

**REFUGEE STATUS APPEALS AUTHORITY**  
**NEW ZEALAND**

**REFUGEE APPEAL NO. 72766/2001**

**REFUGEE APPEAL NO. 72767/2001**

**REFUGEE APPEAL NO. 72768/2001**

**AT AUCKLAND**

<b><u>Before:</u></b>	D J Plunkett (Member)
<b><u>Counsel for Appellant:</u></b>	D Mansouri-Rad
<b><u>Appearing for NZIS:</u></b>	No appearance
<b><u>Date of Hearing:</u></b>	9 October, 7 November 2001 & 10 June 2002
<b><u>Date of Decision:</u></b>	18 July 2002

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**DECISION**

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[1] These are appeals against the decisions of a refugee status officer of the Refugee Status Branch of the New Zealand Immigration Service, declining the grant of refugee status to the appellants, nationals of the Czech Republic.

**INTRODUCTION**

[2] The appellants are a family of Roma, comprising the husband, wife and a three year-old boy. They came to New Zealand in April and October 2000 and made their applications for refugee status on 3 May and 26 October 2000. The husband and wife were interviewed by a refugee status officer on 31 January

2001. The officer issued decisions declining their claims on 25 June 2001. This led to their appeals to this Authority.

[3] As the appeals raised similar issues, they were scheduled to be heard together. For the same reason, the Authority will issue one combined decision in relation to this family. The appeals were initially to be heard on 18 September 2001 but counsel objected to the independent interpreter appointed by the Authority. For the reasons given in a Minute (dated 27 September 2001), the Authority rescheduled the appeal and appointed another interpreter.

### **THE APPELLANTS' CASE**

[4] The following is a summary of the evidence of the wife and husband. It is assessed later.

[5] They are from the city of Opava.

[6] The first to give evidence was the wife. She was educated in a normal state primary school for eight years. The authorities attempted to place her in a "special" school, but her mother refused to allow this. At school, she was verbally and physically abused. The children would often swear at her, calling her "Roma swine!". Children would grab her schoolbag and scatter its contents on the ground. These incidents happened continually and she would often run frightened to the toilets to hide. She found the incidents stressful and did not want to go out. After completing primary schooling, she studied hairdressing for three years and then worked for a year in the period 1995/1996 at a hairdressing salon, owned by an ethnic Czech woman. Due to her fair skin, she is not always identifiable as a Roma and many customers could not tell. She had been instructed by the owner to deny being Roma if asked. In 1996, she left hairdressing to study nursing and completed three out of the four years of study at a state nursing school, but left to come to New Zealand. She found study at the nursing school unbearable because of the insults she received as a Roma. One year of her study was interrupted to have her child.

[7] The wife has not been assaulted since she left school, but often suffered verbal abuse. She was asked by the Authority to describe the worst incident. In January 2000, a group of skinheads banged on the basement door of the residential block where the family lived (on the 4<sup>th</sup> floor), yelling abuse directed at

Roma (many of whom lived there), but they were unable to enter the building. She was at home with her son at the time and found the ordeal very frightening. The incident was reported to the police and they came a few hours later and made a note of the incident, but she heard nothing more from them.

[8] As she found life unbearable and the Czech Republic unsafe, she came to New Zealand in April 2000 with her son, mother, step-father and three sisters, all of whom have applied for refugee status (none of which have been determined apart from those subject to this decision). Another family of five Roma came on the same flight to New Zealand. They also applied for refugee status, although she does not know the outcome.

[9] The wife has a brother, who is a very successful professional dancer, living in the Czech Republic. He has been physically assaulted (by being dragged to the shower by fellow dancers) and was kicked at a disco in 1992 or 1993, resulting in severe pain. He is also subjected to name-calling and snide remarks by other dancers and managers. Her natural father remains in the Czech Republic. He has health problems and is unemployed. Her mother worked as a cook for a few years at a primary school and then as an assistant in a supermarket for many years. She was also the recipient of verbal abuse. Her step-father had many jobs (coal-miner, driver and builder's labourer) and was twice assaulted by skinheads, once in 1996 (with a baseball bat) and once in 1999. She does not know what injuries he suffered, apart from bruising and stomach pains. Her three sisters in New Zealand went to normal state schools in the Czech Republic. They were also subjected to verbal abuse and were "pushed around" a few times.

