

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75940

REFUGEE APPEAL NO 75941

REFUGEE APPEAL NO 75942

REFUGEE APPEAL NO 75943

AT AUCKLAND

<u>Before:</u>	B L Burson (Member)
<u>Counsel for the Appellants:</u>	I Uca
<u>Appearing for the Department of Labour:</u>	No Appearance
<u>Date of Hearing:</u>	15 and 16 February 2007
<u>Date of Decision:</u>	15 October 2007

DECISION

[1] These are appeals against the decision of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL) declining the grant of refugee status to the appellants, nationals of Hungary.

INTRODUCTION

[2] The appellant in *Refugee Appeal No 75940* is the husband of the appellant in *Refugee Appeal No 75941*. These appellants will be referred to as “the husband” and “the wife” respectively. The appellants in *Refugee Appeal Nos 75921 and 75943* are their dependant children. They will be referred to as “the appellant children” or “the elder child” and “the younger child” as context requires. The husband is the responsible adult in respect of the appellants in *Refugee*

Appeal Nos 75942 and 75943 for the purposes of s141B of the Immigration Act 1987 (“the Act”).

[3] Counsel confirmed that the appellants each consented that the evidence of each appellant was to be treated as evidence in their own appeal. The delay in reaching a decision in these appeals is regrettable, however, it has been unavoidable as there have been substantial delays in obtaining psychiatric assessment reports for the elder and younger child, only received by the Authority on 18 June 2007.

[4] What follows is a summary of the appellants’ evidence before the Authority. An assessment will follow thereafter.

THE APPELLANTS’ CASE

The husband’s evidence

[5] The husband was born in the late 1950s. He is of Roma ethnicity. At approximately 10 years of age the family moved to a village, VV. Although unsure, the husband understands that the move to VV was in part due to discrimination he encountered at the school he had begun attending in his birth village. The husband was enrolled in a normal primary school in VV but within a very short period of time was transferred to a residential institution for intellectually handicapped persons to which Roma children were sent regardless of their ability. Only a few older students were non-Roma and they were normally placed in foster homes within two or three months of arrival. By contrast, the Roma children were left there until they completed their education.

[6] After a year or so of being at the institution, the husband tried to escape. However, he was caught and returned to the institution. The person in charge of the dormitory organised the older non-Roma boys to douse him with cold water and beat him about his head and body. The following day, a teacher learned of what he had done and gave the husband a slap on the face which caused him to fall over and knock his head against the edge of a door. At this time, the husband’s parents were due to visit him but, because of the bruising that he suffered as a result of these beatings, his parents were told that he had an infectious disease and were not allowed to see him.

[7] The husband remained at this institution until the early 1970s. He received a certificate of completion and returned to live in VV with his parents. He began looking for work but, because his completion certificate specified the institution he had attended, it was difficult for him to get employment. He found work undertaking casual manual labour by travelling to Budapest. Some jobs lasted no more than two days; some jobs would last a week. The longest job that he had at any time was for approximately one and a half to two years. He estimates the average length of his employment was between one to two months. It could take him up to a week to find jobs. During these times the husband repaired small electrical items that had been discarded by their owners and sold them at a local market.

[8] During the 1970s, the husband began experiencing discrimination with the local police in VV. On one occasion he was assaulted by a police officer in a local bar. The husband made a complaint and the officer received a fine. Despite being the victim, the husband was placed under a curfew and had to get official permission to be outside after the hours of the curfew or travel outside VV. On another occasion, the husband was approached by police officers who asked him for his identification. Unable to produce any, he was taken to the police station where one officer made him sit in a chair while another officer slapped him on the face and asked him why he was sitting on the chair.

[9] In the late 1970s, the husband was conscripted into the army. While non-Roma conscripts were given basic military training for 18 months, Roma conscripts were made to dig trenches and undertake manual labour. During his period of military service the husband suffered a nervous breakdown and was sent to a military hospital where he was placed on suicide watch. Despite this he was made to help with the cleaning. He tried to commit suicide by cutting himself. He was given medication. After he was released from the hospital, he was given one week of leave during which time he unsuccessfully tried to hang himself.

[10] After completing his military service, the husband went to Budapest. Shortly after arriving in Budapest the husband met a Roma woman and the couple commenced a relationship. They had two children together (the first children). However, officials from the Hungarian Child Welfare Agency (the child welfare officials) began visiting the couple. Eventually, in the mid-late 1980s, the first children were removed by the child welfare officers. The husband's limited financial ability meant he could only afford very modest accommodation which was

judged to be substandard for children. As a result of the stress this caused, the relationship between the husband and his first wife collapsed.

[11] As a result of the loss of his family, the husband suffered another nervous breakdown. He began living on the streets and spending any money he managed to obtain from casual employment on alcohol. One day, the husband collapsed and was taken to hospital. The medical staff told him that he had had a heart attack. He was kept in overnight and discharged the following day. He believes that he was discharged early from the hospital because he was Roma and because of his generally unkempt appearance.

[12] The husband's life carried on in this manner for approximately three or four years at which time, he was offered accommodation in TT, a town close to Budapest. While there, the husband met the wife and they formed a relationship. Increasingly, as skinheads came from Budapest to the surrounding small towns both the husband and wife experienced greater harassment. In particular the skinheads spat at him and on a number of occasions punched him in the face.

[13] The husband and the wife learned of employment opportunities in a neighbouring town, SZ, and decided to move there. The couple moved into single room accommodation which had electricity but no internal bathroom or toilet.

[14] The elder child was born in the mid-1990s in SZ. Some two years later the younger child was born. Although unable to recollect precisely when, but some time after the birth of the younger child, the family moved to another nearby village, SM. They did so for a number of reasons. First to try to obtain better accommodation and to avoid skinheads, in respect of whom they had encountered similar problems to those they encountered in SZ. Also, by this time, the elder child had become eligible for kindergarten. The wife had encountered discrimination when she tried to register the elder child at kindergartens in SZ but a kindergarten situated near to SM had agreed to take him.

[15] The accommodation they moved into in SM, while a little larger than that which they had in SZ, was of a similar condition. The husband continued to encounter problems with skinheads as he had done in TT and SZ. While living in SM, another Roma family was attacked by skinheads and one of their children was killed. It made the husband and wife frightened. Also, the elder child and younger child, who had also begun attending kindergarten, told their parents that they had

been discriminated against at kindergarten. The family decided to move back to SZ.

[16] The family remained living in SZ until they came to New Zealand during which time they lived in different rented accommodation. They changed accommodation to try to obtain better accommodation. Financially, the couple only received minimal support from the state. They received an amount of approximately 10,000 *florints* by way of child support for both children. Although the husband applied for an unemployment benefit he was always declined because he did not have a steady residential address. Moreover, while they tried to move into better accommodation, they were unable to afford the rent and their applications for assistance were automatically declined upon being sighted. As a result, their standard of accommodation did not substantially improve despite their moving to different addresses in SZ. Although unsure which, one place was very damp and had mildew growing on the walls. This caused both children to develop a lung infection and they were taken to hospital.

