

REFUGEE STATUS APPEALS
AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76043

AT AUCKLAND

Before: S L Murphy (Member)

Counsel: I Uca

Appearing for the Department of Labour: No Appearance

Date of Hearing: 13 & 14 June 2007

Date of Decision: 7 December 2007

DECISION

[1] This is an appeal against the decision of a refugee status officer of the Department of Labour (DOL), declining the grant of refugee status to the appellant, a national of the Czech Republic.

INTRODUCTION

[2] The appellant arrived in New Zealand on 22 August 2006 and lodged a claim for refugee status on 30 November 2006. He was interviewed by the DOL on 23 & 24 January 2007 and a decision declining his claim was delivered on 5 April 2007. It is from that decision that the appellant has appealed to this Authority.

[3] The appellant's case centres on the discrimination and violence he has suffered in the Czech Republic on account of his Roma ethnic origin. The crux of the appeal is whether there is a real chance of the appellant suffering serious harm if he returns there.

[4] The appellant's counsel provided written opening submissions and country information on 20 July 2007 and written closing submissions and further country information on 12 October 2007. These have been taken into account in the decision.

THE APPELLANT'S CASE

[5] The appellant is in his late 40s. He was born in AB town in what is now the Czech Republic. His father was a manual labourer and his mother a housewife. He is one of a family of 11 children.

[6] The primary school attended by the appellant was a special school for intellectually handicapped children. Many of the children in that school were Roma. The appellant's parents enrolled him and all his siblings in this school because they felt that the high number of Roma children there would ensure that the children were not victimised. The Roma children in the school were, however, discriminated against by the staff. They would never call the children by their names, instead referring to them as "gypsy". The Roma children's hair would be repeatedly checked for head lice and their hands, and on occasion, underpants, for cleanliness. The appellant was, at times, beaten with sticks by the teachers.

[7] In 1975, the appellant started attending a technical school, training to become a locksmith. Because he had attended a special school, he was not eligible to attend any other type of school. He was treated badly by the other students in the school because he was Roma. The classes were held in a mine. On the first day of school, his classmates pressed a hot metal rod on his forearms on two occasions, warning him to remain silent about the treatment that he would receive in his course. In the ensuing weeks, the appellant was doused with buckets of urine and repeatedly forced to make shovelling actions into the air. He was too frightened to complain about the treatment he received, because of the threats he had received on his first day. He also felt that complaining would be futile because the teacher was an alcoholic who turned a blind eye to his mistreatment.

[8] Approximately one month after the appellant started at the school, the students in his class conspired to subject him to a particularly dangerous situation. While one of the students heated up a metal object, the other students distracted the appellant, by requiring him to bend down and pretend to sweep. They then

ordered him to stand up, whereupon he came into contact with the metal object. His face was severely burned as a result. The appellant left the school and never returned. The following day, the appellant's father went to the school to complain. The reaction of the headmaster and the appellant's teacher to the complaint angered the appellant's father so much that he grabbed the teacher's collar and slapped both him and the headmaster. The appellant's father was then warned that he may be arrested for his activities and was required to write a letter of apology. The appellant's mother and grandmother treated the appellant's burn at home, because they were frightened that if they sought hospital treatment, the doctors may perform a skin graft, thereby resulting in further scarring to the appellant.

[9] The appellant stayed at home for three months after the incident, because his mother was fearful that the wound would become infected if he left the house. The wound was sufficiently healed by the end of January to enable the appellant to start working. He started doing casual work gardening for the city council. As he was still a minor, he was not able to take up full-time employment.

[10] The appellant's father undertook casual employment digging wells privately on weekends. As a result of one such job, he met a professor, Professor CD, who was a member of an orchestra and a teacher at a well regarded arts and music academy. The appellant displayed musical talent so Professor CD agreed to enrol him at the academy and give him one-on-one tuition. He taught the appellant the drums on Fridays and Saturdays, and the appellant also had private lessons from a singing teacher. He completed a two-year course in music and graduated with high grades. Professor CD was kind and the appellant suffered no discrimination at the school, although as he was individually tutored he had little contact with the other students.

[11] After the appellant completed the course, he formed a band with two Roma friends. In 1978, the band members registered with the city council and the Cultural Ministry. The registration with the Cultural Ministry was a competitive process, requiring performances in front of judges. The appellant's band were the only band who sang Roma songs, which helped secure their registration.