[10] The husband told the Authority he was educated at normal state schools, at both primary and secondary level, as his parents insisted on a normal school and did not approve of special schools. He did not complete secondary schooling until 1998, as he had been expelled from high school in 1991, three months prior to his final examinations because one of the supervisors did not like "gypsies". In the intervening period, he completed a three-year butchery apprenticeship and then worked as a butcher, before returning to complete his secondary schooling.

[11] At school, he was the victim of verbal abuse and physical assaults. Even teachers would pull his ear or slap his head. He would also be made to kneel in the classroom. The children would also lock him in the toilet, as well as kick and hit him. These incidents often left him bruised and he says he developed a

complex about “being born into a family such that people did not like me”.

[12] The worst assault occurred when he was 14, in [year deleted]. He was returning home from school when he was attacked by a group of four skinheads. They put sand in his mouth, cut and scratched him with a razor and pushed him against a wall, where he banged his head and fell unconscious. When he regained consciousness, he walked home. His parents took him to a doctor who gave him painkillers for a headache. The incident was reported to the police who came to question him but accused him of provoking the skinheads. One or two weeks later, he found his vision was blurry, his right arm heavy and he stopped speaking, so his parents took him to the Opava hospital (later in his evidence, he said he was taken to hospital immediately after the incident). He remained there for two or three days, before being transferred to a hospital in Ostrava where he spent three months. After being released from hospital, he regularly consulted a neurologist until he came to New Zealand where he is seeing a general practitioner who has prescribed antidepressants and medication for his high blood pressure and to improve his blood circulation. The husband says he has suffered serious mental damage as a result of this assault, though he describes his current mental abilities as normal and his intelligence as normal. According to the husband, there was an article in a newspaper featuring the assault on him. His family have not, however, been able to locate a copy of the article.

[13] The husband was also assaulted at a disco in the early 1990s on his 16<sup>th</sup> birthday. He was scratched on his arms and hands with a spiked instrument. He was also assaulted when he was 16 or 17, as he tried to enter a disco. A group of skinheads said the disco was “not for black faces”. He was dragged into a garden and beaten, suffering bruises and sore ribs. He went to see the family doctor who did not think his injuries were serious enough to treat.

[14] In 1996, some skinheads grabbed him while he was walking on the street, beat him and pulled the sleeves from his jacket. A doctor treated him for bruising. He reported the incident to the police who told him he must have provoked his attackers.

[15] About two months prior to coming to New Zealand in October 2000, he was intercepted by a group of skinheads while riding his bicycle and pushed onto the ground. He fell on some broken glass and cut his hand. This was stitched at a local hospital the following day.

[16] The husband also suffered discrimination in obtaining employment. Some prospective employers would reject him as a “dirty gypsy”.

[17] The husband’s parents remain in Opava. His father is the personnel manager of a building company. His mother worked for many years as a cleaner but had to give this up as she developed an allergic reaction to chemicals. She then worked in a chocolate factory and a freezing works and is currently unemployed, waiting for her previous employer to contact her when work is available. There are not many jobs for women in Opava. His brother spent five years studying the repair and design of machinery and has a job in Opava, maintaining machines for heavy industry. His sister is married and works in a freezing factory. His parents own their own house. They do not have any problems at the moment, apart from insults from their neighbours. His brother has been assaulted in the past. On the appellant’s 16<sup>th</sup> birthday, his brother was punched in the head as they tried to enter a disco. His brother suffered a severe headache and spent two weeks in hospital. He does not have any long-term problems from this. He has been scratched during other assaults, including one at Christmas in 1998.