[17] The husband continued to be subjected to verbal abuse, spitting and assaults by skinheads in SZ after the family's return from SM. He estimated this happened three or four times per week. None of these incidents were reported to the police. It was a common understanding of the Roma community that the children of the police and military officers were in the skinhead gangs.

[18] In approximately 2002, the wife received a telephone call from her sisters. The wife's mother had died some years previously and the wife and her three sisters had inherited their mother's house in TT. At the time that the wife's mother purchased the house, it was very small and in an undeveloped area. However, by the time of her death, the wife's mother had made substantial improvements to the house and, by 2002, the area had become highly developed. As a result, the property had increased markedly in value. The wife relayed to the husband her sister's account that they had been receiving threats from skinheads who said that they should sell the property to them because the house was too good for gypsies to live in.

[19] During one particular telephone call, the wife's sisters telephoned and asked them to come to TT to discuss what was happening and, along with the children, they did so. While at the house in TT they heard a loud noise. Upon investigation, they found that a large outside window had been smashed. The

husband and wife went outside and saw two or three skinheads standing outside. The skinheads began verbally abusing the couple.

[20] Some hours later, while all the appellants and the wife's siblings were in the yard, a group of approximately eight or nine skinheads arrived at the property and began attacking them. The wife's siblings managed to take the children into the house but the husband and wife were beaten. As a result of this beating, the husband had a broken nose, a cut lip and his dentures were smashed. He also suffered an injury to his ribs. The wife suffered a perforated eardrum and since this time has a permanent hearing impairment. The skinheads told the husband and wife that they would chase them out of the area and that there were too many gypsies in the area. The husband believes that one of the wife's sisters may have also been beaten up because when he went into the house he saw that she had a bleeding nose.

[21] After discussing the matter, it was agreed that the husband should report the attack to the local police station in TT. The husband went there but had to wait five or ten minutes before the entrance door was opened. When it was, the officer who came to the door was smiling. This gave the husband the impression that he already knew what had taken place. The husband was visibly wounded and when the officer saw him he asked the husband whether he had fallen over. The husband replied that he had been assaulted by some skinheads. The officer asked him to name his assailants. When the husband replied that he could not do so, the officer said that he could not make a report. He then shut the door on the husband and told him to go home and clean himself up. The husband returned to the house in TT.

[22] The following morning the husband and wife returned to SZ with the children and attended the local doctor's surgery for treatment for their various injuries. The husband then reported the incident to the local police station in SZ. While the husband and wife were waiting to be seen, policemen were laughing at them. They were eventually taken into an interview room and told the officers what had happened. Although they mentioned that the wife's siblings had been placed under pressure to sell the house, the officers said they had no proof of this and refused to write this in a report. All that the officers wrote down was that the husband and wife had been beaten by unknown assailants.

[23] Some two or three weeks later, the husband returned to the police station to make enquiries as to progress in the investigation but was told that there had been

no developments and they simply had to wait. However, they heard nothing further from the police about their investigations.

[24] Approximately four months later, the wife received a telephone call from her sisters who told her that the house had been sold. They had been pressured by skinheads to sign a sale and purchase agreement in favour of the skinhead's mother or grandmother. The husband and the wife were upset about this. The wife was the legal owner of a one-quarter share in the house and the sisters had no legal authority to sell the house without her consent.

[25] The husband and wife were aware that vulnerable people such as Roma and the elderly were being coerced out of valuable homes by gangs. They decided to approach a lawyer. The lawyer said that without the wife's signature, the sale was unlawful and that she could ask for a portion of the value of the house to be paid to her. The lawyer filed court proceedings against the purchaser. A lengthy court process followed. The husband and the wife attended the court on one occasion but the skinheads who were there with the purchaser threatened them with physical harm and verbally abused them. A court steward who was nearby did nothing about this. The couple asked the court not to give out their address and asked for all communications to be directed through their lawyer.

[26] The court case proceeded in their absence. After some time, their lawyer advised them that on paper everything appeared to be legal and that it would take many years to prove that the sale was made under duress. He advised them that the best situation was to try and get some money out of the deal. The lawyer advised them of a number of organisations that might help in the event the court case went against them. They visited these organisations but none were in a position to help them. In late 2004-early 2005, a settlement was reached under which the purchaser had to pay to the wife within 90 days, the sum of 2 million *florints* for her one-quarter share in the property. This was, the husband believes, a considerable under-valuation. The purchaser failed to pay the money on time and the appellant's lawyer wrote a threatening letter to the purchaser stating that if the money was not paid the house would be auctioned and the proceeds given over to settlement of the court judgment. The purchaser eventually paid the wife the money.

[27] Shortly after they received the money a letter arrived postmarked from TT. The wife read it and tore it up. She told the husband that the letter contained a threat and abuse. Thereafter, they received several letters all with a TT postmark.

The couple eventually asked the postman to take the letters from TT back and they did not open them.

[28] The wife gave her sisters some of the money and after payment of the lawyer's bill purchased airline tickets to come to New Zealand. The couple had decided after the court settlement that, if they gained any money from the legal proceedings, they would use it to leave Hungary because they were worried about the skinheads and the purchaser. Moreover, the husband did not want his children suffering the same things he had. He wanted better things for his children.

[29] They realised their share of the money would not be enough to buy their own house and even if they could use it to rent better accommodation this would only be a short-term solution and soon enough they would be forced back to their usual accommodation. The husband was particularly worried about this because in the months before the couple left there had been a number of visits by child welfare officials who had indicated they would remove the children from the couple's care because of the living conditions that the couple were forced to live in.

The wife's evidence

[30] The wife was born in 1967. She is of Roma ethnicity. She went to school in a small village. Her parents tried to enrol her in a normal school but were not successful. Instead, she was sent to a special school for children who were intellectually handicapped. She was only at this school for one year but she was verbally abused and hit by the other children because she was a gypsy. While at this school she was also sexually assaulted. Thereafter, she was sent to another institution where she was verbally abused by the Hungarian students. She was also hit by her teacher.

[31] After three years, her parents removed her from the institution because when they visited her they saw that she was covered in bruises. Her parents complained about her treatment but nothing happened. She was placed in another school. However, after another three years the family moved and the wife was taken to another institution for intellectually handicapped people where she remained until she was 16. While the first six months at this new institution were better than the previous one, after this time the beatings and humiliation continued as before. She completed her schooling when she was 16 without gaining any qualifications.

[32] Thereafter, she went to work in a food storage warehouse administered by the local council. While at this employment she was also discriminated against by her fellow workers who verbally abused her and spat on her. After one and a half years in this employment she was falsely accused of stealing and dismissed.

[33] In the late 1980s, the wife married a Hungarian man and moved to a town away from her parents. She remained there for the next five years but, in 1992, she separated from him and moved to TT to live with her mother. In the late 1980s her mother had moved to TT, along with the wife's three sisters. At that time, her mother had purchased some land with a small house composed of only a room with a kitchen. Her mother obtained planning permission to extend the house and by the time she passed away in 1993 her mother had added a cellar, separate bathroom and kitchen and three bedrooms. All that remained to complete the house was the installation of central heating and the development of the attic space.

