

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76230

AT AUCKLAND

Before: A R Mackey (Chairman)
Counsel for the Appellant: R Woods
Appearing for the Department of Labour: No appearance
Date of Hearing: 7 July 2008
Date of Decision: 6 August 2008

DECISION

INTRODUCTION

[1] This is an appeal by a 25 year-old married man from Hungary, against the decision of a refugee status officer in the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining him the grant of refugee status.

[2] The start of this appellant's problems arose after he established a, for a short time successful, computer componentry company. Then, in a search for investors into his company, he became involved with a money-laundering syndicate. As he refused to join in their schemes, he and family members were put under serious threats by influential people in the syndicate. This eventually led to him closing his business and fleeing from Hungary to New Zealand. He predicts that on return, because of an Interpol arrest warrant and the positions and influence of the syndicate members, with whom he was involved in Hungary, he will be detained and severely maltreated, either whilst in custody or even if he is released.

[3] The core issues are, if positive credibility is established, firstly, would there be a failure of state protection by the Hungarian authorities? Then, whether any risk of predicted maltreatment would be for reasons of one or more of the five

Refugee Convention reasons.

[4] The appellant has remained in remand custody, in AA and Auckland, for many months. In an effort to resolve the matter as soon as possible, the Authority and Mr Woods agreed the earliest possible hearing date.

[5] At the end of the hearing before the Authority, when counsel asked for a further three weeks to present additional information he and the appellant were hoping to obtain from Hungary, the Authority explained its reluctance to grant any further lengthy extension as it considered it had a responsibility to complete hearings and publish decisions, in respect of appellants who were held in custody, at the earliest possible opportunity. Regardless of the outcome, the Authority considered it should take all reasonable steps to minimise the period of time an appellant is in detention. After noting this, the appellant still requested the three-week period in which to provide further submissions. On the understanding that he was fully aware of the consequences, the Authority granted the three week extension in which further submissions were to be presented. Some additional submissions and evidence were received at the end of the three weeks.

THE APPELLANT'S CASE

[6] The account which follows is a summary of the evidence given by the appellant on appeal. It is then assessed and the facts as found set against the issues involved and law related thereto.

[7] This appellant arrived in New Zealand in January 2006 on a valid passport and was granted a visitor's permit on arrival. He was then issued work permits which were valid until January 2007. When applying for a further work permit at that time, he was informed by Immigration New Zealand that they held prejudicial information that he was wanted in Hungary on fraud charges. Accordingly, they declined his application.

[8] In October 2007, the appellant was taken into custody in AA, as the subject of a removal order. At that time, he was represented at the District Court by Mr Woods. In December 2007, however, he was transferred from the AA prison to the Auckland Central Remand Prison (ACRP). In November 2007, with the assistance of Mr Woods, the appellant lodged a confirmation of claim to refugee

status with the RSB. After being transferred to the ACRP, the appellant found it difficult to instruct Mr Woods, who is Wellington-based, and was then advised and represented by an experienced Auckland-based lawyer during the processing, interview and ultimate decline by the RSB of his refugee claim.

[9] After being declined by the RSB on 20 May 2008, the appellant lodged an appeal to this Authority. His Auckland-based lawyer was unable to continue to represent him as legal aid was refused. Mr Woods was then contacted by the appellant and he agreed to represent him, apparently this time without the benefit of legal aid.

[10] Clarification at the outset of the hearing was required in respect of the "Interpol diffusion notice". Mr Woods stated that he had not seen the original of this notice, even though he had asked for it at the time he originally represented the appellant in the AA District Court. It transpired that, there was on the file a copy of a document, stated by the RSB to be part of a request to the New Zealand Police from Interpol. This sets out significant details of an arrest warrant issued against the appellant in December 2006, on the authority of the Metropolitan Court in BB (the appellant's home town) by a named judge. The relevant articles of the criminal code are set out. It refers to 15 counts of fraud under two different articles of the criminal code, which allegedly were committed in 2005 in Hungary. A summary of the facts of each of the 15 offences is then set out. A copy of this information had been provided to Mr Woods at approximately the time the appellant was transferred to the ACRP. At the hearing, the Authority located the full email correspondence between officers of the RSB, which set out the information relating to this arrest warrant, which the RSB state was received from the New Zealand Police. Mr Woods later made submissions in relation to this document and its contents, which were fully traversed by the Authority in its questioning.