[18] As for their son, they both fear he will suffer the same history of abuse and assaults that they have endured. They also fear that he will be sent to a special school.

[19] The appellants did not accept the country information put to them by the Authority that the situation is improving for Roma as the government makes efforts to advance their situation.

[20] The Authority acknowledges counsel’s comprehensive memoranda of 12 & 13 September 2001. The appellants also produced to the Authority a home video, which is dated June 1995, concerning a family function. It shows that the wife and members of her birth family were refused entry into a billiard club.

[21] Further documents were received by the Authority on 9 January 2002, including additional country information and further medical evidence. This includes a brief medical report (dated 4 December 2001) from Dr Michael Loten, general practitioner of Auckland. He states that the husband’s current medical problems are hypertension, tension headaches and anxiety/hyperventilation attacks. The Authority wrote to counsel on 12 February 2002 concerning these

documents. Counsel replied on 13 March 2002, enclosing a statement from the husband and further medical documents. As the additional medical evidence received on 9 January and 13 March 2002 raised credibility issues, the Authority reconvened the hearing on 10 June 2002 and heard further evidence from the husband.

### **THE ISSUES**

[22] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

“... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.”

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

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

### **ASSESSMENT OF THE APPELLANT'S CASE**

[24] The first issue for the Authority, prior to addressing the principal issues, is to determine whether the appellants are credible witnesses. The Authority finds that the husband and wife are largely credible and accepts their core story. It has been told consistently, spontaneously and (save as below) without embellishment.

[25] The only aspect of their story not accepted by the Authority is the husband's claim to have been hospitalised for three months in [*year deleted*] due to an assault by skinheads. This is because the medical evidence concerning this hospitalisation is not consistent with the husband's story.

[26] The medical records of the Opava hospital (where he was first taken) show a history of medical and psychological problems, including hospitalisation for

meningitis at [*age deleted*] and again at the age of [*deleted*] with enuresis (bed-wetting). They also record that two months previously (not on the same day or one to two weeks earlier), he complained of a severe headache and high temperature. He was prescribed medicine by a district doctor. A viral infection was diagnosed. On the day of his admission, he returned early from school because of a severe headache and nausea. A neurological examination identified “central paresis” (a muscular weakness caused by disease of the nervous system) and “ischemia” (an inadequate flow of blood due to a blockage). The diagnosis was “amentia” (failure of development of the intellectual faculties) with “aphasia” (a disorder of language caused by disease) and central and right-hand side paresis.

[27] Not only do the Opava hospital records point to a history of brain disease or disorder and to such a diagnosis for his admission to hospital, but they give no indication whatsoever that the admission was linked to any trauma. Indeed, they are inconsistent with any such cause. The records expressly deal with trauma in a paragraph giving the patient’s history, where it is stated:

“No operations, one accident, in [*year deleted*] – a left leg fracture.”

[28] The Authority has no doubt that, if the husband or his parents (one or both of whom had taken him to hospital), had identified an attack as the cause, it would have been mentioned here or elsewhere in the records. As to this, the husband initially said that his parents did not want to inform the hospital authorities of the circumstances leading to his symptoms (namely, the attack by skinheads). They told him not to tell the doctors. The Authority does not accept that his parents would not have informed the doctors that he suffered a trauma, even if they invented a story as to how it occurred. It would obviously have been important to the doctors, as his parents would know, to state that he had suffered some trauma to his head. It is also unlikely that the doctors did not deduce trauma, if that was the cause of his symptoms. He thought that the doctors simply got it wrong but the apparent thoroughness of these records suggests that this is most unlikely.