[34] While in TT, the wife undertook casual gardening and cleaning work. She met the husband and they formed a relationship. After one and half years, she and the husband moved to SZ. The husband had obtained work on a construction site there and she found that she was having more problems with skinheads who were arriving in TT in increasing numbers. They verbally abused her and made derogatory and sexist comments. She and the husband were also hit in the face or kicked by skinheads in the street as they went about their daily affairs. The husband also suffered similar problems when on his own.

[35] In SZ, the husband and the wife lived in a small cabin made out of mud bricks for approximately one and a half years. The dwelling comprised one room with an internal kitchen. While the room had electricity it had no running water, bathroom or toilet. Water was accessed by means of a pump outside and the toilet was in the yard. To bathe, the family used a large plastic wash basin. The house was heated with wood and coal fires. The wife continued looking for employment but only found casual work once or twice a month. The husband and the wife encountered similar problems as they had in TT but on some occasions while in SZ, skinheads tried to steal the wife's handbag, pushing her over as they did so.

[36] The family stayed in SZ until 2000, during which time their two children were born. At this time they moved to another town, SM, situated in the same area, for a number of reasons. First, the wife had encountered problems enrolling

the elder child in kindergarten but had managed to find a place for the elder child in a kindergarten situated a short distance outside SM. Also, they were hoping to try and escape some of the problems they had with the skinheads in the street.

[37] The family moved into accommodation in SM of a similar type to that in SZ. However, it was slightly better in the sense that it was a little drier. There was no mildew and no smell of dampness. The couple began to encounter the usual problems with skinheads who verbally abused them and inflicted minor assaults. Moreover, while the elder child had been accepted into a kindergarten, they began to notice that he was not given as much attention as the non-Roma children were being given. They noticed that his speech had not progressed to the level expected.

[38] Soon after moving to SM, the elder child suffered an allergic reaction affecting his arm. The family went to see a doctor who told them it was an allergic reaction to food. Within a few days the whole arm was affected and the couple went to see a dermatologist who again diagnosed that it was a food allergy. It was not until some six weeks later that the reaction had been correctly diagnosed as an allergic reaction to a cat and not a food allergy. The wife believes that had they been ethnic Hungarians the correct diagnosis would have been made sooner and the elder child would not have had to suffer for six weeks with the allergic reaction.

[39] In 2001, another Roma family were attacked by skinheads in SM and a family member killed. Afraid for their safety, they decided that they would move. However, the family could not move very far. They did not have their own car and only had sufficient funds to purchase bus tickets for a short distance.

[40] The family therefore moved back to SZ where they remained until shortly before they came to New Zealand. After returning to SZ they lived in a number of different addresses called SZ1, SZ2, and SZ3. The accommodation in SZ1 was similar to that which they had occupied previously. However, it was so damp that mildew grew on the walls. The children had developed asthma and bronchitis and had to be taken to hospital.

[41] At this time, they received a visit from the child welfare officers who told them that the accommodation was not of a sufficient standard for raising children. These officials told them that they needed to find a house that had its own internal bathroom and if they did not find better accommodation the children would be

taken away. The husband and the wife told the officers that they would do their best to obtain better accommodation.

[42] The family therefore moved to SZ2. While SZ2 was built in the same way as the previous accommodation it was both larger and drier. However, the family received visits from the child welfare officers who told them that the accommodation was not of a suitable standard for raising children. Again, the couple indicated that they would move to better accommodation and therefore, in 2002, moved to SZ3. Furthermore, more Roma lived in the vicinity of SZ3 and as the couple continued to be verbally abused and hit when walking in the street, they thought they would be safer in that area. As with the previous accommodation, SZ3 did not have an internal bathroom or running water. Nevertheless, it was drier and larger than SZ2.

[43] Again, the couple received a visit from the child welfare officers at SZ3. Although the wife obtained a small amount of money from the Hungarian state by way of child benefit and she supplemented the income when she could with part-time casual work in gardens, nevertheless, when combined with the husband's earnings, their financial situation still did not enable the husband and wife to obtain accommodation of the standard required by the child welfare officers. The attitude of the officials at this time was that although the house was not ideal they could see that the children were not being neglected. The children were always clean and were looked after. Also, the wife believes they were treated more leniently at this time because of a shortage of foster families with whom their two children could have been placed.

[44] The wife told the Authority that although the children did not suffer any recurrence of the asthma or bronchitis which had been caused by the mildew and dampness in SZ1, the children continued thereafter to suffer a succession of colds because it was difficult to adequately heat the homes their finances forced them to occupy. The wife also experienced problems trying to enrol the children in kindergarten in SZ and only managed to secure placement in a "Roma only" kindergarten two kilometres away. Both children remained there until they came to New Zealand.

[45] In 2002, the wife received a telephone call from her sisters, who had remained in the house her mother had bought in TT, informing her that they were coming under pressure from ethnic Hungarians and skinheads to sell the house. On one occasion in the spring of 2002, the wife received one such call advising

that a serious purchaser had expressed an interest in buying the home. The wife and the husband, together with the children, travelled to TT in order to discuss the situation with the sisters. The wife and her sisters agreed not to sell the property until the outstanding work was completed in order to obtain a full price.

[46] Within half an hour of arriving in TT, a man turned up at the house and made an offer for the property. As his offer was only a fraction of the market value of the property they refused his offer. The man told them that they would regret the decision that they made. He told them that they are poor and cannot take care of the property and that sooner or later someone will take it away.

[47] A few hours later, a window in the house was smashed. The husband and wife went outside into the yard to see what was going on and noticed there were a few skinheads nearby. Without warning the skinheads ran into the yard and began attacking the husband and the wife who were both repeatedly kicked and punched by the group of skinheads. Both the husband and the wife were injured. The wife had a bleeding nose, and noticed a humming noise in both her ears. Her arms and hands were bruised and her face was swollen. The husband suffered a broken nose and a cut to his mouth. He had one of his ribs broken and had two black eyes. They returned inside the house and noticed that one of the sisters also had a bloody mouth and a grazed arm. She had also come into the yard and been attacked as well.

[48] It was agreed that the husband would go to the police station and report the attack. When he came back, the husband told the wife that the policeman on duty asked him whether he had fallen over or drunk too much. When the husband told the policeman that he had in fact been beaten by skinheads the policeman laughed and no further action was taken.

[49] The couple returned to SZ the following day. The children were sent to kindergarten and the couple went to the police station in SZ to make a complaint. Although they arrived at 9am they were made to wait until 1 or 2pm to be seen. The policeman on duty took their statement and registered the complaint. The policeman said they should go to the medical centre and obtain a report to prove their injuries. This they did and the police subsequently registered a complaint but only against 'unknown persons'. They were told to go home and wait notification of the outcome of the investigation. The couple heard nothing from the police. They went back several times to see what advances had been made. After several months they received notification that due to a lack of evidence the case

had been closed. The couple asked what investigations they had made but the police did not say anything to them. The wife believes the police did nothing at all to find the attackers.

[50] As a result of the attack the wife has suffered a permanent loss of hearing in both ears. She now has to wear hearing aids. The hearing aids were fitted in the community health centre. In the left ear she has a 90 per cent hearing capacity whereas in her right ear she only has a 70 per cent hearing capacity. The wife also continues to suffer from headaches since that attack.