[11] After completing his secondary schooling in approximately 2000, the appellant then attended and completed a medium level certificate in computing from a college in Hungary. He then found work as a computer technician in BB. Initially, he worked in a computer shop for approximately one year and then, in December 2002, together with a colleague, he established a small IT servicing/technician company (B Ltd). The appellant stayed in this business for 18 months until he decided to work as a salesman selling books and geographic products for a period of approximately one year.

[12] In summer 2004, whilst on holiday with his girlfriend in Croatia, the appellant met a Dutchman, Mr ZZ. They met socially and, in discussions, Mr ZZ suggested he could supply the appellant with computer (hardware) componentry, which the appellant may then be able to distribute in Central and Eastern Europe. Mr ZZ, the appellant understood, worked for a distributor in The Netherlands. The appellant was given Mr ZZ's cellphone number and an invitation was made to call him if he wished to pursue the opportunity.

[13] A few months later, in late 2004, the appellant decided he would set up a hardware distribution business because he noted the pricing Mr ZZ could provide was better than that normally available in Hungary and Eastern Europe. The appellant made some enquiries and then met with a university friend of his brother whom they knew was involved in dealing in computer componentry in Eastern Europe. This man, Mr YY, had a discussion with the appellant in BB and they agreed that the appellant could supply componentry to him. Some samples and illustrative prices were then obtained from Mr ZZ to prove the *bona fides* of the operation. The appellant ordered 40 hard-drives and 60 CPUs at a cost of some €8,000-€9,000, using money lent to him by his parents. The appellant immediately passed them over to Mr YY, who found he was able to sell them. Mr YY suggested an arrangement whereby certain volumes of componentry were supplied to him each month for onward sale. The appellant agreed to this, but then had to be able to finance the purchases, which had to be paid for in advance.

[14] The appellant was able to raise the initial investment money for his distribution business from friends and relatives who appreciated getting a very good return for short periods of investment with the appellant's business. The business grew. In seeking additional investment funds, the appellant came into contact with a client from one of his previous jobs who was a salesman with a major international office products company. This man, Mr XX, agreed to invest €22,000 for the purchase of a number of hard-drives and CPUs. This money, together with some additional funds supplied by the appellant's parents, the appellant sent to The Netherlands and material was then freighted to him. Mr YY also agreed to purchase these at a price which included a small margin allowing the appellant to offer the money back to Mr XX with a good return, after a very short period.

[15] For some eight months after this, using the funding of various family and friends and Mr XX, and the prompt purchasing and payments from Mr YY, the business appeared to be progressing very satisfactorily for the appellant.

[16] In approximately August 2005, the appellant met, through the introduction of his brother, a Mr UU who stated that he wanted to invest money in the business. Mr UU was the IT director of an insurance office in CC. The appellant's brother worked for the same insurance company in the BB office. Mr UU appeared to the appellant to be an experienced, successful businessman of approximately 40 years of age and the appellant was enthusiastic to obtain his advice and involvement. In their first meeting, an initial offer of an investment of €5,000 was made. The appellant was told by Mr UU that he would contact him regularly, every one or two weeks, to see how his investment was being used, and the return he was obtaining, with a view to investing more.

[17] After the first investment was successful, Mr UU then approached the appellant with a proposal as to how the appellant and his business could take part in a "scheme" that would maximise profitability. The appellant had asked Mr UU, as an experienced businessman, for advice on how he should run his business and maximise its profits and he was impressed and keen to work with him. Mr UU drew some complex diagrams of how money would be passed through various channels, involving Serbian sleeping partner owners of Hungarian companies of which Mr UU was a director. The appellant was told that the Serbs involved would disappear from the transactions and, as a result, there would be no taxation payable and a considerable return achieved.

[18] The appellant, without fully understanding the "scheme" Mr UU was explaining, stated that he thought it was very odd that companies should be formed this way and he did not like the idea of being involved in a scheme for tax evasion. Mr UU asked the appellant how he thought he had achieved such significant business success. He went on and eventually explained to the appellant that it had come about through [Mr UU] being involved in what were effectively money-laundering operations. He offered the appellant the opportunity of being involved with a group of Mr UU's colleagues, which included senior government officials, associates of former politicians and members of the police force. The appellant was assured that there was no risk to him by becoming involved because of the many government officials in the scheme who would ensure that nothing went wrong.