[29] The appellant eschewed the explanation about the deliberate failure to inform the hospital, when the hearing was reconvened on 10 June 2002. His new explanation for the failure to mention trauma in the records was that he could not speak when he was at the Opava hospital (the Authority observes that the medical records confirm that his speech was unintelligible), he was under the influence of drugs, slept most of the time and was never asked what had happened. When asked by the Authority why his mother had not told the doctors at the time of his

admission (it is not clear to the Authority whether both his parents took him to hospital or just his mother), he said he did not know what had happened as he had been too traumatised to tell her. He denied that he had been instructed by his parents to hide the true cause. When asked why he had told the Authority previously that he had been so instructed, he said he did not know and it happened a long time ago. As to the failure of his mother (or parents) to inform the hospital (because she or they did not know), he agreed with the Authority that it was “possible” that it would have been obvious to his mother, from the bruising and razor cuts, that he had been attacked, or at least had suffered some sort of trauma. Again, it seems to the Authority, highly likely that his mother (and certainly the doctors) would have deduced this.

[30] Furthermore, the medical records produced from the Czech Republic concerning examinations in January and March 2000, are also inconsistent with his neurological or psychological symptoms being caused by the trauma in [*year deleted*] or assaults and verbal abuse since then. These records show the husband to have hypertension, a recurring state of anxiety, palpitations and insomnia. The possible causes are identified as marital problems (said to be possibly solved) and a heavy workload. There is no mention whatsoever of trauma (or stress caused by trauma) or his fear of assaults, let alone specifically any assaults. He said it was humiliating to talk about what had happened to him but the Authority put it to him it would be just as embarrassing to speak to the doctors of his marital problems. He denied any such problems and did not know why this was mentioned.

[31] Counsel points to a note in the March 2000 records reciting that since an “event” in [*year deleted*], the husband had exhibited a recurring state of anxiety and other symptoms. The word “event” (the relevant Czech word could also be interpreted as “incident”, “accident” and “occurrence”) is said to evidence a trauma, as against an illness, as the cause of the hospitalisation. It would seem to the Authority that the use of this word indicates nothing of the sort. The Opava records describe the husband as returning home from school on a particular day with a severe headache and nausea. He was disorientated, aggressive and his speech unintelligible. This led to his immediate admission to hospital. This is plainly the “event” spoken of in the record. Furthermore, the records must be read as a whole and it is clear from their totality that his hospitalisation in [*year deleted*] was not caused by trauma.



[32] This brings the Authority to the medical records produced after the first two days of the hearing. Frankly, they are suspicious. Turning first to those produced on 9 January 2002, the Authority observes that one page of the Opava hospital record has been amended in three places within the body of the record itself. The alterations have all been typed on what appears to be a manual typewriter, using a typeface similar or identical to the original (or unaltered) document. In one entry, the words "He was attacked by skinheads" have been added. In another, a sentence (which is illegible) has been typed in and then overtyped with crosses. The third alteration reads:

"Note: after a previous attack by skinheads and head injury. Expected treatment time is 3-4 months."

[33] The latter entry has been typed through a signature at the foot of the page and above a date (which is illegible), the signature and date already existing on the (unaltered) underlying document.

[34] The documents were put to the husband at the reconvened hearing. He said that the Opava records initially before the Authority (at the first two days of the hearing) had been obtained by the family doctor from the hospital. She also obtained the amended record produced in early 2002. He explained that the hospital would not issue a new report for an admission [*no. deleted*] years ago (recording the skinhead attack) but had agreed to re-issue the existing record with the annotations described above. As the hospital would not release any original record, only copies (of the amended records) were available to him (and therefore the Authority).

[35] The Authority put to the husband that the amended record was suspicious, as it was unusual for a hospital (or indeed any organisation) to alter an historical record in this way. That is particularly so given his evidence that the Opava hospital was never told of the skinhead attack at the time. He could not explain why the hospital recorded the additional information this way.

[36] Finally, so far as the medical records concerned, the Authority refers to those produced on 13 March 2002. In particular, there is a page from the Ostrava hospital record. The husband said this was sitting in the file of the family doctor who discovered it earlier this year and gave it to his family. The document, on its face, looks authentic. However, there is, again, a set of apparent alterations. They purport to record two dates, "[*date deleted*]" and "[*date deleted*]" (presumably

representing the dates of admission and discharge respectively). They have been typed with a different typewriter than that used for the body of the record (in comparison, “[*year deleted*]” appears on one of the dates in the same typeface as the rest of the text, as do other dates and figures elsewhere in the document). Three date entries have been typed with a different typewriter and at least one has been altered or overtyped. The husband could not provide any explanation. There is no other document which shows he spent three months in the Ostrava hospital, though the body of the Ostrava record states he did “stay” at that clinic.