[12] From 1978 to 2002, the appellant's primary occupation was playing in his band. They played in hotels and also performed privately for Roma celebrations such as marriages and christenings. Managers of the hotels in which they performed paid them less than white Czech musicians. When the band was not

playing, the members would be required to sit in the kitchen rather than in the bar with the customers.

[13] The band was overseen by an official from the Cultural Ministry. He managed a number of bands, the only Roma one of which was the appellant's. The band members bribed the manager to ensure that they had a continued source of work. The other bands had to bribe the manager only if they wanted to perform international work. The appellant worked on a construction site in his spare time to make sufficient money to bribe the manager. He also took on other odd jobs such as washing dishes in a restaurant, which was considered to be degrading work for a man to do.

[14] The appellant suffered numerous problems when playing in the band. Patrons would harass the band members and attack them or provoke fights with them. Skinheads and other anti-Roma patrons would frequently come up onto the stage and push the band members or kick their instruments. Violence initiated or provoked by patrons would occur, on average, three to four times a month when the band first started up, but lessened over time. Violent incidents would generally occur on a Friday or Saturday when people were drunk. At times, barmen would call the police when violence occurred during the performances. When the police came, the band members would be required to show their identification cards and their registration which allowed them to play music.

THE APPELLANT'S MARRIAGE

[15] In 1987, the appellant had a child out of wedlock by an ethnic Czech woman. Their relationship broke up because she was having an affair with another man. The appellant only saw his son on one occasion, when he was a baby. He remained liable for child support payments until the son was 18.

[16] In 1987, the appellant married an ethnic Czech woman. Her parents opposed the marriage because the appellant was Roma and ejected her from the family home when she pursued a relationship with him. In order to obtain official permission to be married, the appellant and his wife were first interviewed by a registry officer. Because the appellant was a Roma man seeking to marry a white woman, the officer undertook an investigation into him, for example checking whether he had a criminal record. The appellant was only given permission to marry when he signed a paper promising that he was of good character.

[17] The appellant and his ex-wife had two sons. However, the relationship dissolved because the appellant's wife expected more material goods than the appellant could provide on his income, and also grew to feel that he was not good enough for her. It transpired that she had a lover. The pair separated in 2001. After separating, the appellant lived with various family members. As a single person, he was not eligible to apply to live by himself. The appellant's mother-in-law spoke badly of the appellant to his children, and turned them against him. His ex-wife would not allow him to see his children after the separation. He did not seek the involvement of the court to get access to the children because he believed that it would be futile as his wife had made the application for divorce and he was Roma so the courts would take her side.

[18] The appellant was liable for child support for the child of his first union and the two children from his marriage. On a number of occasions, he was unable to meet his child support obligations and would be required to attend a court and make arrangements for repayment of the debts. On one occasion, he was subpoenaed to the court for his supposed failure to pay 22,000 crowns. He showed the court his receipt for his payment but they did not believe that he had made it because his wife had not produced her receipt for the money. On that occasion, he was taken from his home to the court by the police. The court did not believe the receipt was genuine and only accepted the appellant had made the payment after checking the receipt against records held at the post office.

[19] On two other occasions, the court refused to accept payments the appellant had made as having been child support payments, instead treating them as gifts to his wife and requiring him to make the payments again. This was because the appellant had failed to correctly fill in the docket that was required to accompany the payments, by failing to specify that the payment was for child support. This also happened to the appellant with respect to a number of payments that he made for the child he had with his previous girlfriend.

[20] The appellant did not make his child support payments for the last few months of his time in the Czech Republic, as he was saving for his airfare to New Zealand. Accordingly, he left the Czech Republic with outstanding child support obligations.

[21] Since coming to New Zealand, he has learned from a nephew that a letter had come to his previous residence, in which the nephew now lives, seeking payment of the outstanding fines.

EMPLOYMENT SINCE 2002

[22] In 2002, the appellant stopped playing for the band. A variety of factors informed his decision to discontinue his activities as a professional musician. The bar and restaurant scene since the fall of Communism in 1989 had changed, meaning there was less work available. This meant that the appellant and other band members were not earning sufficient money. They also disliked the attacks by drunken bar patrons.