[51] Over the next few months the wife was threatened in the street in SZ on several occasions over the fact that they had not agreed to sell the house to the purchaser. The wife reported some of these incidents to the police but nothing was ever done. The wife was also told by her sisters that they had continued to be threatened by skinheads to sell the property.

[52] In late September 2002, the wife received a telephone call from one of her sisters who told her that they had been forced to agree to sign the sale and purchase agreement for the property. The wife was told that skinheads associated with the purchaser had held a knife to the throat of one of her sister's children. Soon afterwards the sisters left TT.

[53] The wife was upset by this news. She consulted an organisation which specialised in trying to help elderly and other vulnerable groups such as Roma persons who had been forced to sell their properties under duress from skinheads and organised crime gangs for a fraction of their true worth. This was a common occurrence in Hungary at that time. They were told they would need to make a donation of 1,000 *florints*. The family were unable to afford this donation and tried to find a lawyer who could help them. Eventually, they found a lawyer who agreed to assist and who would take his fee from any moneys recovered. The lawyer advised the wife that the sisters had no legal authority to sell the wife's share of the property and that the wife would have to take legal proceedings against her sisters. As her sisters had not received any money from the purchaser, this would force the purchaser to attend court. The wife agreed and these legal proceedings were filed by the lawyer.

[54] The husband and the wife went to the first court hearing. At this hearing, some of the skinheads who attacked them in the house in TT as well as the purchaser were present. The skinheads verbally abused the husband and the wife

and threatened them. Although this all happened within the hearing of a court guard no action was taken. As a result of this intimidation, the husband and the wife did not attend any further court hearings but rather had the lawyer conduct their case without them.

[55] The proceedings took a long time to be resolved. In June 2004, while the proceedings were still ongoing, some of these skinheads approached the wife outside the kindergarten where she was taking the children and pushed them to the ground. The wife cannot recall whether something was said to threaten her. Some 15 minutes after the attack the elder child began to vomit. The wife took the child to an emergency doctor who recommended she take him to hospital for an examination. Despite the doctor requesting an ambulance at 7pm, it did not arrive until midnight, even though its place of usual location was no more than 10 or 15 kilometres away. Although the ambulance drivers indicated that they had other jobs to attend to the wife does not believe this and thinks the delay was caused by racism. When she asked the drivers what took them so long and asked what would have happened if her son had died in the meantime, one of the ambulance drivers replied "it would be one less gypsy boy to worry about."

[56] In December 2004 the court proceedings were concluded. While the judge was not satisfied that the wife and her sisters had proved that the sale had been made under duress, he also did not accept the argument put forward by the purchaser that all that had been purchased was a vacant lot of land. The wife had submitted to the lawyer a number of photographs which clearly showed the property in an almost completed state prior to the purchaser taking possession and this conclusively proved the purchaser was lying. In a judgment dated December 2004, the court ordered that the purchaser pay the wife 2 million *florints* together with 18,000 *florints* in costs by 3 March 2005.

[57] After the judgment in their favour, skinheads in SZ started to threaten the husband and the wife that they would not enjoy the moneys that the court awarded them. These threats were in addition to the verbal abuse they encountered from skinheads just because they were Roma.

[58] The purchaser did not, however, comply with the court order. The lawyer therefore threatened the purchaser that if the moneys were not paid then he would obtain an order from the court putting the house up for auction and the wife would be awarded the money from the proceeds of sale. The money was eventually paid in June 2005.

[59] After the moneys had been paid the husband and the wife began receiving threatening letters. In August 2005, a threatening letter arrived at the house. The letter made derogatory remarks about them being gypsies and said they would not get away with what they had done and would not enjoy the money. The letter said that they would find them no matter where they were.

[60] The couple discussed what to do and whether they should go to the police but decided there was not much point given their previous experiences. By this time, the husband and the wife had already purchased their tickets and were scheduled to leave for New Zealand within the next few weeks. The husband and the wife had decided during the court hearing that if they received any moneys they would use it to leave Hungary to escape the harassment and discrimination they faced, and to give their children a better life free from the problems they had faced.

[61] The sum of money the wife received was not enough for them to purchase their own home. They had in the past approached a bank to see whether they could use the wife's share in the property as security for a mortgage but the bank told them that without the husband and wife having regular and stable employment they could not be advanced any loan. While it was possible for them to rent better accommodation, this was only a short-term solution. Sooner or later the money would run out and they would be back in the same financial position.

[62] This was a real source of worry for them as throughout the beginning of 2005, the husband and the wife had come under renewed pressure from child welfare officials about their conditions. The officials told them that all the papers were in place to remove the children unless the husband and wife provided a proper home for the children with separate kitchen, bathroom and toilet, separate rooms for the children and established a proper income. The wife believes that in contrast to previous years there must have had some people who wanted to adopt or otherwise foster the appellant children. Not seeing any way of achieving these demands, and not wanting to have their family broken up, the husband and the wife decided that they would leave the country.

[63] The husband and the wife left Hungary in mid-2005 and arrived in New Zealand some two weeks later.

[64] The family are worried about returning to Hungary for a number of reasons. First, they are concerned that they will continue to face the discrimination and

harassment they faced generally because they are Roma. Second, the skinheads and purchaser involved in the sale of the house have continued to threaten them. They believe they will continue to be targeted by these skinheads no matter where they are in Hungary because they have stood up to them. Third, the wife is worried the skinheads and the purchaser will be able to find them no matter where they are in Hungary. They are very worried that their family will be split up. The couple do not want to be separated from their children.

[65] Finally, they do not want their children to have the life that they have experienced. Although the elder child was eligible to be enrolled in school in Hungary at the time of their departure, they did not do so as they had already purchased their tickets to depart from Hungary. The husband and wife had each been placed in institutions for intellectually handicapped people just because they were Roma and have experienced much discrimination. They want a better life for their children.

Documentary material received

[66] Prior to the hearing counsel filed a written memorandum of counsel containing submissions together with items of country information relating to the situation of Roma in Hungary.

[67] On 15 May 2007, the Authority received from counsel further written submissions dated 14 May 2007 in respect of the Authority's decision in *Refugee Appeal No 75498* (16 June 2006), which had been notified to counsel by the Authority in letter a dated 24 April 2007. Finally, on 19 June 2007, the Authority received further written submissions from counsel together with the documentation as set out in her attached schedule of documents. This documentation related to items of country information and psychiatric assessment reports dated 25 May 2007 by Dr Amanda McFadden, Consultant Clinical Psychologist in relation to the appellant children.

THE ISSUES

[68] 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."

[69] 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' CASE

CREDIBILITY

[70] The Authority accepts the husband and the wife have given credible evidence. Although the husband's description of events was at times vague, the wife's evidence was clear and compelling. She presented as an impressive witness doing her best to recount difficult and painful events with clarity. Although there were some discrepancies between the husband and wife, having seen and heard from both of them, the Authority is satisfied that these discrepancies are consistent with two separate individuals trying to recall separately events that have, in fact, occurred.