[37] The Ostrava record also states that on the day of admission, he was:

“... stressed from the exam, felt unfairly classified ... sent home from school.”

[38] Again, there is no reference to any skinhead attack (despite, so the appellant claimed, to have told the Ostrava doctors of the attack). This document (irrespective of the veracity of the discharge date) is also inconsistent with his story that the hospitalisation was caused by a skinhead attack.

[39] The husband’s explanation for some of the mobility in his oral evidence concerning the [*year deleted*] “event” is that the hospitalisation happened a long time ago. Counsel submitted that the husband was still unable to recall what was said to whom. The Authority appreciates that this occurred more than 10 years ago when he was only about 14 years old and that the husband does have a history of psychological problems and mental dysfunction but the totality of the evidence concerning this hospitalisation is such that these are not adequate explanations for the unsatisfactory oral and documentary evidence.

[40] The Authority’s finding concerning this hospitalisation in [*year deleted*] is that he was in hospital for an unknown period for an illness of some nature and not due to an attack by skinheads. The alterations on the Opava and Ostrava documents purporting to show an attack by skinheads and three months in hospital are false, though the underlying unmodified documents are genuine medical records. Counsel seeks to invoke the benefit of the doubt principle in the husband's favour but this principle has no applicability where the Authority has no real doubt as to its findings.

[41] The Authority accordingly accepts that the husband and wife have suffered constant verbal abuse through their lives. Both of them were the victims of frequent minor physical assaults at school. The husband has also been assaulted

by skinheads since he left school on a number of occasions. None of them were serious. Both have also suffered discrimination in the workplace and the husband was also the victim of discrimination at high school, in that he was expelled prior to sitting his final examinations (though was able to complete his secondary education some years later).

[42] The Authority finds that the harm suffered by the husband and wife in the past does not, considered cumulatively for each of them, amount to persecution for either of them. Persecution is recognised in international refugee law and accepted by this Authority, as the sustained or systemic violation of basic or core human rights demonstrative of a failure of state protection; *Refugee Appeal Nos. 1039/93* (13 February 1995) 19, *2039/93* (12 February 1996) 15. Discrimination (including that motivated by racial origin) can constitute persecution, for the purposes of the Convention, if of sufficient severity and of a sustained or systemic nature; *ibid.* 16, *Refugee Appeal No. 71404/99* (29 October 1999) 30-33.

[43] It is argued by counsel that the existence of the Convention on the Elimination of All Forms of Racial Discrimination (CERD) 1966 (to which New Zealand is a party) "signals that a lower threshold should be applied". The submission that racially motivated discrimination is to be treated as a different specie of human rights breach, for the purposes of the definition of persecution, is rejected. Counsel cites the decision of the Authority in *Refugee Appeal No. 71427/99* (16 August 2000) where it was recognised that the rights enshrined in the CERD were relevant to the assessment of persecution (see pp24-25). There is no warrant for any singular treatment of racial discrimination in that Convention, the decision relied on or any other authoritative refugee jurisprudence.