[23] From 2002 until his departure in 2006, the appellant did casual work to support himself. He had a friend, Mr Y, who was a builder, and who owned his own copy centre. Mr Y would give him work for several months at a stretch and sometimes up to a year. He made unsuccessful attempts to obtain full time employment over this period. Employers whom he approached were uninterested in his applications. Although none of them advised him directly that this was because he was Roma, the appellant could tell by their manner that this was, in fact, the case. The money he received from his casual work during the week was on occasion insufficient to cover his bills. On such occasions, he would endeavour to work weekends to supplement his income

ATTACKS BY SKINHEADS

[24] In 1978, the appellant was subjected to the first of a number of attacks. A man approached him when he was in a park and asked for a cigarette. He then punched the appellant in his left eye, causing the appellant to be hospitalised for two weeks. As a result of the injury, he was required to have surgery on the inside of his lid and his retina and his eyesight was permanently affected

[25] The appellant was subjected to the following skinhead attacks between 1989 and the mid 1990s.

[26] On one occasion, the appellant was passing a skinhead in the street, who had a baseball bat hidden behind his back. He attacked the appellant after walking past him, beating him on the back with the bat. He managed to run away and did not call the police. He was not injured.

[27] The appellant was again attacked during International Mothers' Day some time during the early 1990s, together with members of his band. The attackers were shouting slogans like "Gypsies to the gas chambers" and "Kill the gypsies".

The appellant and his band members were playing at the event, however they left the podium and stood in a circle to protect the women and children from the attackers.

[28] On another occasion, the appellant and his band members were attacked after leaving a night club. Upon leaving the club, they were confronted by 10 skinheads who were waiting for them. The appellant was beaten and kicked with heavy boots; his knee and little finger were injured as a result and he continues to have a scar on his left knee. After this incident, the appellant and his fellow band members went to the police station. One police officer was kind and allowed the men to wash and treat their wounds. The police sent a car out to look for the men but were unable to find any.

[29] On another occasion, the appellant and his wife and children were visiting a dam in the summer months when word came that skinheads were approaching. The appellant instructed his wife to take the children to the other side of the dam. When the skinheads arrived, they hit the appellant, as well as beating him with a baseball bat. He was in the water at the time, so could not run away from them. The appellant had a large bruise on his lower legs as a result of the attack. He treated the injury himself using vinegar water. The appellant recalled this incident occurring around 1990.

[30] In a subsequent year, the appellant was helping an old Roma woman board a tram from the cemetery when two to three skinheads came into the carriage and started to attack the woman while the white people in the tram looked on without helping. The appellant came to her aid and as a result, he too was attacked. The tram driver called the police who boarded the tram at the next intersection. They checked the identification cards of the skinheads as well as the appellant and the old woman. While the police were checking the identifications, the skinheads were giving Nazi salutes and hurling racial insults such as "Gypsies to the gas". The police ignored these actions and allowed the skinheads to go. However, the appellant and the old woman were taken to the police, where they were held for about half an hour. The appellant's clothes were ripped as a result of the skinheads' attack but he had no injuries. He recalls this incident occurring in the early 1990s.

[31] In a further incident, around 1993, the appellant was going to buy cigarettes on a busy street when he was kicked in his rear by a skinhead wearing heavy military boots. The appellant's buttocks were bruised and he bled from his anus

for two days. He was ashamed of the injury so did not tell his wife. He treated it by sitting in a container of water and salt in the bathroom and had to wear sanitary pads for two days.

[32] In about 1993-1994, the appellant and his band were playing at a new year's eve party held in a public square. Unarmed skinheads approached the appellant and other Roma people at the celebration and started a fight. As a result, the appellant had bruises on many parts of his body as well as his face.

[33] Another time around 1993, the appellant and his ex-wife were returning home through a park from a movie, when they saw a group of skinheads. The appellant was concerned that he had been seen holding hands with his wife, an ethnic Czech, as he felt she may be targeted. He told her to go the other way while he diverted attention from her. He was then chased by the skinheads and ran into the entrance of an accident and emergency clinic. Three skinheads chased him upstairs and the appellant ran through the door of the waiting room and held it shut. The skinheads smashed the glass of the door with their baseball bats and hit the appellant repeatedly through the broken glass. Although the appellant begged the people in the waiting room to help him, initially no-one came to his aid. However, after a period, someone stood up and helped him hold the door. The skinheads eventually left and the police were called. They took pictures of the broken door. The appellant was treated for cuts at the centre.

[34] Some time in the mid 1990s, the appellant was escorting his daughter onto a train when he heard word that skinheads were approaching. He managed to run away, but a few days later, he was again with his daughter in the main train station when skinheads approached him. They grabbed him and threw him into a telephone booth forcefully. He hit the telephone booth very hard, causing his jacket to rip. The appellant lay still in the hope that this would deter his attackers. Although there were a lot of people around him, no-one came to his aid. Eventually, the police responsible for the train station approached the area, causing the skinheads to leave. He did not suffer injuries during this incident.

