

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

**REFUGEE APPEAL NO. 72462/00**

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**AT AUCKLAND**

**Before:**

S Joe (Chairperson)  
D J Plunkett (Member)

**Representatives for Appellants:**

**M Hine (72463/00 and 72464/00)**  
**G Leckey (72462/00)**

**Appearing for the NZIS:**

No appearance

**Date of Hearing:**

25 January 2001

**Date of Decision:**

11 June 2001

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**DECISION**

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[1] These are appeals from decisions of the Refugee Status Branch of the New Zealand Immigration Service (RSB), declining the grant of refugee status to the appellants, all of whom are nationals of the Czech Republic.

**INTRODUCTION**

[2] The Authority has issued its decision on these three appeals in the one written decision. This is appropriate as the appellants are relatives from the same family, being grandmother (*Refugee Appeal No. 72463/00*), mother (*Refugee Appeal No. 72462/00*) and son (*Refugee Appeal No. 72464/00*) respectively and their cases are based essentially on similar experiences. Their cases were heard together by the Authority by the same panel. For ease of reference the mother shall hereinafter be referred to as "the appellant", the grandmother shall be

referred to as "the appellant's mother" and the son shall be referred to as "the appellant's son". Collectively, they shall be referred to as "the appellants".

[3] It is relevant to record that by consent the appellant's son, aged 11 years, did not give oral evidence before the Authority. The Authority indicated that it was prepared consider his appeal on the basis of the appeal statement already filed, previous evidence given before the RSB, together with the oral evidence to be provided by the appellant and her mother in support of his appeal. Mr Hine, his then counsel, agreed that this was appropriate and did not seek to call any further evidence in support of the appellant's son's appeal.

[4] The appellants arrived together at Auckland airport on 16 August 2000 respectively. Each of the appellants lodged individual applications for refugee status with the RSB on 21 August 2000 and were interviewed by the RSB in respect of those applications on 24 October 2000. In separate decisions delivered by the RSB on 30 November 2000, the RSB declined their applications. It is from these decisions that the appellants presently appeal.

[5] The appellants appeared before the Authority and gave evidence on 25 January 2001. Mr Hine appeared as counsel for all of the appellants at that time. It is relevant to record that following the conclusion of the hearing and prior to the determination of these appeals, the appellant purportedly withdrew her appeal by notice in writing and then subsequently sought to withdraw that notice of withdrawal. In this regard, the appellant initially enlisted the help of Mr Simon Laurent to do so but subsequently gave Mr Gene Leckey instructions to act on her behalf. For a background to this aspect of the appellant's case, the Authority refers to its previous Minute published on 12 April 2001. The Authority sees no need to refer to the Minute in its entirety here. For reasons explained in that Minute, the Authority considered that the appellant had successfully restored her appeal to the status it possessed immediately prior to the receipt by the Authority on 16 February 2001 of the purported notice of withdrawal. In that Minute, the Authority invited the appellant to submit any further evidence and submissions she wished the Authority to take into account in the determination of her appeal by 5pm, on 8 May 2001. No submissions or further evidence was received.

### **THE APPELLANT'S CASE**

[6] The appellant is a single Rom woman in her early thirties from Prague in

the Czech Republic. She has one son by a de facto relationship. The appellant's mother left the appellant's father about a year after the appellant was born. Thereafter she entered into a de facto relationship with M, an ethnic Czech and the couple subsequently married in 1977. Following this marriage, M legally adopted the appellant as his daughter. In 1986 the appellant's mother divorced M and soon after married a third time, this time to K, a German citizen. The couple moved to live in Germany. However the appellant's mother separated from K in 1993 and returned to live with the appellant and her son in 1993. The appellant has minimal contact with her natural father who remains living in Prague.