[19] The appellant said he was curious and surprised that Mr UU had explained what were illegal activities but, because he could see Mr UU was obviously a person of significant power and had very important contacts at the highest level, he should hear everything Mr UU had to say. Mr UU also explained to the appellant that many influential people were able to “clean their money” through the types of schemes and involvement that were explained to the appellant. Ultimately, the appellant stated that he was not interested and that he would rather continue his business legally, rather than through these complex and apparently illegal schemes. Mr UU stated that he was not surprised at the appellant’s reaction, but still offered to support him and left open the opportunity for him to become involved in the money-laundering schemes that had been outlined.

[20] After concluding the meeting, the appellant received some further monies from Mr UU, which he treated like all the other investments he had attracted over the time his company had been running.

[21] About six weeks later, the appellant found that he was very busy with strong demands for further product from Mr YY in the run-up to Christmas. Unfortunately, the demand for product became too great for Mr ZZ to supply from The Netherlands. Faced with this predicament, the appellant decided, with the agreement of Mr YY, to supply all that he could secure from The Netherlands, which was about 50 percent of the demand. He found this very frustrating and was, in fact in a situation where he had too much capital. Instead of repaying all the people who had invested with him, he decided to equalise the profit he was achieving at the lesser volume across all of the investors. Most of them, although offered the chance, did not want their money back.

[22] The appellant suggested to Mr UU that his share in the profitability should also be cut back, along with everyone else. Following this, Mr UU asked for a meeting with the appellant at a restaurant in BB. At the restaurant, the appellant discovered there were three other people with Mr UU. These were Ms PP, who was the daughter of a senior government advisor, a policeman from the internal police force in CC and Mr QQ a detective sergeant of the police force based in BB.

[23] Mr UU stated that he wanted the appellant to join their money-laundering organisation. It was initially a very friendly approach, however Mr UU pointed out that, as a full and open disclosure of the whole scheme had been made to the appellant, it was now necessary that he must become involved or alternatively

make a deal so that the appellant “kept his mouth shut”. The appellant explained that he had no “connections” and so there was nothing he could harm them with or that he would disclose. Mr UU, however, insisted that the appellant was now required to proceed with his participation in the money-laundering scheme and to pay Mr UU €600,000. The appellant stated that it was impossible for him to earn such money, even using Mr UU’s scheme or channels, as there was insufficient computer hardware available from his sources in The Netherlands for distribution into Eastern Europe.

[24] The appellant was then told he would have to join into the “system” or “get destroyed”. He was told that if he did not co-operate, there would be problems for him and his family. He was told that he could not go to the police and complain. The appellant kept insisting that he could not make the scheme work. Eventually the policeman took out a black gun which was pointed at him. The appellant was then told to sign what appeared to be some contracts that included not only the appellant’s name, but also those of Mr UU and others.

[25] In addition, the appellant was told to sign a number of blank pages. Because of the threats imposed on him, the appellant signed the documents which were then witnessed by Mr QQ. At that point, Mr UU placed €150,000 in notes in front of the appellant and told him that he must pay at least 10 percent of that money back to Mr UU directly each week until ultimately they received their €600,000. Mr UU and the other three then left the restaurant. The appellant then picked up the money, put it in his backpack, paid the restaurant bill and left.

[26] The appellant kept the cash with him and then, over the following weeks, each Friday he met with Mr UU in the car park of a supermarket in CC. On each occasion, he took his girlfriend’s brother with him in an effort to have at least some security. The meetings with Mr UU were very brief. On each occasion, the appellant moved quickly to sit in Mr UU’s vehicle and passed him €15,000. This continued for a period of some seven or eight weeks. During that time, however, the appellant decided that he should pay out all the other investors, and hopefully, by concentrating solely on the money he had been given by Mr UU, he may be able to overcome his problems.

[27] By mid-December 2005, virtually all of the money, including the €150,000, had been paid out. However, because of the lack of product from Mr ZZ, he was

unable to go anywhere near developing a profit to the level required by Mr UU and his associates.

[28] When paying out his other investors (family and colleagues), he told them that there was now no profit available because of the lack of supply. Whilst they were not very pleased, they were generally satisfied with the appellant's explanation.

[29] In his short discussions with Mr UU, the appellant told him he simply could not give him the profit he wanted to, or pay the €600,000. Indeed, in the last two weeks in December 2005 that he tried to keep operating, he paid Mr UU only €6,000-€7,000 each week.