[35] In May 2006, he went to board a train whereupon he was confronted by a skinhead who punched him in the face with his knuckle-dusters and then gave a Nazi salute. The appellant fell back into the crowd, apparently irritating people. He then boarded the train again and tried to hide behind people to avoid further violence from the skinhead. His mouth was bleeding and he had to take off his tee-shirt to stem the flow of blood. As a result of the punch, he lost a tooth. He

did not obtain dental treatment and still has a missing tooth.

[36] In addition to the attacks described, the appellant suffered a number of other less serious attacks. On average, he suffered two to three attacks per year from 1989.

GENERAL HARRASSMENT

[37] The appellant described himself as someone who could not bring himself to stay inside for a long time. He liked having a lot of people around him so would frequently go into public areas such as towns and parks. When he was feeling under stress, he would spend time in children's playgrounds. When he spent time there, the mothers of the children would give him strange looks and put their bags into their child's pushchair, as if protecting them from being stolen by him. This made him sad.

[38] At times he would receive harassment by the general public. For example, he was once in a shopping mall holding a can of Coca Cola when security guards approached him and accused him of stealing the drink. He was able to provide proof of purchase, as he had kept the docket.

[39] The appellant was stopped frequently by the police and asked for identification and papers. On one occasion, he was taken to the police station and questioned. The police wanted him to identify other Roma in photographs, but the appellant did not know them.

[40] The appellant fears further violence and discrimination if he returns to the Czech Republic. He also fears that he will be sentenced to three years imprisonment due to outstanding child support debts.

DOCUMENTS

[41] The appellant submitted the following documents in support of his claim:

- i. photographs of his Roma band;
- ii. copies of his Cultural Ministry Registration documentation;
- iii. medical report dated 20 July 2007; and
- iv. medical report dated 27 July 2007.

THE ISSUES

[42] 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."

[43] 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

[44] The appellant is accepted as a credible witness.

APPELLANT'S MENTAL HEALTH

[45] Counsel has described the appellant as a mentally frail individual and made submissions about his mental state which are addressed below (see [60] and [70] below).

[46] Two documents were submitted in respect of the appellant's mental condition. Both were reports from General Practitioner Tony Wansbrough. The first was dated 27 July 2007 and referred to the appellant having recently been described an antidepressant with anti-anxiety effects, anti-anxiety medication and sleeping medication. He was described as "a highly anxious and hyperalert individual". Dr Wansbrough noted in the report that she anticipated that his anxiety and depression would be under control in six weeks.

[47] The second report was dated 27 July 2007 and noted that the appellant had not been taking the medication properly but that he now understands how to use the medication. Dr Wansbrough indicated that she expected that he would get a significant benefit from the medication after a month.

[48] No subsequent reports were submitted.

[49] In the context of submissions regarding the appellant's mental state, counsel apparently invited the Authority to infer that the appellant is of limited intelligence because the appellant was exempted from military service on that basis. However, the appellant gave no impression of being of limited intelligence and indeed gave evidence of having achieved high grades at a prominent tertiary academy. Moreover there is no connection between intellectual slowness and mental health.

[50] It is accepted that the appellant suffers anxiety and depression.

COUNTRY INFORMATION

[51] The Authority has considered the position of Roma in the Czech Republic in a number of cases including, in recent years *Refugee Appeal No 73607* (26 February 2004), *Refugee Appeal Nos 74776, 74777 and 74782* (10 May 2004), *Refugee Appeal Nos 74122, 74123, 74124 and 74125* (23 June 2005) and *Refugee Appeal Nos 75530, 75531, 75532 and 75533* (30 June 2006). All of those decisions refer to country information which demonstrates that Roma in the Czech Republic have held a disadvantaged position in Czech society, particularly since the end of the Communist era. They have suffered widespread discrimination, faced hurdles in accessing social services, been subjected to racially motivated attacks, and on occasion been mistreated at the hands of the police.

[52] The Czech government has taken measures to provide for greater recognition of the rights of Roma as a result of its 2004 accession to the European Union. However, in spite of the government's efforts, Roma continue to face discrimination in education, employment, housing, and other areas of everyday life, as well as racial attacks, with only incremental improvements in recent years. (United States Department of State *Country Reports on Human Rights Practices for 2006: Czech Republic* (6 March 2007).

IS THERE A REAL CHANCE OF THE APPELLANT BEING PERSECUTED?