[44] The abuse, harassment, discrimination and curtailing of the enjoyment of liberty due to the fear of harm (see 6.1 of submissions regarding the son) the husband and his wife have suffered, are not of sufficient severity to amount to persecution. Many of the incidents are, on their own, of a trivial nature, though the Authority accepts that cumulatively their experiences cannot be considered trivial. Their frequency is such that they would be depressing and stressful but they do not reach the threshold that could be considered persecution. This is so, even if considered in conjunction with the general atmosphere of insecurity for Roma (see para. 6.4 of counsel's submissions concerning the appellant and his wife). While they have suffered discrimination in education and employment, it is noted that both the husband and wife obtained a primary education in normal state schools

(and the husband eventually completed his secondary education) and both obtained trade qualifications (the husband as a butcher and the wife as a hairdresser). Both of them had employment for most of the time they were not studying and the husband received a social welfare benefit when he was not working. The Authority observes also that his medical records show that he received comprehensive medical assistance which, on its face, appears to be as good as that which would be received in a public hospital in New Zealand. The Authority was also told that the wife had undergone a breast reduction procedure for medical reasons, paid for by an insurance company. The husband accepted that comprehensive medical treatment is available to Roma.

[45] The Authority also finds that, even if it accepted (which it does not) that the husband was hospitalised for three months in [*year deleted*] due to an attack by skinheads, his treatment in the past would still not reach the threshold required to establish persecution. One isolated serious incident, so many years ago, even considered in conjunction with the other minor assaults, verbal abuse and discrimination, does not reach the requisite level of sustained or systemic violation of his basic human rights.

[46] Counsel submits that it suffices that the husband “belongs to a group which is subject to systematic Convention related harassment”. The fact that he is a member of a group (Roma), some of whom are subject to persecution, does not mean that all members of that group are at risk (at the real chance level) of persecution. This is not only a matter of common sense, but is clear from the guidelines promulgated by the United Nations High Commissioner for Refugees (UNHCR), concluding that Roma are not *prima facie* refugees (see later).

[47] It is submitted that “a single act of oppression” may constitute persecution, relying on observations in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379, 430. The Authority accepts that it is not a necessary element of persecution that the individual suffers a series of harmful acts. However, there is no single incident in the history of any of these appellants which is of sufficient gravity to constitute persecution.

[48] Even though the appellants have not been persecuted in the past, the Authority must assess prospectively whether they would face a real chance of persecution in the future. There continue to be incidents of violence and discrimination against Roma; see United States Department of State *Country*

*Reports on Human Rights Practices 1999* (April 2000) (published on the Internet on 25 February 2000) 1488-1503 (see paras. cited by counsel) and newspaper articles (period 1993-2001) submitted by counsel. The Authority accepts that they would suffer the same pattern of verbal abuse and discrimination (particularly in obtaining employment) as they have in the past. The risk of isolated physical assaults remains. Such difficulties would not give rise to a well-founded fear of persecution. In this regard, the Authority notes the conclusion of the United Nations High Commissioner for Refugees that Roma from the Czech Republic do not warrant the recognition of asylum claims on a *prima facie* basis, though individual Roma may, in the light of their particular circumstances, meet the test for refugee status; *Guidelines Relating to the Eligibility of Czech Roma Asylum-Seekers* (December 1999, republished in February 2000) paras. 26, 29.

[49] It is also the case that the situation for Czech Roma is slowly improving as the Czech government makes efforts to improve the situation for them; UNHCR *Guidelines supra* paras 5-6, 8, 10, 15, 17, 21, 29b, United Kingdom Home Office *Czech Republic Country Assessment* (April 2001) 7.25, 7.30, 7.34 - 7.38, 7.43, 7.51, 7.55, 7.60 - 7.61, 7.64 - 7.79. The appellants do not accept that there has been any progress and the Authority observes that the reports show that progress has been slow but there is a clear willingness on the part of the Czech government to improve the situation for Roma.

[50] Counsel points to statistics showing that many police recruits are racist and other country materials which, it is submitted, show that the appellants will not enjoy police (and therefore state) protection. The attitude of the police to the appellant, when he complained of assaults, is said to bear this out. It is accepted that the country materials do show police indifference to violence perpetrated against Roma and occasionally even hostility towards them. However, this does not necessarily give rise to a well-founded fear of persecution. It is certainly not part of the case of this family that the police as an institution or individual officers will persecute them (and, if it is, they have not established any such risk). Nor does frequent police indifference to skinhead violence establish that the family face a real chance of persecution at the hands of others, such as skinheads. Police indifference, and with it a lack of adequate protection on such occasions, does not put this family at risk of serious harm (at the real chance level). It merely establishes that if there was a risk of serious violence, at the real chance level, from the skinheads or others, they could not rely on the state or police to protect them. The definition of persecution is conjunctive, requiring the presence of the

elements of both serious harm and a failure of state protection; *Refugee Appeal No. 71427/99* (16 August 2000) 31.

