

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76468

REFUGEE APPEAL NO 76469

REFUGEE APPEAL NO 76470

REFUGEE APPEAL NO 76471

REFUGEE APPEAL NO 76472

REFUGEE APPEAL NO 76473

AT AUCKLAND

<u>Before:</u>	A N Molloy, Member
<u>Counsel for the Appellants:</u>	J McBride
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Dates of Hearing:</u>	27 & 28 April 2010
<u>Date of Decision:</u>	25 June 2010

DECISION

[1] These are appeals against the decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining their applications for refugee status.

[2] The appellants, nationals of the Czech Republic, are a family comprising two parents and four children. Where appropriate they are referred to as the father, the mother, the older son, the older daughter, the younger son and the younger daughter. The appellants claim that they will be seriously harmed if they return to the Czech Republic. Their predicament arises from their Roma ethnicity and more specifically by virtue of the father's activities on behalf of an organisation

established in part by his father (the grandfather) in order to provide social and cultural services to Roma people.

[3] The father, mother and older son gave evidence in person, as did a witness, XY. Both daughters and the younger son are minors whose interests were represented by the father as the “responsible adult” pursuant to s141B Immigration Act 1987 (“the Act”). The minors did not give evidence.

[4] The appeals turn upon whether the appellants’ claims are well-founded. This is assessed following the summary of their accounts which appears below.

THE APPELLANTS’ ACCOUNTS

The father’s account

[5] The father was born during the early 1970s. After leaving school at the age of 18 the father worked as an unqualified labourer and tradesman. He eventually started his own construction-related business during the early 1990s. The father and mother married during the same period.

The grandfather’s activities

[6] An important aspect of the context in which the appellants have applied for refugee status relates to the grandfather’s activities. From the time of the “Velvet Revolution” during the late 1980s when Czech society made the transition from a single party communist state to a democracy, the grandfather became increasingly involved in the social and cultural affairs of the Roma population in his home town, Z. He did so under the banner of a recently formed association known as the Roma Association, which received some funding from the Czech government to provide a degree of assistance to Roma people. The grandfather sought to promote greater awareness among Roma of their rights. The Association also provided practical help for Roma to improve upon the temporary and inadequate accommodation in which many of them were housed, and to apply for social welfare benefits to which they might be entitled.

[7] The grandfather also established a construction business in the early 1990s. It has never been particularly profitable, but is a vehicle to provide work for a number of Roma.

[8] In recognition of the grandfather’s activities on behalf of his people he had

conferred upon him a Presidential award in 2006.

The father's involvement with the Roma Association

[9] The father drew considerable inspiration from his father's tireless example and towards the end of the 1990s he too became increasingly involved with the Roma Association. He spent one or two evenings a week as a volunteer. Many Roma were illiterate and the father helped with basic paper work relating to matters such as welfare, housing and difficulties arising out of their children's schooling.

Attack on the older son

[10] In May 2005 the older son was beaten by several skinheads. He received cuts and a broken nose. The father reported the assault to the local police, and provided them with a copy of a medical report supplied by the hospital where the older son was treated for his injuries. The police took no steps to investigate the incident.

Family relocates

[11] Later the same year, the father's mother died. The appellants moved to P soon after, to be closer to the grandfather as he came to terms with his grief. The father then began to expand the type of assistance he gave to Roma in Z. He was increasingly called upon to accompany young Roma who had been assaulted, to help them to lodge complaints with the police. The father explained the value obtained from Roma taking a stand when they were subjected to physical abuse. He referred to the positive changes in self-image which resulted from being proactive and standing up for themselves. He said that, in light of police inaction, this was the real point of lodging complaints.

[12] The father followed up complaints with the police but invariably no progress was made. The police were neither interested in the complaints, nor in investigating the circumstances in which the attacks took place.

[13] As his level of involvement with the Roma Association increased, the father began to be harassed by police officers. He was subjected to racial abuse and threats in P, where the father lived, and in Z, where he was active for the Roma Association. He also began to receive abusive calls on his mobile telephone. The callers never identified themselves but left racially abusive messages and threatened the father because of his activities. The nature of the messages

intensified from around 2007 when the callers began to make death threats.

[14] Against this broad background it is necessary to refer to three separate attacks on the appellants.