[30] During this time both the appellant and his family received visits and telephone calls demanding that he meet the repayments required. On one occasion, Mr QQ and two others, apparently policemen, came to the appellant's apartment. They told him to co-operate as it was his only chance. He was told there was danger to all those involved, including politicians, so he must co-operate. A gun was placed on the table and Mr QQ explained that they could torture him and his family and make his life miserable, even if he was in prison. Mr QQ, while explaining his connections with the police, had come in plain clothes. He was always dressed in the manner of a smart businessman and not as the appellant would have expected of a detective.

[31] Two days later, the appellant received a visit from members of the National Security Bureau (a sort of secret police). These people showed him their badges with attached cards and also advised him to co-operate with Mr UU and that they were following him so that he should not do anything stupid. The appellant considered that these people were genuine, although he had not seen their type of cards or badges before.

[32] At this point, the appellant was extremely stressed and discussed the matter with his family, who were also being visited by the police and receiving calls from "underground" people. The appellant had no plan in mind but just wanted to get out. His family could not assist him directly from a financial point of view and, along with his friends, suggested he should leave the country and forget the whole thing.

[33] Following a further incident in which Mr QQ, Mr UU and two others stopped him in his car and told him to co-operate and join them, the appellant and his girlfriend decided they must leave the country.

[34] The appellant stated he had not actually carried out the instructions of Mr UU in relation to the "investment" that had been made by him and his group, but had just given to them as much money as he could. He never spoke to the police about the incidents nor had he instructed a lawyer before he left. Contact with the police and lawyers had, however, been made by his parents after he left Hungary.

[35] Just before he departed, the appellant received a further surprise and problem when his original investor, Mr XX, who contacted him and implied that he was also involved in various criminal activities. He arranged to meet the appellant at his apartment around lunchtime. He was with another person. They took the appellant away in a car and eventually drove him to a disused mine. Mr XX then explained that the appellant should co-operate with Mr UU and Mr QQ, or that he would be forced to dig his own grave at the mine and they would bury him in it. Other strong threats were made to him.

[36] The appellant was taken off guard by Mr XX, as he did not realise he was also involved in criminal activities. This man had received all of his investment monies back, with interest, over a period of some 12 months. During that time, Mr XX had made significant money from the appellant's business and had been favoured by the appellant throughout. The appellant felt, at that time, that he had been duped and simply used by Mr XX. It was explained that if the appellant went along with Mr UU's plans and schemes, he would be left alone.

[37] Eventually, he was returned from the mine to Mr XX's home. When he saw that Mr XX was also against him, the appellant knew he had to leave immediately as he simply could not continue. All of the funds he had left had been paid out to Mr UU. He told his purchaser, Mr YY, that he was closing down the business as he was in trouble. He accepted the situation and told the appellant to be careful as he knew the nature of the type of business the appellant was in. There were no outstanding orders or other commitments.

[38] The appellant and his girlfriend then took a train to Paris and moved around several European cities over the following two weeks, eventually arriving in

Slovakia. In a meeting with his parents in Slovakia, in early January 2006, the appellant and his girlfriend decided they should get as far away from Hungary as they could and, for this reason, chose to come to New Zealand. Using funds provided by his parents, they were able to travel to this country and enter visa free.

[39] The appellant explained that in April 2007, he and his girlfriend had married. Soon after the marriage, his wife departed New Zealand to complete her university education in Hungary. Before he was detained in October 2007, the appellant was in regular contact with his parents and his wife by telephone and email. However, since that time, there has been little contact except by way of the occasional telephone call, which he stated was difficult to arrange.

[40] The appellant does not wish to return to Hungary as he predicts he will be arrested and imprisoned immediately upon his arrival and that Mr QQ and Mr UU have such influence that even the location as to where he would be sent could be controlled by them. His treatment within prison, because of their connections, would therefore be unsafe.

Actions of the appellant's parents in Hungary

[41] The appellant's parents reported to him that virtually every week after he left, they received threats on the telephone and, on occasion, men came to their home to threaten them. These men denied any knowledge of a contract signed by Mr UU and the appellant. The appellant's brother moved to CC because of the threats that were being made to him. However, as Mr UU has left the insurance company where his brother also worked, in order to take up a management position with the largest oil company in Hungary, the brother has not reported continuing problems.