[53] The task of the Authority is to assess whether there a real chance of the appellant being persecuted, in the context of the country information and his personal situation. The Authority has defined persecution as "the sustained or system denial of basic or core human rights such as to be demonstrative of a

failure of state protection"; see Hathaway, *The Law of Refugee Status* (1991) 104-108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996).

[54] The appellant has suffered a number of serious random racial attacks. He has also suffered harassment in the course of his education, including a serious racial attack. In addition to these attacks, he has suffered more general discrimination such as being asked for ID by the police and being assessed prior to being given permission to marry his white wife.

[55] When the totality of the appellant's experiences are considered he may be viewed as having, in the past, suffered persecution within the meaning of the Convention. The key factor that gives rise to this finding is the number and seriousness of attacks he has suffered.

[56] However a person who has suffered persecution in the past is not necessarily at risk of future persecution. The Authority's task is to make a prospective assessment of the risk of persecution to the appellant upon return to the Czech Republic. In other words, in order for an appellant to be in need of protection there must be a real chance of their being persecuted in the future. (see *Refugee Appeal No 70366/96* (22 September 1997)). It is therefore necessary to assess the various components of the risk facing the appellant upon his return, both individually and collectively, in order to assess whether he falls within the ambit of the Convention. It is in that regard, of course, that the existence of any past persecution becomes relevant – as a possible indicator of what he might face in the future.

RISK OF ATTACKS

[57] There are two factors in this case which indicate that the risk of the appellant suffering serious racial attacks to the level of persecution in the future falls below the real chance threshold. The first significant factor is that, other than the 2006 incident, all of the significant racial attacks against the appellant occurred prior to the mid 1990s, more than ten years ago. The concentration of skinhead attacks against the appellant in the years subsequent to the collapse of communist rule is likely to have been due to a combination of the relative youth of the appellant at the time, and the spike in skinhead violence that occurred in the aftermath of the revolution, as social controls were relaxed. It is significant that, in the last decade, the appellant has suffered only one such attack.

[58] The second related factor is that all the attacks against the appellant have been random and opportunistic, including the one in 2006, and not demonstrative of any vendetta against the appellant by a particular skinhead or groups of skinheads, or profile on the part of the appellant over and above other Roma. It is simply not possible to conclude, on the basis of a single serious incident in the past decade, which although vicious and undoubtedly frightening did not of itself amount to persecution within the meaning of the Convention, that there is anything more than a remote, or random, chance of further such incidents which individually or collectively rise to the level of persecution. The degree of future risk of racial attacks rising to the level of persecution falls well short of the level of a real chance.

[59] Country information does not establish that every Roma in the Czech Republic has a real chance of falling victim to racial attacks of a persecutory nature, and neither do the appellant's own individual experiences in recent years indicate a real chance of that happening. The chance of him falling victim to serious racial attacks which individually or collectively amount to persecution upon his return is no more than random and is appropriately described as no more than the chance of being in the wrong place at the wrong time.

[60] Counsel's submission that another skinhead attack would result in serious psychological harm to the appellant is speculative, in light of the absence of medical evidence to that effect or evidence that such serious psychological harm has occurred as a result of any past attacks. The appellant's general anxiety and depression has, on the evidence, been relieved by his medication and Dr Wansbrough's reports do not signal any risk of serious psychological harm to the appellant were he to return to the Czech Republic.

INABILITY TO SECURE EMPLOYMENT

[61] Counsel submits that the appellant would be unable to secure employment if he is returned to the Czech Republic.

[62] The appellant, although not able to obtain full time employment, was able to obtain extended periods of casual work. There is no reason that he could not find further such work were he to return to the Czech Republic. The appellant would therefore be able to maintain a livelihood upon his return to the Czech Republic.

[63] It is accepted that the appellant has suffered discrimination in respect of his past employment, in a number of respects. The Refugee Convention is, however, not designed to protect appellants from discrimination, which, unfortunately, occurs to a greater or lesser extent in all societies. Its purpose is to protect persons from being persecuted. We find that the appellant's likely ability to find casual rather than permanent work upon his return to the Czech Republic does not rise to the level of being persecutory.

INABILITY TO SECURE ACCOMMODATION

[64] Counsel submits that the appellant fears that he will be unable to secure accommodation if he is returned to the Czech Republic. The Authority acknowledges the country information which demonstrates discriminatory practices in the allocation of housing to Roma. However, the appellant's evidence is only that he was ineligible for his own apartment because he was single (that is, for reasons unconnected with his race), and that he was able to obtain accommodation through living with relatives. There is no reason that the appellant would not be able to secure accommodation with relatives upon his return to the Czech Republic. Accordingly, any limitations on his ability to obtain accommodation do not arise due to discrimination and he is likely to be in a position to obtain accommodation upon his return, without difficulties.