First attack on the father

[15] The father was attacked by a group of four “skinheads” in Z one evening in mid-2006. As they kicked and punched the father, the skinheads yelled racial abuse, and told him to stop “helping other Gypsies”. Though injured, the father was able to drive himself to hospital where he received stitches for a wound. The father reported the attack to the police in Z. Their response was contemptuous. When the father followed the matter up approximately two weeks later, he was told that the matter was not under investigation.

Second attack on the father

[16] In early 2007 the father was again accosted by four men wearing balaclavas as he made his way from his car to his apartment. He had just returned from the maternity ward where the mother had given birth to their youngest child. The father was dragged to an alley and thrown against a wall. He was subjected to vitriolic racial abuse, punched and kicked until he lost consciousness. The father believes he was known to the attackers as they abused him about the assistance he was providing other Roma.

[17] The father received injuries to his head and his shoulder. After regaining consciousness he managed to contact the grandfather, who drove him to hospital. The father was treated for wounds to his head.

[18] When the father reported this attack to the police a day or two later his complaint met with the same contemptuous response.

The third attack on the family

[19] Late one evening in August 2009 the mother was standing at the kitchen window of the family apartment when she noticed four men alight from a motor vehicle. The men donned balaclavas as they began to head towards the apartment building. As soon as the mother raised the alarm the father gathered the appellants (except the older son) into the bathroom, where he locked the door. The older son left the apartment through a rear window to try to summon help.

[20] After forcing their way inside the four men ransacked the apartment. When they located the family the men began trying to gain entry to the bathroom. The older son returned to the apartment before they could do so and, as he was accompanied by neighbours, the men left.

[21] The father did not believe that there was any point in complaining to the police. This was not just because of the lack of interest displayed by the police in the past, but because he now believed one of his assailants to be a police officer. During the attack the father observed that one of the four men wore an idiosyncratic item of jewellery which the father had previously observed on the person of a police officer at the Z police station.

Departure from the Czech Republic

[22] The third attack was particularly distressing because it was the first time that the family had been targeted in their own home. They left their apartment immediately and moved in with the mother's mother in P. The appellants remained there for just over a fortnight before leaving the Czech Republic to come to New Zealand. Before the appellants left the grandfather received information that the family is likely to remain an ongoing target of unnamed persons who want to kill them. The grandfather provided financial assistance to help the appellants leave the Czech Republic.

The mother's account

[23] The mother was born in what is now the Slovak Republic, but moved to what is now the Czech Republic as a young child. She was educated at special schools until she was 16. After leaving school the mother's lack of meaningful education, combined with her ethnicity, made it difficult to find employment. Her work record is accordingly sparse. She married the father when in her late teens and has not actively sought work since having children.

[24] The mother also became involved with the Roma Association as a volunteer, although not in the same way or to the same extent as the father. She helped children with homework when they came to the Roma Association premises. She also taught cooking and crafts and cleaned the offices.

[25] The mother was the victim of a racially motivated assault before she married. Since then she had experienced prejudice and discrimination as part of everyday life, but was not subjected to any further attacks until the home invasion

in late 2009.

[26] In broad terms the mother corroborated the father's core account.

The older son's account

[27] The older son claims that he was discriminated against throughout his life in the Czech Republic. He was the victim of bullying at school until he left at the age of 16 and received little effective assistance from his teachers in combating the problem. He was routinely accused of stealing by shopkeepers and he was continually harassed by the police as he grew older. The appellant has the same names as his father and grandfather and said that the police are well aware of his familial connections.

[28] The older son struggled to find work after leaving school and was frequently denied even an interview once prospective employers saw the colour of his skin. He occasionally laboured for his father and was eventually employed to work part-time for the Roma Association in Z. He became computer-literate and performed routine office duties such as data entry, but was not involved in visiting families like the father. He believes he would still be working for the Roma Association if he had not left the Czech Republic.

[29] The older son's account was consistent with the evidence given by the father, particularly in respect of the attack upon him in 2005. He confirmed that he had left the apartment to summon help when the family home was broken into by four men in late 2009.

The remaining children

[30] As already indicated, neither of the daughters gave evidence, and nor did the younger son. Their concerns were communicated by the mother and father and their claims essentially arise out of the father's predicament.