[7] The appellant undertook 11 years of schooling before leaving a secondary school in hospitality in 1986. At the time she was serving an apprenticeship in the catering industry. The appellant had to re-sit her maths exam after initially failing to obtain a pass. She subsequently managed to obtain a pass in that subject but unlike other Czech students who had similar grades, was not permitted to continue her studies without repeating the academic year. The appellant lost confidence in her abilities and lost interest in school at the prospect of repeating another academic year. In these circumstances she left school to work as a kitchen-hand in a hotel restaurant for a year. The appellant had aspired to become a receptionist or hotel manager, but was unable to obtain such employment in the absence of any secondary school qualifications.

[8] Subsequently the appellant was engaged to work behind the counter in a bar on the basis that her employment situation would be further reviewed after she had worked there for a year. However, after a year's employment at the bar the appellant was told that her year's employment had expired and that her services were no longer required. She therefore left and thereafter stayed at home. She was supported during this time by her mother and her mother's husband, K.

[9] The appellant considers that her employment was terminated due to her ethnicity. The appellant speaks Czech without any discernible accent and therefore her Rom ethnicity is not readily identifiable from her spoken language. The surname by which she is named is Czech. She also conceded before the Authority that she would not be readily identifiable by her mere physical appearance as an ethnic Rom either, given that her complexion is comparatively fair. However, the appellant claimed that she nevertheless has dark eyes and dark hair, and that when she is seen with certain other relatives (who, by contrast, have very dark complexions), she is similarly regarded as a Rom. Her mother and son

are also, comparatively speaking, very fair in complexion compared to other Roma.

[10] The appellant believes that although other workers may not have initially been aware of her Rom ethnicity, this would have been readily apparent to her manager, as it is common practice for prospective employers to obtain references and check such details from one's previous employer. The appellant believes that this information would then have been made known to the other workers. She had over the course of that year encountered various forms of discriminatory treatment from her work colleagues. While not overtly discriminatory in nature, the appellant claimed that she was forced to work in an environment in which the other Czech workers made her working life "uncomfortable". It was made known to her that the Czech workers did not want to work with a Rom and that Roma were considered not to have any work ethic. For example, when she returned to work after calling in sick, she would be accused by others of being lazy and of simply making up an illness as an excuse to avoid turning up for work. There was also a tendency for her colleagues to try to find fault with her work. She would be regarded rather dismissively as either "useless" or "not interested" in her work. Her manager commented that "gypsies [were] lazy and [did not] really want to work". She was therefore not considered worthy of training. By contrast, there was a general willingness among the Czech workers to help one another if they had problems in carrying out their work.

[11] Following the termination of her bar job, the appellant remained unemployed for another year. She applied for several positions and on three occasions proceeded to the interview stage of the recruitment process. However she was not successful in any of these positions.

[12] The appellant was supported financially during this time by her mother and K until, in 1988, she obtained full-time employment as a shop assistant. However it was not long after this time that the appellant fell pregnant, and due to anticipated complications with her pregnancy, the appellant chose to give up work and remain at home for the duration of her pregnancy. The appellant gave birth to her son towards the end of 1989. The son's father, an ethnic Czech, ceased any further contact with the appellant.

[13] In 1990 the appellant obtained a licence with which to trade at the market. She supported her living and that of her son by selling clothing and textiles at a

local market. At this market there were predominantly Roma stall-holders, although some ethnic Czech also traded there as well. She continued to earn a living by this means until she left Prague in August 2000.

[14] Between 1990 and 2000, when she left the Czech Republic, the appellant and her son faced harassment from their neighbours and skinheads who worked in the area. She was also verbally abused by members of the Czech community generally. This occurred many times, often more than once a week.

[15] The appellant's son would play outside her apartment in the playground. However, whenever the children of some of her neighbours wanted to play as well, the parents would scream at him saying that gypsies had to leave the playground so that others could play there. The appellant was told by one parent that she and her son would be beaten if they did not leave the playground.

[16] The appellant did not report these incidents to the police. Indeed one of the neighbours who had verbally abused her was a police officer. In this regard, the appellant referred to an incident where her son was playing with a Czech child at the playground. The appellant was in attendance supervising, when suddenly the child's grandparent - a police officer - yelled at the appellant from the balcony to leave and that if she did not, he would "break her". Again racial slurs were made against her.