[42] The appellant's father made two complaints to the police in their home district, reporting the threats made by the unknown offenders because of "business matters" involving the appellant. The appellant, on several occasions, requested an extension of time, during the processing by the RSB, to obtain documentation relating to his business activities and anything else that could support his claim. Unfortunately, his parents had not been able to obtain such documentation. Indeed, the RSB found this unusual and appear to have counted it against the appellant in the assessment of his credibility.

[43] The appellant's father also made contact with a lawyer to represent them and the appellant in Hungary. However, apart from receiving a copy of a letter from the lawyer confirming a complaint made to the police by his parents, the appellant has been unable to receive any reports from his parents, or the lawyer representing him, as to any steps taken to clarify the position.

The arrest warrant

[44] The Authority took the opportunity to go through in detail a copy of the document that is stated by the RSB to have been taken from an Interpol diffusion notice in respect of this appellant.

[45] The Authority confirmed with the appellant from that document, that the name, date of birth, place of birth and his mother's maiden name were correctly recorded in the summary of the arrest warrant. The "warrant" then goes on, after providing a number and date in December 2006, to state that the "prescription runs to 21 December 2011 and 21 December 2013". It is stated to be issued by the authority of the Metropolitan Court of BB. It relates to 15 counts of fraud with maximum penalties of five years' and eight years' imprisonment. The date of the offences is stated to be in 2005.

[46] The summary states:

"[In] 2005, [the appellant] took over sums of money of several values from several persons referring to the costs of his fictitious enterprise, promising short-term investment at high interest."

[47] Fifteen different offences are then listed. The Authority took the appellant through each one of these. The majority of them set out that the appellant had taken a sum of money on a certain date from a named investor which, in the majority of the cases, was not repaid. The appellant was able to recognise many of the names in the list and several of them were known to him as being people who worked in the same insurance company as his brother and Mr UU. In each case, he denied having any investment association with them or that there was money outstanding or had not been redeemed by them. The full name of Mr QQ appears in many of the 15 transactions. There is also reference to another two persons with the name QQ, one male and one female. In respect of five transactions (numbers 2, 5, 7, 13 and 15 in the list), it is recorded that some of the total investment was redeemed. In one case, the repayment is stated to have

been made by QQ and in another, a partial redemption is stated to have been made by the parents of the appellant.

[48] The document concludes with the wording:

“During the investigation it was established that [the appellant] was neither the member nor the representative of any company/enterprise in Hungary.”

[49] The appellant stated all the information in the Interpol document was false and that even the last statement was not correct as he had been a member of the registered company, B Ltd. He agreed, however, that the computer componentry importation business had not been a registered company or business.

[50] When asked where he thought the details set out in the “warrant” came from, he stated that he guessed they might arise from the papers he signed in blank format in the restaurant. He said he thought the papers he signed were just to frighten him and that they would not be used against him. He thought, however, that he had signed some 20-30 blank pages, in addition to four or five apparent contracts.

[51] When, in re-examination, he was asked to give some more details of the operation of his componentry business, he stated that the work had primarily been carried out by telephone and email and that deliveries were made by way of courier deliveries to him. On occasions, bigger packages were transported to him by a relative of Mr ZZ, who drove to Vienna and met with the appellant.

Submissions on behalf of the appellant

[52] The Authority has noted the 11 pages of submissions presented by Mr Woods, and the post-hearing submissions.

Convention ground

[53] It was submitted that the appellant’s claim was based on his membership of a particular social group. Mr Woods claimed that the appellant fell within a group “whose members voluntarily associate for reasons so fundamental to their human dignity that they should not be forced to forsake the association”. He referred to *Refugee Appeal No 71427/2000* (16 August 2000) at [95]. Within this sub-category, he submitted that the social group consisted of:

“... self-employed individuals who exercise freely the fundamental human right to work as it is defined in Article 6 of the International Covenant on Economic, Social and Cultural Rights, and ratified by Hungary.”

[54] In the post-hearing submissions received from counsel on 28 July 2008, the claimed social group was expanded by the submission:

“The appellant justifies his claim to Convention refugee status on the basis of his well-founded fear of persecution by a money laundry (*sic*) organisation if he were to return to Hungary, by reason of his membership of a particular social group “self-employed individuals” or “independent businessmen”.”

[55] Mr Woods relied on two Canadian cases dating back to the early 1990s *Mayers v Canada (Minister of Employment and Immigration)* [1992], (no citation given) and *Cheung v Minister of Employment and Immigration*, [1993], (no full citation given), and *Canada (Attorney General) v Ward* [1993] 2 SCR 689.