[31] The mother said that her children had been educated in mainstream schools, although the younger son had been transferred to a separate school shortly before they came to New Zealand. She said that the children had all been bullied at school, both by their teachers and by other children.

[32] The younger daughter has a specific health problem which has made her comparatively frail. It caused her to react in a particular way when the family were

attacked in their home in 2009, and made the mother particularly frightened. The mother confirmed however that the daughter had received appropriate medical care and medication in the Czech Republic. There was no suggestion that she had been discriminated against in respect of the level of care and specialist attention which she received through the Czech health system.

Evidence of XY

[33] XY is a Czech citizen who came to New Zealand in 2004. She was recognised as a refugee by the RSB in early 2005.

[34] XY had been involved in Romska Obcsansky Iniciativa (ROI), a political entity formed during the early 1990s to advance the interests of Roma. When she moved to Z during the late 1990s she joined the Roma Association, where she met the grandfather. He was her supervisor. She confirmed that much of the work was unpaid. XY described the grandfather as strong-willed, very hard-working and said that he was highly regarded by Roma people, among whom he was well-known.

[35] XY first met the father at a gypsy ball in Z during the late 1990s. She corroborated the father's evidence with respect to the nature of the work he performed for the Roma Association. She has no direct knowledge of the particular problems that the appellants experienced in the Czech Republic because she left in 2004, before their specific problems began. However she too experienced problems with the Czech police because of her involvement with the Roma Association.

Statement of the grandfather

[36] Following the appeal hearing counsel obtained a statement from the grandfather. He helped to establish the Roma Association in Z during the 1990s. Its objectives were to foster cultural pride among Roma, while seeking to integrate them into Czech society. They also sought to provide pragmatic assistance relating to finding employment and securing appropriate accommodation. Volunteers assisted with paperwork and encouraged families to pursue education opportunities for their children. In October 2006 the grandfather received a national award from the Czech President for distinguished public service. While the grandfather still attracts adverse attention and threats from some sectors of society, he believes that to some extent his high profile has helped to protect him

from the more extreme types of attention focussed upon the father.

[37] The grandfather corroborated the father's account as far as it relates to the work undertaken by the Roma Association and the father's connection with the Association. He also corroborated, as far as he was able to do so from his personal knowledge, the father's evidence concerning the major incidents referred to during the appeal hearing. The grandfather complained to the ombudsman about two of the attacks, but both complaints were dismissed as just one of many, with little indication that they would be resolved.

[38] The grandfather also stated that:

"I have learned from my very good friend in the Czech government who doesn't wish to be named that those people plan to eliminate my son and his family. He told me 'They want to kill your son and his family. I recommend him to take his family and leave Europe.'"

Arrival in New Zealand

[39] The appellants arrived in New Zealand in August 2009 and lodged claims for refugee status almost immediately. After being interviewed by a refugee status officer in October 2009, decisions were issued declining their applications for refugee status on 5 December 2009. All six appellants have appealed from those decisions.

Material received

[40] The Authority has had the benefit of a considerable amount of documentary information provided by counsel under cover of letters dated 22 and 23 April 2010 and 19, 20 and 26 May 2010. The documents provided include submissions, a chronology, country information and refugee status determinations from other jurisdictions, a statement lodged by the grandfather, additional country information and certified translations of two documents that appeared on the Immigration New Zealand (INZ) file.

[41] Additional documents were handed up during the appeal hearing. These include travel itineraries and proof of payment showing that the appellants' travel to New Zealand was booked in late August 2009, approximately a week before the appellants' departure from the Czech Republic. In addition, counsel provided a certified translation of a letter sent by the grandfather, a copy of a death certificate relating to the father's mother, colour copies of photographs already on the INZ file, and an additional item of country information relating to the Worker's Party in

the Czech Republic.

[42] The Authority notes the considerable assistance it gained from the manner in which evidence, country information and submissions were marshalled in the short time available to counsel, who only received confirmation that legal aid had been granted during the week before the appeals were heard.

THE ISSUES

[43] 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.

[44] 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?
- (c) If so, can the appellants access meaningful state protection elsewhere in the Czech Republic?

ASSESSMENT OF THE APPELLANTS' CASES

General credibility observations

[45] Before addressing the principal issues identified it is necessary to determine whether the appellants are credible witnesses. The Authority finds that they are, subject to one qualification identified below.