[17] The appellant recalled being verbally abused by skinheads on four or five specific occasions, the most recent occurring in March 2000. The appellant would be walking on the streets either to go to the shop or to the movies when skinheads would confront her with racial slurs and call her names. She received threats of physical harm and was told that there was "no place for gypsies" in the Czech Republic. On these occasions the appellant was able to run away.

[18] In January 1999 the appellant went to B to visit her aunt. One evening, while walking to the shops to purchase a packet of cigarettes, the appellant was confronted on the street by skinheads. They verbally abused her again referring to her Rom ethnicity and pushed her to the ground and began kicking her. The appellant screamed for help, and although other people were nearby, no one came to her aid. The skinheads ran and left the appellant, badly bruised, on the street. The appellant managed to make her way back to her aunt's house (some 200 to 300 metres away) and sought medical treatment. The appellant does not

know how the skinheads identified her as a Rom on this occasion. She does not know whether or not she had been watched or not, but accepted that it was a possibility they had seen her leaving from a Rom household. Her aunt is visibly darker in complexion than she.

[19] In support of this aspect of her case, the appellant submitted a copy of a medical report, together with English translation, evidencing a consultation with her doctor on 20 January 1999. The doctor's notes comment that the previous evening the appellant had been beaten on the street by skinheads. She had bruises, but the morning after the assault she observed "massive blood in her urine". Further extracts in that report evidence that the appellant was prescribed various medications and that she returned for check-ups on 1 February 1999 and 10 February 1999 respectively, by which time the appellant had largely recovered.

[20] It took the appellant some three weeks to recover before she was able to return to work. The appellant did not report this incident to the police, afraid that if she did that she would face retribution from the skinheads. Secondly, she was not confident that the police would in any event be able to afford her protection.

[21] One day in March 2000 the appellant, while out shopping with her mother and son in Prague, was confronted by skinheads again. The skinheads yelled out verbal abuse saying that they would kill or rape them. In fear, the appellants fled into a shopping complex where they remained for a time and hid. It was also around this time that the appellant recalls on a number of occasions receiving in the post anonymous letters or pamphlets containing threats against the Roma.

[22] The appellant stated that all of these incidents caused her to decide to leave the Czech Republic. The appellant claims that she would continue to meet with the same problems on account of her ethnicity if she returned to the Czech Republic and that she could not rely on the police to afford her protection as "they only come when someone is dead". In this regard the appellant referred to the fact that in 1969 her uncle was murdered in broad daylight having been stabbed by someone on the street. Her grandmother, who was a witness to the incident, sought help from the police but was told that gypsies had to sort out the problem amongst themselves.

[23] The appellant also referred to the fact that two of her other uncles had been the victims of serious assaults in recent times. One uncle was beaten and left

lying in his own blood on a street in C in 1997. Although statements were taken, the police was unable to take further action to identify and locate the assailant. Another uncle, E, was attacked in 1999. That uncle has also fled the Czech Republic and currently has his refugee application pending determination in New Zealand.

[24] Finally, sometime around 1999, the appellant's cousin was at a restaurant in B when ethnic fighting broke out between Roma and Czechs resulting in the restaurant being damaged. By the time the police arrived at the scene, most of the perpetrators had left. However, the appellant's cousin, who remained, was falsely accused of fighting and engaging in disorderly behaviour, for which he was charged and sentenced.

### **EVIDENCE OF THE APPELLANT'S MOTHER**

[25] The appellant's mother was born of mixed ethnic parentage. Her mother was a Rom and her father was of Czech ethnicity. Both parents are deceased. Her grandparents were both of Rom ethnicity.

[26] The appellant's mother has four siblings. One of her brothers, E, has as already stated, applied for refugee status in New Zealand. That application is pending determination by the RSB. All of the appellant's mother's siblings that remain in the Czech Republic are self-employed.