[71] Also, their account of the problems they encountered in relation to the house in TT was supported by credible documentary evidence, in particular:

- (a) A letter from the lawyer appointed by the wife addressed to her explaining the outcome of the court proceedings in late 2004; and
- (b) A copy of the sale and purchase agreement drawn up by the lawyer following the court judgment naming both the wife and purchaser which states, *inter alia*, that the parties to the agreement acknowledge the purchaser was in possession of the property prior to the court's judgment and that both parties were aware of the market value of the property and had no further claim against each other;

[72] As to the removal of the appellant children, the Authority has not been provided with any documentation issued by the relevant child welfare agency. However, having regard to the compelling manner in which the wife gave her evidence, the Authority accepts the evidence as to visits to the family home by child welfare officers as they claim.

[73] The Authority therefore accepts the account of the husband and the wife as it relates to the experiences of all four appellants.

A WELL-FOUNDED FEAR OF BEING PERSECUTED

Country information

[74] The situation for Roma in Hungary was extensively considered by the Authority in *Refugee Appeal No 75498* (16 June 2006). In that decision, the Authority embarked upon a comprehensive and detailed analysis of the position of Roma in Hungary both in relation to their rights under the 1966 International Covenant of Civil and Political Rights (ICCPR) and in relation to their rights under the 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) – see paras [118]-[140]. At para [140] the Authority concluded:

- “[140] A number of general conclusions can be drawn from this country information:
- (a) The national legal system in Hungary, buttressed by myriad obligations imposed upon it as a recent member of the European Union, the Council of Europe and by the jurisdiction of the European Court of Human Rights, provides a legal framework for the protection of Roma's basic civil, political, economic, social and cultural rights. In particular, Hungary is bound, under the ECHR, to implement the decisions of the ECHR, including the payment of compensation and damages;
 - (b) In recent years, the Hungarian authorities have taken many initiatives at the regional, national and community levels, to address discrimination and prejudice against Roma. These have achieved varying degrees of success. The fact that there is such voluminous country information and analysis from a variety of sources means that these issues have not been forgotten and, indeed, are the subject of close scrutiny and reporting.
 - (c) Although, as counsel rightly cautions, any positive developments do not mean that discrimination has been eradicated, cases such as *Balogh* illustrate that the human rights of Roma can be secured and redressed through the national courts and the ECHR. The ECHR has a normative and positive effect on the state party's obligations, including an improvement in the accountability and impartiality of its judicial system. In *Balogh* the claimant's rights under Article 3 of the ECHR were violated but other important rights, such as a fair trial and non-discrimination as a Roma, were not violated in the national system;
 - (d) Notwithstanding the positive developments that are taking place across the spectrum of civil, political, social, cultural and economic rights, in practice Roma are still frequently the victims of incidents of discrimination and

negative stereotypes that persist in all aspects of social life throughout the country:

- (i) Specifically, there are serious incidents of police ill-treatment of Roma, particularly in detention, although their frequency is difficult to determine;
 - (ii) There are specific incidents of Roma receiving less than equal treatment in the judicial process but this does not appear to be as widespread or systemic problem as in the past;
 - (iii) The authorities do not consistently provide Roma with adequate protection or redress from racially-motivated attacks and other acts of discrimination by the local populace. Many incidents continue to occur;
 - (iv) Socio-economic discrimination against, and marginalisation, of Roma continues. In some instances, Roma, themselves, bear some responsibility for the segregation that exists.
- (e) Overall, many Roma continue to be significantly less educated; have fewer and lesser paid work opportunities; inferior housing; poorer standards of, and access to, health care; and lower life expectancy than the population at large.”

[75] These conclusions in *Refugee Appeal No 75498* have been reinforced by the country information submitted in support of this case. As this is the case, and without disrespect to counsel’s efforts, there is little to gain by adding to an already lengthy decision by recitation of the same. The Authority does not, therefore, propose to summarise each item submitted. Rather, the Authority will refer to the country information where it arises in the context of the specific issues raised by counsel in her submissions.

[76] The recent Human Rights Council *Report of Independent Expert on Minority issues – Addendum: Mission to Hungary (26 June – 3 July 2006) A/HRC/4/9/Add.2* (4 January 2007) (“the HRC report”), makes a number of important observations. First, Roma in Hungary, generally, are disproportionately affected by severe poverty. Citing a 2003 study by the World Bank, Hungary’s 2004 *Millennium Development Goal Report*, and a 2002 joint *United Nations Development Programme/International Labour Organisation Report*, the HRC report notes, at para [50] that:

- (a) 40.3 percent of Romani households in Hungary live in absolute poverty (less than \$US1 per day) compared to only 6.9 per cent of the general population;
- (b) 62 per cent of Roma families lived on less than half of the median income; and

(c) More than half of Roma children live in households that regularly go hungry.

[77] As for this phenomenon, the HRC report states at para [52]:

“Poverty faced by Roma in Hungary is both a cause and a manifestation of the diminished rights and opportunities available to members of that community. Poverty in this context involves more than just a lack of income or a daily struggle for basic sustenance. Roma are generally less able to participate effectively in political decision-making or to access mechanisms of justice when their rights are violated. They suffer from unequal access to education, health care and employment.”

[78] The HRC report also states, at paras [79]-[80] and [83], that the housing situation for many Roma remains desperate. The policy of selling public housing stock adopted by autonomous but poorly funded municipalities in the post-communist era has disproportionately impacted upon Roma, many of whom survive on benefits and face difficulty in meeting the cost of rent in the private market. Claude Cahn, Programs Director of the European Roma Rights Centre, “Roma rights, racial discrimination and ESC rights” *Human Rights Tribune des droits humains* Vol 11, No 3 ([http://www.hri.ca/tribune/onlineissue/V11-3-2005/Roma Rights.html](http://www.hri.ca/tribune/onlineissue/V11-3-2005/Roma%20Rights.html)) (accessed 6 July 2005) notes:

“...since the collapse of Communism, Hungarian authorities have significantly eroded rights associated with the right to adequate housing and policies aimed at securing adequate housing for all. For example, Hungary already has among the lowest public housing stocks in Europe and as a result of diminishing resources, local authorities have since the early 1990s been selling off what public housing stocks do exist – a fact which national lawmakers have done nothing to check. At the same time, Hungarian lawmakers have knocked out previously existing protections against forced evictions;

...

These developments, combined with rising prices in Hungary, have resulted in new armies of homeless. The Hungarian Ministry of Social Affairs estimates the homeless population to be approximately 30,000.

...

There are clear indications that practices of forced evictions and related homelessness are disproportionately falling against Hungary’s Romani community. Indeed, it was Hungary’s Parliamentary Commissioner on National and Ethnic Minority Rights who recommended a review of local rules on the provision of social housing in the wake of the Constitutional Court rulings, primarily because their impact is disproportionately experienced by Roma.”

[79] Country information provided by counsel confirms this picture. The Canadian Immigration and Refugee Board Documentation Centre report *Hungary: Situation of Roma, including housing and the impact of Hungarian membership in the European Union; state protection (2002–February 2005)* (March 2005) notes that housing conditions are very poor for a large proportion of Roma and often do not meet the most basic health and safety requirements.

