear of being persecuted in Romania. The first principle issue is answered in the negative. The need to consider the second principle issue does not, therefore, arise.

CONCLUSION

[53] The appellant is not a refugee within the meaning of Article 1A(2) of the Refugee Convention. The appeal is dismissed. Refugee status is denied.

"B Burson"

B Burson
Member