[27] The appellant's mother was raised in an orphanage from the age of four. At that time, the government authorities attempted to change the wandering lifestyle of the Roma and took away many of the children of Roma, the appellant's mother included, and put them in orphanages to be re-educated. The appellant's mother lived in a number of different orphanages and received schooling until the age of 15 years. During that time she was subject to some teasing from the other children on account of her ethnicity and was sometimes hit by other older children. She was not seriously harmed as a result of any of these incidents.

[28] After leaving school the appellant's mother entered into a relationship with J, and subsequently became pregnant. The appellant is the product of this union.

[29] The appellant's mother gave evidence that she personally had never been the subject of any physical assaults in her adult life.

[30] The appellant's mother confirmed the appellant's evidence as to her various marriages and that she lived in Germany from 1988 until 1993 following her marriage to K, a German citizen.

[31] It is relevant to record that the appellant's mother is also of fair complexion, and conceded that she was not readily identifiable by her mere physical appearance as being of Rom ethnicity, unless seen with her relatives. Indeed, her ethnicity was only made known to her husband K when, as advance warning of her mother's visit from the Czech Republic, she told her husband of her ethnicity. Thereafter K requested that she have no contact with her Roma relatives.

[32] The appellant's mother never desired nor applied for German citizenship notwithstanding her eligibility to apply. Further, although she can speak German, the appellant's mother stated that she only moved to live in Germany having married K. (Since arriving in New Zealand she has sought to divorce K.) In any event, following her separation from K in 1993, she returned to live in the Czech Republic.

[33] The appellant's mother stated that the physical attack on the appellant in March 2000 precipitated her flight from the Czech Republic. She did not wish to live in Germany as she would be separated from the appellant and the appellant's son, as neither had a right to reside in Germany. She did not wish to return to the Czech Republic as she feared she would face persecution for reason of her ethnicity.

[34] Insofar as the appellant's difficulties are concerned, the appellant's mother provided the following corroborative evidence:

- (a) She frequently visited the appellant's school to complain about the behaviour of other students towards her daughter in that they never accepted her. In any event, neither the efforts of herself or her husband proved successful in resolving the appellant's problems;
- (b) The appellant was denied the opportunity to continue her studies after having to re-sit her maths exam at school. Although she passed that exam, the Director of the school and the appellant's teacher agreed that the appellant would need to repeat a full academic year before she could progress further;



- (c) The appellant was always assigned the worst jobs and made to repeat some jobs until, without any reason being given, she was asked to leave. Later, the appellant's mother assisted the appellant in operating the market stall;
- (d) The appellant was attacked by skinheads in January 1999 while visiting her sister in B. The appellants were also confronted by skinheads in Prague. The skinheads threatened that they would do what Hitler had not finished, namely kill them. The appellants ran away to the shopping mall and hid. The appellant and her mother were confronted in similar circumstances a few years before this incident and both were able to run away and avoid harm.
- (e) The appellant's mother's brother, J, was murdered in 1969. Two of her brothers (the appellant's uncles) were attacked in 1997 and 1999 respectively. Her elder brother was attacked on the street at night and was found lying in a pool of blood. He lost all of his teeth and was ill for quite some time after the incident. He remains living in the Czech Republic and is self-employed, earning his living sharpening knives. Her younger brother, E, (also a refugee claimant, pending determination at the RSB level) was attacked in 1999 by unknown persons who came to his apartment and hit him with a wooden stick. His assailants also pointed a gun to his head. Her sister was also verbally attacked by skinheads on the streets and her sister's son was falsely charged of an offence by the police.

### **THE APPELLANT'S SON'S CASE**

[35] As previously stated, the Authority did not hear oral evidence from the appellant's son, who is 11 years old. In his appeal statement he stated (verbatim):

"I and my mum had a nice home, but the neighbours and kids at school were bad to us. They call us "dirty gypsies". My mum worked at the market selling textile. During the holidays we went to my grandma in Germany. Later the grandma did come back and was selling with my mum.