[80] This leads onto the second point that emerges from the HRC report, namely, that the Hungarian state is taking steps, in accordance with its obligations under the ICESCR, to address the situation of Roma. Thus:

- (a) A system of minority self-government has been established – see para [41];
- (b) In November 2006, “a welcome initiative” was established in which the presidents of minority self-governments have become *ex-officio* members at meetings of municipal authorities. This development was in response to concerns that the system of minority self-government was being diverted from its task of preserving Roma culture, identity and language into confronting the urgent economic and social problems that Roma communities face, in part, due to the “failure and neglect of municipalities to fulfil their social and economic functions for which they are state funded”. This initiative allows them to raise the issue directly – see paras [42] and [43];
- (c) In response to the continuing widespread discrimination faced by Roma in the employment field, notwithstanding the enactment of the 2004 Equal Treatment Act and the establishment of specific institutions such as the Equal Treatment Authority and a Minority Ombudsman, the Hungarian government has funded a number of initiatives and targeted labour market programmes over recent years – albeit with varying degrees of success. Examples include training and development initiatives, expansion of public works programmes and providing financial capital to aid micro, small and medium sized Roma business ventures to encourage Roma entrepreneurship and facilitate Roma employment;
- (d) Initiatives have been taken in relation to housing in the form of rehabilitation schemes comprising the building of new housing “for the most in need” and the refurbishment of existing houses. However, funding restrictions have resulted in both a limited number and scope of such schemes – see para [82]. Also Roma families with two children are entitled to a housing benefit of 2,400,000 *florints* (US\$11,000), doubling for families with four children – see para [82];

Counsel’s submissions

[81] Counsel places the appellant's claims for refugee status on a broad basis. She submits at paragraph 16 of her memorandum dated 13 February 2007:

"... the appellants' claims are based on the cumulative effect of longstanding and persistent discrimination in all areas of their life, including, at times, serious infringements of their fundamental rights including the right to personal safety."

[82] The thrust of this submission is maintained in the submissions of 18 June 2007. Counsel submits at para 51 that, the experiences of the appellants and, in particular, the unwillingness of the police to investigate crimes against them clearly show that the presumption of state protection does not apply in this case.

[83] As to the removal of the children, at para 21 of the submissions dated 13 February 2007, counsel submits on behalf of each appellant that the family will:

"... be unable to secure proper accommodation in Hungary and that their children will be taken away."

[84] It can be seen at a glance that the submissions made by counsel raise a complex amalgam of claimed breaches of rights under the ICCPR and the ICESCR. There are two broad areas of claim under the ICCPR. First, that the husband and wife would not receive the equal protection of the law in terms of the threats of harm they face from the purchaser and her associates or other persons with racist attitudes towards them. Second, that the family unit would be split up because of the socio-economic status of the family, a status said to result from breaches of their rights under the ICESCR. Before considering the cumulative effect of any established breaches in terms of establishing a well-founded fear of being persecuted, the Authority will disaggregate the substance of the claimed breaches for ease of analysis.

As to the claim based on a lack of equal protection before the law

[85] The Authority is satisfied that there is a real chance the husband's and wife's right to the equal protection of the law under Article 26 ICCPR would be breached. While the wife has not been wholly shut out of the legal system, in that she was able to bring private legal proceedings against the purchaser, there is evidence of a historical failure of protection by the relevant state agencies. In particular, they have failed to enforce the provisions of the domestic criminal law without discrimination when the husband and wife were attacked by skinheads associated with the purchaser. This attack, which resulted in serious injury to both and, in relation to the wife, permanent injury in the form of a lasting hearing impairment, constituted a serious criminal assault.

[86] It would have been an easy task for the police to conduct an investigation. There is no evidence that any serious investigation was ever undertaken. Indeed the police refused to link the assault to the house in TT when the husband and wife reported the attack to them thereby foreclosing any meaningful inquiry into the assault. There is no reason to suppose that the position would be any different in the future in respect of any further attack on them by the same group who have threatened to do further harm to the husband and wife.

AS TO THE THREAT OF THE CHILDREN BEING REMOVED

The position in Hungary

[87] The domestic legislative scheme for child protection is summarised by the Hungarian government in its second periodic report to the Committee on the Rights of the Child – see (CRC/C/70/Add.25 (24 May 2005)). The main features for present purposes are:

- (a) A parent is obliged and entitled to take care of his/her child, to educate the child and provide the conditions required for the physical intellectual emotional and moral development of the child – see para [228];
- (b) Parents are obliged to co-operate with state agencies participating in providing care for or administering the affairs of children – see para [229];
- (c) The state and municipalities have an obligation to provide assistance in the form of basic welfare care which can take the form of aid, in-kind care and personal services – see para [232]. Municipalities provide for organisation, management and co-ordination of child welfare services within a general family help service or by employing an appropriate person – see para [239];
- (d) While under child protection legislation a child may be separated from his/her parents or other relatives, this can only be done when it is in the child's interest and only in a manner provided by law. Children may not be separated from their families where a risk of endangerment to them arises for purely financial reasons - see paragraph [245];
- (e) When a child's family environment seriously threatens the child's physical, intellectual, emotional and moral development and this requires immediate placement elsewhere, the authorities will seek to place the child with a parent living separately who is able to provide care and agrees to do so or a

relative of the child. It is only if no such placement can be found that the child is placed in foster care or, as a last resort, a children's home or other boarding institution – see para [251];

- (f) Where children are separated and placed in adoptive or foster families, their cultural ties have to be respected – see para [245]. The children must also be allowed to keep personal and direct contact with the parents – see para [247];
- (g) Parental control over a child is deemed by legislative provision to arise upon the birth of the child but can be discontinued by a court in specified circumstances where the continuation of parental control is not in the best interests of the child – see para [235];

[88] On the face of it, Hungary's legislative and administrative frameworks appear to comply with the requirements of the 1989 Convention on the Rights of the Child (CRC). However, the CRC Monitoring body, Committee on the Rights of the Child, commenting on this above report (CRC/C/Hun/CO (17 March 2006) has noted that:

- (a) While Hungary had undertaken a number of positive steps by way of follow up measures to address issues raised by the Committee in response to Hungary's initial periodic report, the Committee still had concerns that some issues had been insufficiently addressed, including discrimination against Roma – see para [5];

“Despite positive improvements such as the Act on Equal Treatment and the Promotion of Equal Opportunities adopted in 2003, discriminatory and xenophobic attitudes towards the Roma population remained prevalent.”

- (b) Discriminatory and xenophobic attitudes remain prevalent and Roma children suffer from stigmatisation, exclusion and socio-economic disparities, notably in relation to housing, unemployment, access to health services, adoption and educational facilities –see para [19];
- (c) It was concerned that the principle of the best interests of the child was not always respected in decisions involving Roma – see para [22];
- (d) It was “particularly worried about the overrepresentation of Roma children among children in alternative care institutions” against a background of

concern that children are being placed in alternative care often for financial reasons – see para [30];

[89] The Authority notes the wife's evidence that approximately six months before their departure, the husband and wife were orally informed during a visit by child welfare officials that "all the papers are in place" to remove the appellant children unless they obtained better accommodation. However, after carefully considering this matter, particularly given the husband's previous experience of having the children of his first marriage removed from his care in the mid-1980s, the Authority concludes that the risk of the appellant children being removed is essentially conjectural in nature and falls below the real chance threshold.