[46] The testimony given by the three adult appellants was plausible, broadly consistent with each other's accounts and consistent with the evidence they had previously given in connection with their claims.

[47] The father's evidence as to his involvement with the Roma Association, particularly after the death of his mother, was detailed and spontaneously recounted. He spoke simply, but passionately, in a manner which was entirely plausible. The appellants provided documentary and photographic evidence supporting the claims of the father, mother and older son to have been involved with the Roma Association. This was also corroborated by XY.

[48] Their claims to have been targeted by "skinheads" and the accounts given of the attacks on the older son in 2005 and the subsequent attacks on his father in 2006 and 2007 are plausible in light of available country information, an analysis of which appears below. The Authority also notes the existence of medical reports identifying scars on the father's body, and confirming that they are consistent with the injuries he attributes to the attacks he experienced.

[49] The Authority notes in particular that it did not appear that any of the three had colluded with a view to giving a "consistent" account of the one major incident where all three adult appellants were present, namely the home invasion in early August 2009. The evidence of each in respect of that incident was nuanced and spontaneous. While there were some minor discrepancies between accounts, the Authority is satisfied that these are consistent with genuine but differing perspectives rather than being indicative of false evidence.

Threat to kill the entire family

[50] There is one aspect of the appellants' account which the Authority does not accept, namely the grandfather's claim that he was told before the appellants left that the family would be killed if they remain in the Czech Republic.

[51] The nature of the evidence in this connection is entirely different in quality to the remainder of the appellants' accounts.

[52] The Authority notes that the appellants did not refer to this significant evidence in the statements lodged in support of their applications for refugee status, nor when interviewed by the RSB. The Authority also notes that the grandfather failed to name the source of this allegation and that it is unable to examine the grandfather in person in order to determine the credibility of his claim.

[53] Having heard and considered all of the evidence, the Authority is in no doubt that this is an unfortunate and misconceived attempt to bolster the appellants' claims.

Conclusion regarding credibility

[54] The Authority is satisfied that the one unfortunate embellishment can be excised from the appellant's evidence. It does not taint the credibility of the evidence as a whole, and accordingly the remainder of the appellants' core accounts are accepted.

Summary of factual findings

[55] The Authority finds that the appellants are a family of Czech nationals. From their appearance it would be apparent to other Czech nationals that they are of Roma ethnicity. They have all experienced discrimination based upon their ethnicity throughout their lives in the Czech Republic. The grandfather, father and the older son all share identical names.

[56] The grandfather is a prominent, nationally-known figure who has received a civic award for his contribution, over many years, to the social and cultural standing of Roma.

[57] The father has also been involved with the Roma Association, particularly in and around Z, for many years. He has assisted local Roma with everyday problems relating to basic issues of housing, welfare and racially motivated crime. He has actively encouraged Roma to report crime to the police, irrespective of the outcome. As a result he has acquired some profile with the local police.

[58] The father has been the victim of sustained racial abuse, often communicated by anonymous telephone calls, and has been the target of three separate attacks by skinheads, of whom at least one is a police officer. The attacks were not random but were linked to his activities with the Roma Association. The most recent attack was aggravated in the sense that it targeted the father in his family home.

[59] The father complained to the police on several occasions about the physical assaults and the abusive telephone calls. They did not investigate his concerns.

[60] The mother was the victim of a random, racially-motivated assault before she married. She had not experienced a similar assault since, with the exception of the home invasion in 2009. She has little work experience. Originally she had difficulty obtaining work due to her ethnicity and her level of education. Latterly she has opted to work in the home and not to seek paid employment. She has also worked as a volunteer for the Roma Association for a number of years.

[61] While he was not educated within segregated schools, the older son was subjected to discrimination and bullying because he is Roma. This extended to life outside the school grounds. The older son has found it difficult to secure meaningful employment since he left school. He has worked for the Roma Association, although not in the same capacity as his father, performing more mundane office duties. He, like his mother, was the victim of a racially motivated assault in 2005, although this is more properly characterised as a random incident in respect of which he was a Roma in the wrong place at the wrong time.