Twice the neighbours wanted to beat us up, because I was playing with the children in the garden. In 1996 I started attending school [specified]. I liked to learn things, study, but classmates were bad to me. They swear at me and also beat me. The teacher didn't help me. When we went shopping, the skinheads were chasing us, screaming something about Hitler, that he forgot us here and that

they will kill us. We, me, my mum and my grandma run away and hide in the shopping centre.

Then my mum went to B to an aunty and there she was attacked and beaten by skinheads. Mum calls to a grandma. I was crying because I was scared. Mum was sick for a long time. After this I stop to go playing even to the garden. We also had leaflets in our letterbox saying things like "Death for gypsies" and that we should get lost from that house. I don't know how many times we find leaflets like that. Maybe 4x or 5x. That was the reason why we move to N. But it was the same there too. So we went to an aunty in B and then to Vienna, from where we flew to Malaysia and to New Zealand. I was so scared, that we have nowhere to go, that we don't have any home anymore.

We like it very much here. Nobody is swearing at us and no one is beating me. I already have some friends at school and I can understand some English. I like our school principal [name]. An English teacher G is coming to our home to teach us.

When my mum and grandma learn English, than they will find work and we will live normal life. I would like to play hockey, but I have to wait when mum and grandma has work.

I am very glad that we are here. I do not want to go back to Czech Republic. I am scared that we will be killed there."

[36] The appellant's son gave a consistent account before the RSB. He stated in that interview that he did not want to return to the Czech Republic because of all of the problems associated with being Roma. He believed the skinheads would kill him or his mother as they would recognise that he and his mother were Roma.

### **SUBMISSIONS ON BEHALF OF THE APPELLANTS**

[37] Mr Hine, appearing as counsel, submitted that the "nub" of the appellants' appeal claims was essentially the treatment suffered by the appellant. The appellant had suffered a very bad beating in 1999 and that there had been corroboration by the appellant's mother, as well as the medical evidence submitted, as to the seriousness of that attack. Further, there were in general unhappy circumstances that had befallen the appellant's family which, it was submitted, were linked to their ethnicity. The attacks on the appellant's uncles (one of whom is in New Zealand), when considered with the lesser incidents of verbal abuse elevates the treatment towards this particular family to the level of persecution.

[38] Counsel submitted that there was nothing from the news the appellants had received by way of correspondence or telephone conversation that suggested that there had been any "drastic improvement" in the situation in the Czech Republic. Further the appellants have little faith in the government's expressed concern at the plight of the Roma, which is motivated by the need to placate other countries in

its bid to secure membership to the European Union.

[39] It is relevant to record that at the conclusion of the hearing, the appellant's former counsel sought and was granted a further seven days leave within which to file further written submissions in support of the appellants' cases including, as regards the appellant's mother, her dual nationality rights. Subsequent to the hearing, the Authority forwarded to the appellants' then counsel further relevant country information and invited comments or submissions to be filed by 5pm on 15 February 2001. No submissions have, to date, been received from either Mr Hine, (as counsel for the appellant's grandmother and son) or Mr Leckey as the appellant's current representative.

### **THE ISSUES**

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

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

[41] 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 APPELLANTS' CASES**

[42] Before considering the issues as framed, the Authority must first make findings as to the appellants' credibility.

[43] The Authority is prepared to accept the appellants' accounts as true. The appellant and her mother both gave consistent evidence as to the family's respective difficulties on account of their being of Rom ethnicity. The appellant's son's appeal statement and previous evidence at RSB interview was similarly consistent with the accounts given by the other two appellants. Accordingly the

accounts given are accepted as genuine accounts.