[56] Counsel further claimed that while vulnerability to persecution is not an internal defining characteristic of the particular social group, the individuals concerned, through the nature of their work, are particularly vulnerable to exploitation by criminal elements such as Mafia and money-launderers who, country information suggests, are particularly active in Hungary.

[57] It was further submitted that the persecution arises through the manipulation of state and political structures by criminal agents in order to harass and victimise the members of the social group who, as a consequence, are unable to obtain state protection to which they should be entitled.

[58] He submitted that in this case, the appellant’s life and well-being were threatened by members of such a money-laundering syndicate which had strong connections to members of the government and the police, such that they were able to engage in their criminal activities with impunity.

[59] He accepted, however, that in order for the appeal to succeed, the appellant had to establish that he was a member of a particular social group whose members were being persecuted by state agents or state-connected agents, and as a result, he was unable to obtain state protection.

The Interpol diffusion notice

[60] Mr Woods submitted that the RSB had failed to produce the original arrest warrant allegedly issued by the Metropolitan Court in BB, or the original Interpol

diffusion notice. He therefore claimed that without that Interpol notice, or any affidavit giving evidence of its existence, it was inadmissible, particularly to the extent that the appellant had fled Hungary to avoid prosecution.

Country information

[61] Mr Woods went on to make submissions about corruption in Hungary and referred to country information contained in the United States Department of State *Country Reports on Human Rights Practices 2005 and 2007*. The Authority, at the hearing, passed to Mr Woods an updated bundle of country information relating to Hungary. He was invited to make submissions on that additional material within the three week period. The brief comments on the country information in Mr Woods' post-hearing submissions have been noted by the Authority.

Post-hearing submissions and evidence

[62] In addition to the post-hearing submissions noted above Mr Woods submitted that the appellant had established that he operated a legitimate computer parts business in Hungary, he had been harassed and persecuted by a money-laundering organisation led by Mr UU, which had high-ranking connections and was able to enjoy immunity from prosecution for its criminal activities and also that these activities included an ability to manufacture spurious charges and the alleged issue of an Interpol notice against the appellant. He submitted further that the appellant had established that he feared being killed or persecuted by members of the money-laundering organisation if he returned to Hungary because he had been threatened for refusing to participate in their activities and used his computer business in these money-laundering activities. He submitted that this act constituted a political opinion related to the use of Hungarian government structures (including the police) to commit crimes.

[63] Finally it was submitted that he could not access protection from the Hungarian government and that on the evidence the Authority could "justify finding that on the balance of probability is more likely than not" that his story was true.

[64] The appellant also submitted, post-hearing, a letter, with an English translation, dated 17 July 2008, from the appellant's parents and a short letter from the appellant's brother-in-law who had accompanied him, when he met with Mr UU and gave him money.

THE ISSUES

[65] 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."

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

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

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[67] After hearing the appellant's evidence, and in particular questioning him in relation to areas of credibility concern expressed by the RSB, the Authority is satisfied that the core of the appellant's story is credible.

[68] The Authority also accepts that a genuine Interpol diffusion notice in respect of this appellant has been issued. The Authority finds that whilst an original of that document has not been submitted to the Authority, or the appellant, the email advice given between the RSB officers, on the file, that the information in respect of this "warrant" has been passed to them by the New Zealand Police is credible. There is no reason to conclude that the RSB or Immigration New Zealand officers have not received genuinely sourced material.

[69] Thus, while accepting there is a genuine diffusion notice/warrant, this is not to say that the Authority finds, even if it had the jurisdiction to do so, that the appellant has been implicated in any of the 15 different claimed offences set out in the warrant. This is so even though the appellant is aware of some of the names

and people involved. The Authority does not consider the fact that Mr QQ is referred to many times in the document in any way enhances its credibility.

[70] A careful consideration of the arrest warrant shows there is no implication of criminality or wrongdoing by Mr QQ that can be drawn from this document. Indeed, it merely lists that he was some form of lender or investor to the appellant who, it is alleged in this notice, failed to repay monies lent or invested. The fraud claimed in the warrant is that the appellant ran a fictitious enterprise wherein he borrowed money for short-term investment at high interest rates and simply never repaid it. Mr QQ is therefore, in terms of this warrant, merely one of several people, it would appear, who claimed to have been defrauded and could possibly give evidence in a Hungarian court.