[51] The lack of adequate protection begs the question as to whom they need protection from (and the level of risk at the hands of putative assailants). When the Authority looks at the risk of serious violence from society (which for his family, in reality, means skinheads), it finds that the risk is remote for these appellants. The incidence of serious violence is not sufficient to give rise to a real chance of serious harm; see the statistics set out in the United States Department of State *Country Reports on Human Rights Practices for 1999 supra* 1498 (the Authority observes that the estimated population of Roma is 170,000 – 300,000). Their fears are not well-founded, irrespective of the attitude of the police. The Authority also observes that there have been some initiatives to improve the attitude of the police; *Home Office Assessment supra* 7.61, 7.76.

[52] Counsel acknowledges that the Czech government has, in recent years, taken steps to address the plight of Roma but questions whether there has been enough real improvement.

[53] It is submitted, correctly, that a state's "reasonable willingness" to operate a system for the protection of its citizens is not sufficient. The crucial test, counsel contends (again correctly) is whether the state is capable of preventing a real chance of persecution of the particular individual. The Authority answers this question in the affirmative for this family. The history of these appellants and the country information do not support any finding that their fears of persecution are well-founded. Despite the harassment and discrimination from society and the indifference of many police officers, this family has not been persecuted in the past and, as the Authority finds, there is no real chance of such a fate in the future.

[54] Counsel cites the decision of this Authority in *Refugee Appeal No. 71253/99* (8 July 1999) in support and particularly the description of discrimination in the Czech Republic against Roma given in that decision (*supra* 10). In that case, a family of Roma was granted refugee status (the husband was not, in fact, a Roma, but was persecuted by virtue of his marriage to one). However, the experiences of that family are very different from the family in this case. The husband in that case was a restaurateur, operating a prominent restaurant, who had been subject to numerous death threats and to an attempt to kill him which put him in a coma for six to seven weeks and in hospital for six months. It was also made clear in that

decision that discrimination, even if widespread, does not necessarily constitute persecution. The Authority (in 71253) found that the harm experienced by the family in that case went well beyond the level of discrimination commonly experienced by Roma in the Czech Republic and involved a breach of the most fundamental of rights, namely the right to life. There is no such issue in this case.

[55] As to the son, the principal concern of the parents is that he will be sent to a special school where intellectually handicapped children are sent, along with many Roma. The statistics show that large numbers of Roma children are educated in such special schools but the country information also states that this must be with the consent of the parents; Home Office *Assessment supra* 7.28. The experiences of the husband and wife bear this out. The authorities sought to put both of them into special schools but their parents successfully fought any such moves. The Authority has no doubt that these appellants will refuse to allow their child to be educated at such a school. It is also noted that the wife's three sisters attended normal state schools (it is not known to the Authority where her brother was educated). Furthermore, even if their son attends a special school, this no longer prevents him from furthering his education at a mainstream secondary school; Home Office *Assessment supra* 7.30. They also fear that he will suffer as they did. The Authority accepts that he is likely to endure verbal abuse and probably even the harassment, minor physical assaults and discrimination that his parents suffered. With the slowly improving situation for Roma, it is highly unlikely to be worse than that which they suffered. Accordingly, there is only a remote possibility that he would suffer persecution in the future.

[56] The Authority therefore finds that the husband, wife and child do not have well-founded fears of persecution. In respect of each of them, the first principal issue is answered in the negative and the second does not, accordingly, arise.

## **CONCLUSION**

[57] For the above reasons, the Authority finds that the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined. The appeals are dismissed.

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D J Plunkett  
Member