[44] The Authority shall now address the issue of whether, on the facts as found, the appellants face a real chance of persecution for reason of their Rom ethnicity. In assessing the appellants' respective claims, it is helpful to put the appellants' claims in context by considering relevant background information. According to the UNHCR, in the *UNHCR Guidelines Relating to the Eligibility of Czech Roma Asylum Seekers Update – December 1999*, Geneva UNHCR 10 February 2000 at para 2:

"Following the fall of communism in the then Czechoslovakia in November 1989, the situation of the Roma improved in some respects and deteriorated in others. They are recognised as a national minority, have formed political and cultural organisations, and, like other Czech citizens, have the opportunity to enjoy the benefits of political and economic freedom. However, with the transition to a market economy, the Roma have become increasingly marginalized relative to the majority Czech ethnic population, both socially and economically. Moreover, dormant anti-Roma attitudes, suppressed under the Communist system, emerged in the form of societal discrimination and, less frequently, violent attacks. This increased marginalization and feeling of vulnerability has led some members of the Roma community to seek a better future through migration."

[45] Further, supra at para 9, the UNHCR goes on to state:

"Widespread anti-Roma feelings exist among the ethnic Czech population. It is often explained that Roma are not disliked due to their colour or ethnicity but because they are lazy, noisy, criminal, etc. Reactions to the Romany lifestyle range from indifference to intolerance, and are reflected in incidents of Roma being excluded from bars and restaurants, or, to a much lesser extent, being subject to racist statements and skinhead violence."

[46] Recent sources suggest that over the past 8 years (1992 to 2000), there have been approximately 1500 racially-motivated attacks recorded by The Documentation Centre for Human Rights, the Czech non-governmental organisation which tracks racial crimes. Over the same 8 year period, nearly 30 persons in such circumstances have died (see United States Department of State *Country Reports for Human Rights Practices for 1999: Czech Republic* (April 2000)).

[47] In terms of New Zealand's refugee jurisprudence, the Authority has previously found that persecution is defined in international refugee law 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)). The violation of a person's human rights and/or discrimination do not, of themselves, amount to persecution unless they can be said to reach the level of a sustained or systemic violation of basic or core human rights (ibid, 16).

[48] Mr Hine drew to the Authority's attention at the hearing decisions delivered by differently constituted Authority panels in *Refugee Appeal No. 71253/99* (8 July 1999), *Refugee Appeal No. 71429/99* (31 March 2000) and *Refugee Appeal No. 71336/99* (4 May 2000), all successful appeals dealing with Czech Roma claims. In *Refugee Appeal No. 71253/99* (8 July 1999) the Authority found that the appellant's husband's marriage to a Rom and his very public association with Roma through his restaurant engendered hostility from Czechs in the local community. This involved attempts to close down his business, harassment of his customers by skinheads, general threats against him and his wife and two extreme attempts on his life. In *Refugee Appeal No. 71429/99* (31 March 2000) the Authority found that the appellant in that case and his son were victims of several assaults by skinheads, which were sufficiently serious to amount to persecution. Finally, in *Refugee Appeal No. 71336/99* (4 May 2000), the appellant in that case was found to have suffered breaches of a significant number of his human rights, including his right to freedom of movement, his right to work, his right to privacy and security of his home and person. His right to life was also threatened. Cumulatively, these measures amounted to a sustained and systemic violation of his core human rights amounting to persecution.

[49] By contrast, in the present appeals, the appellant has suffered some verbal abuse or threats having racial connotations, and been subject to some educational and workplace discrimination. However she has been able to obtain employment with which to support herself and in the 10 years preceding her departure to New Zealand, she was able to operate a market stall selling clothing and textiles, a business activity for which she was licensed. In all of her thirty or so years of living in the Czech Republic, the appellant was subject to only one physical assault, an isolated incident that occurred in January 2000. Neither of these measures, when considered either individually or when taken cumulatively, can be said to be of sufficient severity to constitute persecution.

[50] The appellant's son has also been subjected to low-level harassment or verbal abuse. As for the appellant's mother, who spent all but seven of her forty or so years in the Czech Republic, apart from low-level discriminatory treatment as a child, she has suffered no physical harm or serious discriminatory treatment in her adult life at all. Certainly neither the appellant's son nor the appellant's mother can be said to have suffered persecution in the past. Indeed, the Authority finds that none of them have.