[62] The daughters and the younger son have also been educated in mainstream schools, although the younger son had been transferred to a separate school shortly before they came to New Zealand. They have all had to endure a degree of bullying at school, both by their teachers and by other children.

[63] The younger daughter has a specific health problem, however she had received a level of care and specialist medical attention through the Czech health system which was appropriate to her condition.

[64] It is on this basis that the appeals will be determined.

Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to the Czech Republic?

[65] For the purposes of refugee determination, “being persecuted” has been described as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125]. Put another way, it has been expressed as comprising serious harm, plus the failure of state protection; *Refugee Appeal No 71427* (16 August 2000).

[66] The threshold is not whether an appellant will be persecuted, but whether there is a real chance of the appellant being persecuted if returned to the Czech Republic. In that context, the Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. The standard is entirely objective.

[67] For reasons set out below the Authority finds that the answer to this

question is not the same for each of the appellants.

Discrimination experienced by Roma in the Czech Republic.

[68] Before addressing the particular problems faced by the appellants it is necessary to outline some background to the circumstances for Roma in the Czech Republic. In general they face high levels of poverty, unemployment and illiteracy as a result of widespread societal discrimination. This manifests in many ways, from being refused service in restaurants to discrimination in education, employment and housing; United States Department of State *Country Reports on Human Rights Practices for 2009: Czech Republic* (11 March 2010) (the “DOS report”) (p14). It also manifests in violence, to which further reference is made below. The discrimination is said to persist because of the failure to effectively enforce legislation prohibiting discrimination based on race or ethnic origin; the DOS report (p10).

Racially motivated violence against Roma

[69] Racial violence is also a significant problem in the Czech Republic. The DOS report refers to ongoing reports of assaults, racially motivated hate crimes and arson attacks against Roma. Many are conducted by members of neo-Nazi organisations estimated to number some 4,000 active members throughout the country; (p1).

[70] Following a demonstration linked to the right-wing Czech Workers’ Party in Litvinov in November 2009 the UN Special Rapporteur on racism remarked upon the “serious and deep-rooted problems of racism and discrimination against Roma at the heart of modern Europe”. During that incident 500 demonstrators clashed with some 1,000 police while attempting to reach the predominately Roma neighbourhood of Janov; Amnesty International *AI Report: Czech Republic* (2009) (the AI report) (p 2).

[71] The events leading to that incident are referred to in the European Network Against Racism *Shadow Report 2008 Racism in the Czech Republic* (October 2009) (“the ENAR report”). It asserts that: “Extreme right-wing nationalist demonstrations and violence increased to new levels during 2008 in the run-up to various elections” (the executive summary) and then refers to a “steady rise” in racist violence conducted by neo-Nazi organisations and parties (p 19). It states that Roma continue to be the main targets (p 19) and noted criticisms levelled against the police for failing to shut the Litvinov protest down much earlier.

Level of State protection

[72] Some efforts have been made to provide mechanisms to counter the problems referred to in the country information. For example the law allows citizens to lodge a written complaint with the Public Defender of Rights (Ombudsman), whose office was created to protect citizens against officers of the state administration, including the police, should they act (or fail to act) in a manner 'contrary to the Law'; Canadian Immigration and Refugee Board (IRB), Research Directorate CZE102667.EX *Czech Republic: Situation of Roma...* (January 2006 – November 2007) (12 December 2007) (the IRB report).

[73] In addition, the Police of the Czech Republic Act allows individuals who consider they have been wrongly treated by a police officer, to complain to various office-holders; the European Commission against Racism and Intolerance *ECRI Report on the Czech Republic (fourth monitoring cycle)* (September 2009) (the ECRI report) (para 166).

[74] Unfortunately the country information indicates that the effectiveness of such measures cannot be taken for granted for the simple reason that the public (and in particular Roma) have no confidence that these measures will be implemented.

[75] The ECRI report refers to anecdotal evidence that the incidence of racist violence is significantly greater than reflected in official figures (para 65) and hypothesises that victims may refrain from reporting crime because they lack confidence that the police will take action to follow-up on complaints (para 65).

[76] The IRB report states that (as at 2006) there appeared to be "near total impunity for racial discrimination against Roma" and that the authorities turn a blind eye to cases involving targeting of minorities, including Roma.