[71] The total amount of money involved in all 15 charges in the “warrant” amounts to approximately €250,000 or NZ\$500,000. The sums of money involved, noting the appellant’s evidence, also do not assist in either direction in the assessment of credibility of the contents.

Well-foundedness

[72] While the Authority accepts the core of the appellant’s story including accepting that he ran a computer componentry importing business, whether that business was lawful or was involved in fraudulent activities are not conclusions the Authority needs to reach. Thus the Authority makes no conclusions as to the validity of the allegations set out in the arrest warrant or whether or not they are of a criminal nature. It is possible, through simple naivety and lack of commercial experience, that the appellant may have committed some fraudulent activities or breaches of contractual arrangements. It is not for the Authority to reach conclusions on such issues. They can only be determined in the Hungarian courts.

[73] In summary, therefore, the Authority accepts that this young man became involved, while attempting to establish an import and distribution business, with a criminal syndicate who were attempting to launder money through outwardly legitimate, or near legitimate, businesses. The Authority finds that the appellant’s failure to go along with the schemes presented to him by Mr UU and others has resulted in a real chance of their seeking violent retribution against him, or at least, strong and persistent threats that that would take place. It is from those accepted

threats that the appellant fled the country. Whether or not he became deeply or even partially implicated in the schemes of this syndicate or otherwise committed fraudulent or other activities within Hungary, is not for this Authority to determine, nor within its capability or jurisdiction.

The requirements of “being persecuted”

[74] Accepting the core of his account therefore, the Authority is satisfied that if the appellant returned and came to the notice of the syndicate members, including those involved who were also apparently rogue members of the Hungarian police, he would be at a real risk of serious maltreatment. Whether he is at risk of “being persecuted”, in terms of Article 1A(2) of the Refugee Convention, however, would depend on whether or not there would be, in addition, a failure of state protection by the Hungarian state. It is settled refugee law, both internationally and in New Zealand that for a claimant to be at risk of “being persecuted” requires the establishment of both a real risk of serious maltreatment *plus* a failure of state protection. See *Refugee Appeal No 71427* (16 August 2000) at [67], *R v Immigration Appeal Tribunal, ex parte Shah* [1999] 2 AC 629, 653F (HL) and *Svazas v Secretary of State for the Home Department* [2002] EWCA Civ 74 at [36].

State protection and prosecution

[75] The Authority also finds, having accepted the Interpol diffusion notice/arrest warrant, that preliminary to any risks the appellant might suffer from the syndicate members, there is a real chance that he would be detained on arrival in Hungary in relation to this warrant. He would then come before the Hungarian courts to be tried on the offences set out in the warrant. Again, the issue of his ability to access meaningful state protection arises. From a full assessment of the country information, the Authority considers the appellant would not face a real chance of a failure of state protection in any prosecution and related detention. Thus, the Authority concludes that his risk on return in relation to his Interpol diffusion notice/arrest warrant is not one of persecution but of prosecution.

[76] The Authority considers that from an analysis of the country information, fundamental civil and political rights are guaranteed by an independent judiciary, the Constitutional Court and the Ombudsman; see page 280 “Nations in transit 2008” – Hungary, Kovacs and Molnar. The same reference goes on to state that

there is no systematic torture or ill-treatment of defendants in Hungary and, whilst the professionalism of the police has come under heavy criticism, this has resulted in a leadership purge of the national and capital police forces. While continuous legislative efforts are being progressed in the field of anti-corruption, the country does continue to struggle with high level corruption. The perception of corruption is also noted in the United States Department of State *Country Reports on Human Rights Practices 2007*. However, that same report, at page 2.17 in respect of prison and detention centre conditions, provides:

“Prison conditions generally meet international standards and the government permitted visits by independent human rights observers.”

[77] The same report provides that judicial independence is generally respected by the government. The totality of the country evidence therefore indicates that in any possible prosecution of this appellant, not only would he have the access, which he has already obtained, to independent legal advice, but there would not be serious or egregious maltreatment whilst in detention or a failure on the part of the judiciary to give him a fair trial. Accordingly, the Authority considers that there would not be a failure of state protection for this appellant on return.

[78] In addition to the above findings this appeal must also fail because the Authority finds that any possible maltreatment the appellant predicts he may suffer on return would not be “for reasons of” one or more of the five Refugee Convention reasons.