FEAR DUE TO UNPAID CHILD SUPPORT

[65] The appellant anticipates that he will face problems upon his return due to unpaid child support. He says that he was unable to pay it in the lead up to his departure to New Zealand as he was saving for the aeroplane tickets. He expresses concern that he will be sentenced to three years in prison because of his outstanding debts.

[66] The appellant's evidence is that he has been advised by his nephew that a letter has come to his previous residence seeking payment of the unpaid debts. The fact that the appellant may be at risk of being prosecuted, and even imprisoned, for non-payment of child support is not persecutory. There is generally no breach of any core human right in being subject to the ordinary and non-discriminatory laws of a country - even where those laws, or the punishments thereunder, might be regarded as harsh or strict. The Czech Republic is entitled to make and uphold laws relating to default in child support payments, including

the imposition of criminal sanctions. That is recognised by, for example, Article 9 of the ICCPR which limits the right to liberty and security of the person to instances of *arbitrary* arrest or detention and expressly provides (emphasis added):

“No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”

[67] The appellant did face some difficulties regarding his child support payments, in that he was required to make further payments when he failed to fill in the form correctly. In light of the country material regarding discrimination against Roma generally, it is possible that the officials may have been more lenient on non-Roma who made similar errors in filling out their child support documentation, and therefore there may have been an element of discrimination in their treatment of the appellant in that context. Similarly, on the occasion that the Court initially believed that the appellant had produced a false receipt for 22,000 crowns, their assumption that his non-Roma ex-wife’s version of events was accurate was apparently discriminatory. However, an objective process was then undertaken by the Courts that vindicated his story, which resulted in a fair outcome for the appellant. The proceedings were dropped and he was not subjected to any further difficulties relating to this matter.

[68] We are satisfied that any past discrimination faced by the appellant in his child support payments, even if it existed, was of an insufficiently serious nature to give any objective basis to the suggestion that he faces discriminatory prosecution and/or punishment. If he does suffer some Court-imposed sanction for failing to pay child support (including imprisonment), the imposition of a non-discriminatory penalty for breaking the law is simply not persecutory within the meaning of the Refugee Convention.

OTHER MATTERS

[69] The appellant also says that he risks being subjected to checks by the police on his identity. However, as stated above, the Refugee Convention is not designed to protect persons against all forms of harm, including random acts of discrimination. Periodic identity checks do not rise to the level of persecution. Neither are any other occasional acts of societal discrimination that the appellant may face upon his return sufficiently serious to amount to Convention based persecution.

[70] Counsel submits that the appellant would have a severe mental breakdown and require committal to a psychiatric hospital if returned to the Czech Republic. She submits country information regarding mistreatment of mental patients, and submits that the mistreatment amounts to serious harm. This submission is speculative. There is no evidence before the Authority to indicate that the appellant had any form of mental breakdown, severe or otherwise, in his years in the Czech Republic, even during the 1990s when he was subjected to a series of serious racial attacks. The anxiety and depression that the appellant currently suffers is being treated with medication and at the time it was prescribed his doctor expected that it would abate considerably. Presumably, his condition will remain under control as long as he takes the medication.

CONCLUSION ON WELL-FOUNDEDNESS

[71] The issue is whether a person having all of the characteristics of the appellant, in his circumstances, faces a real chance of being persecuted. We have had regard to the fact that the appellant is a single male Czech Roma with moderate employment prospects who has a history of persecution in the early 1990s and subsequent discrimination. We have borne in mind that he has suffered a number of significant attacks concentrated in the early 1990s, that he has had a decade free of significant attacks prior to a further attack in 2006, the fact that he suffered discrimination as a musician, and was only able to obtain only casual employment after giving that work up, that he has been able to secure accommodation with relatives, that he has outstanding child support payments to make, and that he is currently being treated for anxiety and depression. Although the appellant risks further discrimination, none of the concerns he raises, taken singly or cumulatively, give rise to a real chance of him being persecuted if he returns to the Czech Republic.

[72] Accordingly, the first framed issue is answered in the negative and the second framed issue does not arise.

CONCLUSION

[73] For the above reasons, 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.

"S L Murphy"
S Murphy
Member