[77] That impression is reinforced by the ECRI report. Observing that victims of the most violent racist crimes are predominantly Roma, the ECRI report states that "the approach taken by both the police and the judiciary to establishing whether an act was based on racist motivations is frequently too narrow" (pp1-2). Further, it states that ill-treatment of minorities by the police continues to be under-reported (para 65); the possibility of racist motivation is not always examined, and where convictions are obtained, they result in the imposition of comparatively light

sentences (para 165). In that connection the ENAR report records that the state prosecutor withdrew charges against 11 out of 12 people initially charged with disturbing the peace following the violence which attended the Litvinov demonstration in November 2009 (page 25).

[78] In assessing the effectiveness of state protection it is worth noting research undertaken by Gallup Europe which found that more than 60 per cent of Czech Roma polled experienced incidents of discrimination in employment, health care, social services at school or when shopping during the previous 12 months. More than two-thirds of those had not reported the discrimination. According to the same survey, 36 per cent of Czech Roma polled reported having been the victim of an assault, threat or serious harassment during the previous twelve months. Seventy-six per cent of those did not report the crime, assault, threat or serious harassment: the European Union Minorities and Discrimination Survey "Data in Focus Report: The Roma" (2009) (the EUMD survey).

[79] It is unlikely that these trends can be reversed in the short term given the nature of public opinion and political pandering to that opinion. According to the ECRI report "anti-Roma hate speech has become an increasingly regular feature of public discourse in the Czech Republic" (para 43). This is echoed by the ENAR report, which refers in its conclusion to the gradual organisation among Roma groups to oppose the extremist right-wing violence but states that:

Unfortunately, as in many other areas of the fight against racism, civil society remains relatively unsupported by the Czech political class in this effort; rather, mainstream politicians have become even more populist and nationalist as a result of the support expressed by average citizens for the messages of the neo-Nazis. (p 41)

[80] As a result of their findings the authors of the ECRI report made a series of recommendations. They encourage the Czech authorities to strengthen implementation of criminal law provisions against racism and related crimes; urge the authorities to adopt comprehensive anti-discrimination legislation and recommend that a vigorous approach be taken to implementing laws prohibiting the manifestation of racist views and incitement to hatred.

[81] Turning these recommendations on their head, it appears that legislative intervention to prevent hate crimes and their proliferation is not only inadequate, but, to the extent that it does exist, it is not enforced or implemented effectively.

Analysis of the appellants' claims in light of the country information

The father

[82] The father's predicament has arisen from a combination of the grandfather's profile, augmented by his own efforts over many years. He has been the subject of a prolonged campaign of harassment and violence which should not be viewed as a series of disparate events, but as a continuum in which the three assaults are bridged by a sustained campaign of abusive telephone calls. Importantly, the attention focussed upon the father has escalated to a point where he was attacked in his own home.

[83] If the father were to return to the Czech Republic it is inevitable that he would continue to be involved with the Roma Association and to continue to help his community in the same manner he has in the past. In other words, he will continue to participate in the type of activities which brought him to the attention of the skinheads in the first place. It is also inevitable that if he were to return to P or Z he would eventually be singled out again by the skinheads who have targeted him in the past. The police have provided him with no protection in the past and are unlikely to do so in the future.

[84] In the circumstances there is a real chance that the father will face serious harm and it is clear that he will receive no protection from the state in that connection.

The older son

[85] The older son was the victim of a racially motivated assault in 2005. While not seeking to diminish the impact of that assault, the Authority finds that it was a random event in which the older son was unfortunately in the wrong place at the time. He has not been the direct focus of attention by those who have targeted his father (or anyone else) since, and that particular incident is not relevant to the assessment of the risk of future harm faced by the older son.

[86] Counsel submits however that the older son is at risk of becoming the target of the same elements within the local community that have targeted the father.

[87] In weighing that risk, the Authority notes that the older son has not been involved with social and cultural affairs on behalf of Roma in the manner of his father. As against that, he has been working for the Roma Association for some time. While the level of risk faced by the older son is considerably less clear-cut than the risk to the father, the test is whether there is a real, as opposed to a

remote or speculative, chance of being persecuted. The Authority is satisfied that the risk of serious harm faced by the older son is not so low as to be purely speculative and remote. He is known to the local police as the son of the father and the grandfather and indeed he is inextricably linked with them in that he shares their Christian name and surname. It is possible that the skinheads who targeted the father may, in his absence, turn their attention to the older son. By a narrow margin, the Authority finds that the older son has a well-founded fear of being persecuted if he were to return to P or Z in the Czech Republic.