[90] As to the warning they received in early 2005, the warning itself was of a conditional nature. It did not amount to a commitment to remove the appellant children.

[91] The warning must also be put in context. First, the appellant children were born in 1997 and 1999. Yet there is no evidence of any visits by the child welfare agency until 2001. Second, although the appellants had been living in SZ on a continuous basis since 2001 and during that time had been visited on a number of occasions by the child welfare officials and given essentially the same warning, no actual steps were taken to remove the appellant children. Although the wife is suspicious that the lack of action may be in part explained by a lack of foster home places, it is clear from the country information that this is not a bar on removal and many Roma children are simply placed in institutions. Rather, it appears to the Authority that the more convincing explanation for the lack of action is that provided by the wife, namely, that the child welfare officials could see that the children were being adequately cared for by the husband and wife. Third, although the 2005 warning was made approximately six months prior to their departure, nothing whatsoever thereafter happened to give any effect to this warning. If there is a real chance the 2005 warning is, contrary to earlier similar warnings, a prelude to the actual removal of the children, it is reasonable to expect that there would have been some further administrative action taken in that period. The fact that nothing at all appears to have happened points towards the conjectural nature of this aspect of the claim.

[92] Neither the wife nor the husband could provide any compelling explanation as to why no such steps were taken to actually remove the children in 2005 if there

was a real chance this last warning would be treated any differently from those they received in the years prior.

AS TO THE CLAIMS UNDER THE ICESCR

[93] The issue of the relationship of the ICESCR to the Refugee Convention was discussed at length by the Authority in *Refugee Appeals Nos 75221 and 75225* (23 September 2005). The Authority concluded:

“Conclusion on state obligations under the ICESCR

[108] The Authority thus finds that in light of the above matters, States parties are under an obligation to respect, protect and fulfil ICESCR rights. This involves obligations of negative and positive conduct (respect and protect) and result (fulfil). In practical terms, the obligation of a State party under the ICESCR is to undertake an ongoing, coordinated and coherent programme of action so as to ensure that a core minimum level of each of the ICESCR rights are enjoyed by the widest possible population, having regard to the resource constraints of the country as a whole. The programme must be designed to lead over time to the full realisation by all of their ICESCR rights. It must be sufficiently flexible so as to deal with any situations of urgent need.

[109] This obligation will require, where needed, immediate legislative measures to rectify existing *de jure* discrimination in the enjoyment of ICESCR rights. Such measures, however, in no way themselves constitute sufficient action so as to meet the basic positive duties owed by States to ensure the progressive realisation of the Part III ICESCR rights. Rather, it is to be seen as the first of an ongoing series of coherent and integrated steps, that States parties are required to take to ensure, at the very least, that core minimum standards are enjoyed as widely as possible.”

[94] This is not a case where there has been a failure by the state to take any steps whatsoever in relation to the enjoyment by Roma of Part III ICESCR rights. It cannot be said there is, on this basis, a real chance of future failure by the state to take any steps to ensure enjoyment by the appellants of core minimums of their ICESCR rights in the future simply because they are Roma. Rather, this is a case where despite a range of initiatives undertaken, societal discrimination against Roma continues to hamper their fuller enjoyment of their ICESCR rights.

[95] Counsel, in her written submissions of 18 June 2007, submits that although Hungary has formally joined the EU and is subject to the full weight of EU law regarding human rights, Hungary’s accession is simply a device for securing financial advantage as opposed to evidencing some commitment to the promotion of human rights. This has, counsel submits, resulted in “mountains of useless paper on the precarious situation of the Roma” – see paras [52], [55] and [56]. Counsel’s submission, however, goes too far. Leaving aside for the moment the correctness of the assertion that Hungary’s motivation in joining the EU was purely

financial (no evidence is cited to support the proposition), the fact is that in order to secure entry to the EU Hungary has had to comply with a substantial amount of governance related requirements. These have included requirements, known as “the Copenhagen Criteria”, relating to the protection of human rights for disadvantaged groups such as Roma – see, for example, the summation of the relevant principles in the record of decision of 28 January 2002 of the Council of Europe *Council Decision on the principles, priorities, immediate objectives and conditions in the Accession Partnership with Hungary (2002/87/EC)* at para [3].

[96] Moreover, it is clear that change in the institutional landscape for the protection of human rights for Roma has taken place in Hungary as a result of the accession process – see for example, Commission of the European Communities *2002 Regular Report on Hungary’s Progress Towards Accession [COM (2002) 700 Final]* SEC (2002) 1404 (9 October 2002) at pp30-33 where various institutional reforms in the field of education, health, employment and in respect of the justice system are noted. This report also makes clear that such institutional reform has not eliminated discrimination against Roma in these spheres, and to this extent counsel’s submission rests on more solid ground. However, it simply cannot be credibly submitted that entry into the EU has had no substantial effect and created “mountains of useless paper”.

[97] As to the actual effect of the steps that have been taken by Hungary on the socio-economic predicament of the appellants, both the husband and wife have not been wholly shut out of the labour market. It is true that their work has been of a casual nature. It is also true that their employment opportunities have been affected by work-place discrimination and the discrimination they encountered in their education. Nevertheless, they have had sufficient levels of employment over a number of years to enable them to sustain themselves and their children to a level consistent with basic human dignity.

[98] While the family may have encountered discrimination in accessing health care, this has been occasional as opposed to a sustained feature of their lives. Nor has it resulted in serious harm in the past. The husband was admitted to hospital when he suffered a serious heart problem. The husband and wife both received medical treatment after the serious assault and the wife was fitted with two hearing aids at a public health facility.

[99] As regards their housing, the Authority notes this was secure and there has been no claim that they have at any time been subjected to unlawful evictions or

housing related harassment that has otherwise impacted upon their security, peace and dignity. Their accommodation gave them access to employment, education and health care facilities. It had access to running water and an outside toilet. While their ability to afford better accommodation has been negatively affected by the failure of local public servants to accept their applications for financial assistance, the husband and wife have managed to find and afford alternative accommodation which, while perhaps only marginally better, was necessary to prevent the recurrence of more substantial respiratory illnesses in the appellant children.

[100] After careful reflection, the Authority finds that their socio-economic condition while one of poverty, cannot be said to be one which falls below “the basic level of dignified human existence” for the purposes of engaging the protection of the Refugee Convention. First, when measured by the core minimum content of the relevant ICESCR rights, the Authority finds that a sufficient number of those core minimums are being enjoyed. Second, while it is clear that societal discrimination has prevented the appellants from enjoying fuller levels of their ICESCR rights, particularly in relation to employment and housing and there is a real chance this will continue in the future, the Authority finds that the chance this will result in future serious harm to the appellants is speculative. There is no evidence that such discrimination that they have encountered in the employment, housing or health field has lead to serious harm to the husband or wife in the past. There is no evidence upon which to establish this will be different in the future.