[51] Clearly, it is not necessary for refugee claimants to demonstrate that they have been persecuted in the past in order to establish that they have a well-founded fear of persecution if they now returned to their country of nationality. However, such past treatment can nevertheless be indicative (although not determinative) of the likely treatment they would face in the future upon return.

[52] As previously stated, the appellants in *Refugee Appeal No. 71253/99* (8 July 1999), *Refugee Appeal No. 71429/99* (31 March 2000) and *Refugee Appeal No. 71336/99* (4 May 2000), suffered either excessive violence and brutality by skinheads, physical attacks on a sustained basis or treatment which cumulatively amounted to a sustained or systemic violation of their core human rights.

[53] In the context of these particular appellants' claims, it is significant that the appellants were subject to only relatively minor forms of discrimination and to only one isolated incident of relatively minor violence. A significant factor is to their physical appearance. Both the appellant and her mother conceded to the Authority that they and the appellant's son were, by comparison to other Roma, markedly fair in complexion. The appellant accepted that she was not readily identifiable by her appearance or name as an ethnic Roma. This may be the reason why the incidence of any racially motivated harassment or physical assaults against them has been relatively low in contrast to that perpetrated against their relatives, whose complexions were considerably darker. The factual basis of the present appeals are therefore in a quite different category to that of the other three successful refugee appeal cases cited by counsel.

[54] It is clear from country material, however, that Roma generally are not recognised as a group being persecuted in the Czech Republic such that all persons of Rom ethnicity are deserving of international protection. In the *UNHCR Guidelines Relating to the Eligibility of Czech Roma Asylum Seekers Update – December 1999* (supra) it is worthy of note that the UNHCR consider that while it cannot be disputed that Czech Roma are frequent victims of discrimination and on occasion incidents of violence, conditions in the Czech Republic do not warrant the recognition of any asylum claims on a *prima facie* basis. Applications must be assessed individually to establish if the treatment experienced amounts to or creates a "[well founded] fear of persecution in the context of the 1951 Convention" (see *UNHCR Guidelines*, supra at para 26).

[55] Country information shows that violence against Roma generally remains a problem, and that although the Czech government has made efforts to improve the condition of Roma focusing on the key areas of education, employment, housing, and discrimination resulting in some positive steps (see for example 2000 The Regular Report from the Commission on the Czech Republic's progress towards accession European Commission, 8 November 2000), Roma continue to face discrimination (see for example UK Home Office, Country Information and Policy Unit *Country Assessment: Czech Republic* (October 2000); United States Department of State *Country Reports for Human Rights Practices for 1999: Czech Republic* (April 2000)).

[56] Such country information must be considered *in the context of these particular appellants* whose cases are before the Authority. On the facts as found, serious discriminatory measures of the nature described in these reports, such as racial violence/attacks have either not been a feature of their cases at all, (as in the case of the appellant's mother and son), or, in the case of the appellant, have occurred on an isolated basis only. One of the factors why the appellants have not been easily discernible as Roma is because of their pale complexion. As for the isolated event of the appellant's assault in January 2000, the appellant conceded the possibility that she was either followed or was known to have come from a Roma household (her aunt) at the material time. (The appellant gave evidence she was assaulted some 200 to 300 metres away from her aunt's house). Indeed, it was the consistent evidence of both the appellant and her mother that they were subject to racial harassment usually when seen in the company of persons or relatives of identifiable Roma descent and rarely alone. Furthermore, the appellant was not seriously injured. This being the case, the Authority considers that the chance of either of the appellants being the subject of any serious harm of a sustained or systemic nature amounting to persecution is but a remote one, and not rising to anywhere near the level of a real chance. It may well be that the appellants may continue to be subjected to verbal abuse and minor discriminatory measures, as has occurred prior to their leaving the Czech Republic. However such violations of their rights in this regard do not amount to persecution.

[57] Accordingly, for the reasons given, the Authority finds that there is no real chance of either appellant being persecuted in the future should they return to the Czech Republic. Their fears of persecution are not well-founded.

**CONCLUSION**

[58] 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. Their appeals are dismissed.

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[S Joe]  
Chairperson