The mother, the daughters and the younger son; (the remaining appellants).

[88] The remaining appellants also claim that they are at risk of being persecuted because of their association with the father. However, while it is true that they were victims of the home invasion in late 2009, in truth the skinheads' target has in the past always been the father, because of his activities for the Roma Association. The abusive and threatening telephone calls were made to him, and the assaults were upon him. None of the remaining appellants have the father's profile and any suggestion that they might acquire it in the future is entirely speculative.

[89] Nor do the remaining appellants share the distinct characteristic which may create an additional risk for the older son; the fact that he shares the same names as the father and the grandfather.

[90] While it is apparent that Roma are subjected to racially motivated violence throughout the Czech Republic, it does not establish that Roma are per se at risk of being persecuted. None of the remaining appellants were targeted prior to the incident which led the family to come to New Zealand and, in the absence of the father, there is no reason to believe that they would in the future attract the attention of the particular skinheads in question. Further, while it is not possible to conclude that any individual will not be the victim of violence, the risk to each of the remaining appellants in that regard is random to the point of being speculative.

[91] The country information also provides evidence of widespread systemic discrimination and prejudice against Roma. However discrimination alone is not enough to establish a claim for refugee status. The Authority has consistently found that not every breach of human rights will equate to being persecuted (for example *Refugee Appeal No 71404/99* (29 October 1999) [paras 65-67]). It is therefore necessary to evaluate whether the cumulative impact of the

discrimination likely to be experienced by each of the remaining appellants could equate to being persecuted.

[92] It is likely that the family will face financial hardship if they return to the Czech Republic. In the absence of the father as breadwinner it will fall to the mother to support her family. Given her lack of recent employment experience, and taking into account the possibility that she will face discrimination in the workplace, this will be difficult.

[93] However, the mother is literate and as a result of her own involvement with the Roma Association she is well-versed in ensuring that the family can access state benefits to which they are entitled. They have been able to move from one town to another in the past, without being unduly disadvantaged in terms of access to housing or other social benefits. Further, the mother and father have been able to ensure that their younger daughter had access to ongoing medical care as her condition dictates. In addition, the remaining appellants would have access to a high level of family support from the grandfather and from the mother's own mother, with whom the appellants were able to stay for a short time prior to leaving the Czech Republic.

[94] The daughters and younger son may be subjected to the same type of discrimination and bullying at school as they have experienced in the past, and the remaining appellants will all be vulnerable to societal prejudice. However there is no evidence that such difficulties would reach the level of intensity which would constitute persecution.

[95] In summary, the Authority is satisfied that the level of discrimination faced by each of the individual remaining appellants would not rise to the level of serious harm such that it would equate with being persecuted. They do not have a well-founded fear of being persecuted if they return to the Czech Republic.

Does the well-founded fear of being persecuted arise for a Convention reason?

[96] The father's predicament arises most obviously because of his race, and is accordingly for a Convention reason.

[97] The older son's predicament arises as a result of his race and his

membership of a particular social group, namely his family. It is therefore for a Convention reason.

Can the father and the older son access meaningful state protection elsewhere in the Czech Republic?

[98] Having found that both the father and the older son have a well-founded fear of being persecuted for a Convention reason in the Czech Republic, it is necessary to determine whether there is an “internal protection alternative”.

[99] For the reasons more fully explained in *Refugee Appeal No 76044* [2008] NZAR 719 (NZRSAA) and *Refugee Appeal No 71684/99* [2000] INLR 165 (NZRSAA), once a refugee claimant has established a well-founded fear of being persecuted for a Convention reason, recognition of that person as a Convention refugee can only be withheld if that person can genuinely access in his or her home country domestic protection which is meaningful. This requires:

1. that the proposed internal protection alternative is accessible to the individual; the access must be practical, safe and legal;
2. that in the proposed site of internal protection there is no well-founded risk of being persecuted for a Convention reason;
3. that in the proposed site of internal protection there are no new risks of being persecuted or of being exposed to other forms of serious harm or of *refoulement*; and
4. that in the proposed site of internal protection basic norms of civil, political and socio-economic rights will be provided by the State. In this inquiry reference is to be made to the human rights standards suggested by the Refugee Convention itself.