Convention reason

[79] Mr Woods, as discussed above, submitted that the appellant should be considered a member of a particular social group. The Authority does not accept that the group submitted, “self-employed individuals who exercise freely the fundamental human right to work”, or other like groups counsel submitted, constitute a particular social group within the provisions of Article 1A(2) of the Refugee Convention. Beyond this, the evidence does not indicate that, even if it were accepted such a group fell within Article 1A(2), any risk of being persecuted is “for reasons of” the appellant’s membership of the particular social group as he claims. The nexus simply does not exist.

[80] The reality of the situation is that even if the appellant is at risk of being maltreated by the money-laundering syndicate, or even rogue police officers within that syndicate, the reasons for that maltreatment are his failure to comply with the

demands for him to join the activities of the syndicate and carry out their money-laundering activities. It is not because he is a self-employed individual, or independent businessman exercising his right to work. Additionally, Mr Woods correctly noted that the potential vulnerability to maltreatment does not establish the nexus required. It is fanciful to suggest that a person in Hungary who exercises their right to work through self-employment is, for that reason, at a real chance of being exploited by criminal elements in Hungary. The country information and the evidence of the appellant simply does not establish that.

[81] Finally on this issue, the Authority does not consider that workers, or even self-employed workers, in Hungary can, based on the New Zealand and internationally accepted jurisprudence on this issue, be classified as a “particular social group”. The Authority’s jurisprudence, and indeed a significant overview of the international jurisprudence, on the issue of particular social group, is set out in *Refugee Appeal No 71427/2000* (16 August 2000) at [90]-[106]. In this decision at [94]-[105], the Authority set out seven areas of consensus from the international jurisprudence on the ambit of “particular social group” and definition set out in Article 1A(2) of the Convention. The second, third and fourth elements identified in *Refugee Appeal No 71427/2000* are of particular relevance in this case. Paragraph [96] of that decision notes that the particular social group category is limited by anti-discrimination notions inherent in civil and political rights:

“In short, the meaning assigned to “particular social group” should take into account the general underlying themes of the defence of human rights and anti-discrimination that form the basis for the international refugee protection initiative.”

[82] A group identified as workers or even self-employed workers in Hungary implies nothing of a discriminatory nature. Workers, or self-employed workers, are not discriminated against in that society on any analysis of the objective country information before the Authority.

[83] The third element, identified at [97] of the decision, refers to the sharing of common immutable characteristics. That characteristic must be either beyond the power of the individual to change, or so fundamental to individual identity or conscience that it ought not to be required to be changed. While the right to work itself may be an important human right contained in the International Covenant on Economic Social and Cultural Rights, 1966, it is obviously within the power of an individual to change their workplace or employment in Hungary, or not to work at all. Whilst the Authority would agree that some jobs may involve matters

fundamental to the identity of an individual or their conscience, in this appellant's case this is not the situation.

[84] Finally, as was noted by Mr Woods, a particular social group must exist independently of, but not be defined by, the persecution. As soon as the element of self-employed persons being targeted by mafia or other criminal groups, who carry out violent retribution, is brought into the definition, clearly that brings with it elements of potential persecution or maltreatment, and circular reasoning.

[85] Accordingly, the Authority does not consider this appellant can be classified as a person falling within a particular social group, pursuant to the Refugee Convention.

[86] Mr Woods also submitted that the appellant's refusal to use his computer business to participate in money-laundering activities constituted a political opinion related to the use of Hungarian government structures, including the police, to commit crimes. The Authority does not accept this submission. The appellant's refusal to become involved in the activities of the money-laundering syndicate, even if it included rogue policemen, is not an expression of a political opinion even in the wider sense. His potential risk of harm relates to his refusal to take part in criminal activities and the fact that he has thwarted attempts by the money-laundering syndicate to achieve their personal gain.

[87] The Authority therefore finds that this appellant is not a refugee because he is unable to establish that any possible harm feared on return is for reasons of any one or more of the Refugee Convention reasons. His appeal, therefore, must fail at this point as well.

CONCLUSION

[88] In conclusion, therefore, the Authority finds that the appellant is not a refugee within Article 1A(2) of the Refugee Convention. He may be at risk of prosecution on return, but not persecution. There will be no failure of state protection and any risk he fears, outside of the judicial process, is not for a Convention reason.

[89] Refugee status is therefore declined. The appeal is dismissed.

"A R Mackey"

A R Mackey
Chairman