CONCLUSION ON WELL-FOUNDED FEAR OF BEING PERSECUTED

The husband and wife

[101] The Authority finds that the husband and wife each have a well-founded fear of being persecuted when the following matters are accumulated:

- (a) Each has been subject to serious physical assaults by skinheads associated with the purchaser which have caused serious injuries to them both. The husband suffered broken ribs; the wife has been left with a permanent hearing impairment;
- (b) The attacks on them in relation to the house occurred in more than one location, namely TT and SZ, suggesting a degree of profile among the skinheads in that particular area;

- (c) The couple have managed to secure the payment of a not insubstantial amount from the purchaser. The wife has been threatened orally and the couple have received threatening notes that they will not live to enjoy the money they have received;
- (d) Each time the couple have complained to the police about the treatment by the purchaser and the associated skinheads, the police have either failed to register their complaint or conduct any investigation whatsoever;

The children

[102] Regarding the appellant children, the Authority is satisfied that they do not have a well-founded fear of being persecuted. There is no suggestion that the children have been targeted by the skinheads in the past. The risk that they will be in the future is speculative. There is no real chance that they will be removed from the family simply because they are Roma.

[103] It is accepted both appellant children would live in the same economic conditions as their parents. For the reasons given in respect of the husband and wife, the Authority finds that while there is a real chance they will lead an impoverished existence, their socio-economic condition will be consistent with a basic level of human dignity.

[104] The elder child was seen by health professionals for an allergic reaction and other matters. Although the wife is critical of adequacy of the diagnosis process, there is nothing to support her concerns. This appellant was seen by a doctor after he was pushed to the ground in 2004. Moreover, in a written report dated 25 May 2007 on the elder child, Dr McFadden, Consultant Psychologist, notes that his speech development was delayed as a small child. Significantly for present purposes, she notes advice from the wife that this appellant was referred to a speech language therapist upon being enrolled in kindergarten, which was successful in developing his speech. This reinforces the impression that this family, while impoverished, have not been deprived of essential health care and health care services to enable them to live a life of basic human dignity.

[105] In terms of the wider enjoyment of the right to health, the Authority accepts the wife's evidence of the discriminatory attitudes displayed by the comments of one of the ambulance drivers. However, even assuming that this was the reason for the delay in the ambulance arriving, this isolated nature of this incident serves

to underscore the essentially conjectural nature of any claim that there is a real chance of serious harm befalling the elder or younger child in this regard. It does not evidence a more generalised pattern upon which a real chance finding can properly be based.

[106] Also in relation to the elder child, Dr McFadden states that the results of cognitive assessments performed show his level of cognitive functioning to be below average. Having conducted interviews with the school staff and observed him at school, she states that he was a focussed and determined individual, well-liked by his peers. He is, it seems, making slow but steady progress. Dr McFadden states that it would not be in his best interests to be removed from this present school environment and any such move may result in deterioration in his learning at all levels.

[107] The Authority also received a report by Dr McFadden of the same date in respect of the younger child. Dr McFadden states that his test results showed a greater cognitive ability relative to his age but that he had under-developed adaptive behaviour skills, which sometimes brought him into conflict with his peers. However, Dr McFadden notes that this appellant was showing signs of beginning to settle and expected that he would “continue to blossom provided he continues to access the existing levels of intensive supports”.

[108] It is accepted that, having settled, moving the appellant children from their school may be disruptive to them. As far as their education is concerned generally, both appellants face a real chance of encountering discrimination. Both the decision in *Refugee Appeal No 75948* (*op cit* at paras [131]-[135] and country information provided by counsel, confirms that Roma children continue to be over represented in institutions for children with mental health problems. There also exists in some places a *de facto* segregation system, with Roma only schools or Roma only classes within schools being relatively under resourced – see European Commission Against Racism and Intolerance (ECRI) *Third Report on Hungary* (CRI 2004 25) (8 June 2004) at paras [98]-[111]. Similar observations are made in a report by the Documentation Centre of the Canadian Immigration and Refugee Board *Hungary: Situation of Roma, including housing and the impact of Hungarian membership in the European Union; state protection (2002 – February 2005)* (March 2005).

[109] While many Roma will have been subjected to similar discrimination in the past, plainly some have managed to secure a reasonable standard of living for

themselves. Not all Roma in Hungary live in poverty. Some, like the husband and wife in this case, while suffering relative poverty, nevertheless have not suffered serious harm as a result. Moreover, the HRC report states, at para [85] that, (contrary to counsel's assertion of a political disinterest in ensuring the advancement to the level of enjoyment by Roma of their rights):

"Having widely consulted, assessed documentary information, and collected and analysed the views of various parties and stakeholders, the independent expert concludes that the Hungarian Government has demonstrated a high degree of attention and significant political will to addressing the unique needs of and problems faced by minorities."

[110] It can reasonably be expected that a combination of political will and the normative force of Hungary being subject to the full weight of EU institutions will work together to improve the situation for Roma over time. Against this background, it is entirely a matter of conjecture that any discrimination they may encounter in their education will create a real chance of serious harm to either of the appellant children.

INTERNAL PROTECTION ALTERNATIVE (IPA)

[111] However, in order to qualify as refugees, the husband and wife must establish that they cannot obtain effective internal protection by moving elsewhere in Hungary. Because the issue of internal protection arises in this case, the decision of this Authority in *Refugee Appeal No 71684* (29 October 1999) requires a third and final issue to be addressed, namely, can the appellants genuinely access domestic protection which is meaningful? In particular:

- (a) In the proposed site of internal protection, is the real chance of persecution for a Convention reason eliminated?
- (b) Is the proposed site of internal protection one in which there is no real chance of persecution, or of other particularly serious harms of the kind that might give rise to the risk of return to the place of origin?
- (c) Do local conditions in the proposed site of internal protection meet the standard of protection prescribed by the Refugee Convention?

IPA Issue One

[112] This is answered in the affirmative. The site in which the appellants have a well-founded fear of being persecuted comprises a highly localised area, namely

villages in the area surrounding Budapest comprising SZ and its environs. The wife described how their financial situation limited their options for travel away from this localised area. The Authority does not accept that there is a real chance the skinheads associated with the purchaser will come looking for them were they to live in other parts of Hungary situated, for example, some 150 kilometres away. The risk of them being located in any such area is remote and falls below the real chance threshold.

IPA Issue Two

[113] This issue is answered also in the affirmative. With the exception of the lack of interest by the skinheads associated with the purchaser, there is no basis for finding that these conditions would be different from that which they faced in SZ. The Authority accepts they may encounter occasional low level harassment from local skinheads who seem to be present throughout Hungary. Further, the Authority finds that the socio-economic condition of the family would be similar to that they faced in SZ. The risk of their being persecuted or suffering serious harm to them as a result of attacks from skinheads is, however, speculative. Any risk elevating profile would disappear in the site of IPA, leaving them open to, at best, random and isolated instances of discrimination. Also, for the reasons the Authority has given in relation to the claim under the ICESCR, the Authority finds the risk of the appellants suffering serious harm that might force them back to SZ or its environs as a result of their wider socio-economic condition is also speculative.

IPA Issue Three

[114] It follows from the answer to the issue discussed above that this issue is also to be answered in the affirmative. The appellants would each enjoy the rights accorded to refugees under the Refugee Convention.

CONCLUSION

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

"B L Burson"

B L Burson

Member