[100] Recognition of refugee status can only be withheld if each of these four elements is satisfied.

The father

[101] The father has spent many years of his life involved in improving the circumstances of other Roma. There is no reason to suspect that he would cease his activities even if he were to settle somewhere other than P or Z in the Czech Republic. The significance of this is that it will increase the likelihood that he

would attract the adverse attention of other skinheads and risk being exposed to serious harm.

The older son

[102] The Authority bears in mind the decision of the High Court, *A v Chief Executive of the Department of Labour* (CIV 2004-404-6314, 19 October 2005). Winkelmann J found that the Authority must consider "whether ... individual[s] having all of [the appellants'] characteristics" would face a real chance of serious harm for a Convention reason (para 38).

[103] Applying that to the current issue, the Authority finds that the older son cannot genuinely access meaningful domestic protection because of various factors, including characteristics particular to him, which mean that in the proposed site of internal protection he would be exposed to refoulement, or return, to the sites where he is at risk of being persecuted.

[104] These include factors which would push him back to those sites and other factors which would pull him back.

[105] When considering the factors which would pull him back it is relevant to note that the Authority has found that the remaining appellants, who do not have a well-founded fear of being persecuted in the Czech Republic, would almost certainly, upon return, seek to live in close proximity to the grandfather in Z or the mother's mother in P. That is where they would obtain the support necessary to sustain them, given the financial hardship they would face.

[106] Their presence, and the older son's desire to contribute to the financial wellbeing of his mother and his younger siblings are factors likely to pull the appellant back to those areas, where he is at risk.

[107] These must be considered in tandem with other factors likely to push the older son back to those areas.

[108] The Authority has already referred to country information touching upon the fact that Roma face high levels of discrimination in the Czech Republic. This manifests in difficulty obtaining access to adequate housing and employment. For example, according to a 2006 study referred to in the DOS report, more than 330 ghettos "blighted by substandard housing and poor health conditions" were inhabited almost exclusively by Roma. The combined population in these ghettos

was estimated to equate to more than one third of the entire Roma population (p 16). Barriers to better accommodation include discrimination and unaffordable rental alternatives, the impact of which is exacerbated by high unemployment rates among Roma.

[109] If he were to live elsewhere in the Czech Republic the older son would need to obtain accommodation and work. He has described the difficulties he experienced in seeking work in the past, and it is likely that he would face similar difficulties, because of his ethnicity, in the future. In assessing the impact of those factors the Authority also takes into account the fact that, while an adult, the older son is still a teenager, and has never previously lived independently.

[110] The discrimination he is likely to face in respect of basic needs such as accommodation and income are factors that would be likely to push the older son back to his family members (the remaining appellants), in the areas where he is at risk of being persecuted.

[111] In all the circumstances identified, there is no proposed site of internal protection in respect of which it can be said that the older son will not be exposed to the risk of refoulement.

Conclusion on internal protection alternative

[112] The Authority is satisfied that neither the father nor the older son can access meaningful protection elsewhere in the Czech Republic.

CONCLUSION

[113] With respect to the father and the older son, the first principal issue identified for determination is answered in the affirmative. The Convention reason in respect of the father is race. The Convention reason in respect of the older son is either race or his membership of a particular social group; namely, his family.

[114] Neither the father nor the older son would be able to access meaningful state protection elsewhere in the Czech Republic.

[115] The Authority finds that the father is a refugee within the meaning of Article 1A(2) of the Refugee Convention. He is recognised as a Refugee. His appeal is

allowed.

[116] The Authority finds that the older son is a refugee within the meaning of Article 1A(2) of the Refugee Convention. He is recognised as a Refugee. His appeal is allowed.

[117] With respect to the remaining appellants; the mother, the older daughter, the younger daughter and the younger son; the principal issue identified for determination is answered in the negative. That being the case, the second principal issue does not fall for consideration in respect of any of those appellants.

[118] The Authority finds that the remaining appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined to each of them. Their appeals are dismissed.

"A N Molloy"
A N Molloy
Member