

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76380

REFUGEE APPEAL NO 76381

REFUGEE APPEAL NO 76382

REFUGEE APPEAL NO 76383

AT AUCKLAND

<u>Before:</u>	A N Molloy (Member)
<u>Counsel for the Appellants:</u>	S Khan
<u>Appearing for the Department of Labour :</u>	No Appearance
<u>Date of Hearing:</u>	17, 18, 19 & 20 November 2009
<u>Date of Decision:</u>	30 June 2010

DECISION

[1] The appellants, nationals of the Czech Republic, appeal against decisions of a refugee status officer of the Refugee Status Branch (RSB) of the Department of Labour (DOL), declining their applications for refugee status.

[2] They are a family comprising a couple, the husband and the mother, the mother's daughter, BB, and the mother's son, XX. The appellants claim that they would be seriously harmed if they return to the Czech Republic. The mother, daughter and son claim that the harm would be for reason of their Roma ethnicity. The husband is not Roma. His claim is based upon his membership of a particular social group: a mixed-race family.

[3] The appeals turn upon whether their fears are well-founded. This is addressed below, following the outline of the procedural history of the appeals and the summary of the appellants' accounts as presented to the Authority.

Procedural history of the appeals

[4] The mother had four children. The two youngest are appellants. Her eldest, PP, died in circumstances outlined below. Her next, ZZ, travelled to New Zealand in 2004. She was granted refugee status by the RSB in 2005.

[5] At the time that these appeals were originally set down for hearing, the appellants' solicitor had not had the opportunity to brief the evidence of ZZ. She sought additional time to do so. Counsel also wished to obtain an assessment of the mother from a clinical psychologist, Amanda McFadden. For these and various other reasons, the hearings were adjourned from September 2009 until November 2009.

[6] The husband, mother and daughter all gave evidence on their own behalf. Their testimony was supported by ZZ, who also gave evidence in person. The Authority also had the opportunity to consider a comprehensive written report from Ms McFadden dated 10 November 2009, and to question her in person about the content of that report on the third day of the hearing.

[7] XX did not give evidence. He is a minor and his interests were represented by BB as the responsible adult pursuant to s141B Immigration Act 1987 ("the Act").

[8] Publication of this decision was delayed by the provision of a further report by Ms McFadden in connection with XX. The delay was contributed to in part by Ms McFadden's limited availability, and also by some confusion between counsel and the Authority.

THE APPELLANTS' ACCOUNTS

The mother's account

[9] The mother was born during the early 1960s in what is now the Slovak Republic. She attended school for 10 years. At the time all Roma children attended what were euphemistically termed "special schools". The fact that she emerged virtually illiterate after 10 years provides some indication of the emphasis placed on education at such schools. This, together with her ethnicity, has made it difficult for the mother to obtain employment. She has never held a job for more than eight months.

[10] The mother married in her early 20s. She and her first husband moved to A, which is now in the Czech Republic, during the early 1980s. During the mid-1980s they moved to B, where the two oldest children started school. They did not attend segregated schools but, like the mother, encountered bullying and discrimination from teachers and pupils alike.

[11] During the late 1980s, Czechoslovakia made the transition from a single party communist state to a multi-party democracy. While this brought greater freedom, it was accompanied by the emergence of skinhead groups. Skinheads in the vicinity began to make a nuisance of themselves by throwing stones at houses and tipping rubbish bins over. The mother was assaulted by a gang of skinheads during the late 1990s, when XX was only a few months old. He became so distressed during the incident that he was kept in hospital for observation.

[12] Tragedy struck the family later that year when PP drowned in the local lake where he had been swimming. The mother was not present when it happened but was told that his death was the result of an attack by skinheads. When the family attempted to convince the local police to investigate the death, they showed no interest in doing so and closed the file.

[13] PP's death had a profound effect upon the family. The mother became clinically depressed and her first husband began drinking heavily. He began to abuse her verbally and physically until she eventually left him in 2002. She took BB and XX and moved in with ZZ, who had by then had married and had moved to C with her husband, who is not Roma.

[14] The mother, BB and XX remained in C for about a month before finding their own apartment. The mother was not working at the time but received a benefit that enabled her to support the children. Those three appellants remained in C until they left the Czech Republic to come to New Zealand in late 2008 (with the possible exception of a short period when XX lived with his father).

ZZ's predicament

[15] In order to properly understand the context in which the mother's predicament arises, it is necessary to insert here the account given by ZZ.

[16] From the early part of the decade, ZZ and her husband began to be targeted by local police in C, who took a dislike to the fact that they are a mixed-

race couple. Their predicament became so great that they left the Czech Republic in 2004 and travelled to New Zealand.

[17] ZZ received substandard maternity care and recounted perennial difficulties in obtaining employment. She was only able to obtain one job which she held for only a limited period of time.

[18] She also recounted numerous incidents of police harassment; she had fines imposed for minor traffic violations and had her motor vehicle clamped and her tyres slashed. Once she was bitten by a police dog while her husband was beaten by police. They were harassed and targeted by local skinheads and, more than once, had family pets killed in gratuitous acts of violence.

[19] In 2003, ZZ, her husband and her daughter went into hiding to escape the perpetual harassment. They travelled to New Zealand in 2004.

First attack on the mother

[20] ZZ's profile had serious ramifications for the mother even before ZZ left the country. In June 2003, the mother was attacked by police officers who saw her at her local shops. She remembers little about the event other than the fact that she was injured in some way. The husband was passing at the time. When he attempted to intervene to help the mother, the police assaulted him as well.

[21] The husband eventually helped the mother to get home safely. He went back to see her a few days later. They became friends and later that year the mother, BB and XX moved in with the husband in C.

Second attack by the police

[22] The mother recalled another occasion when she and the husband were assaulted by police officers outside their apartment building. She could not recall the details surrounding that incident apart from the fact that they were trying to take their dog for a walk.

Third attack by the police

[23] One evening in September 2008, when the appellants were preparing to go to bed, the husband answered a knock at the door. Several police officers forced their way into the room. They vandalised the apartment and destroyed many of

the appellants' belongings. Throughout the attack the mother covered on the floor of the bedroom with BB and XX.

[24] That incident proved to be the catalyst for the appellants' decision to leave the Czech Republic. The following morning, the appellants left their apartment and moved into an empty apartment owned by a friend of the husband. The mother contacted ZZ and she helped them to pay for their travel to New Zealand.

Verbal abuse and discrimination

[25] In between the specific incidents she was able to recall, the mother was routinely subjected to racist verbal abuse. In addition, her lack of education and her ethnicity combined to prevent her from obtaining meaningful employment for any length of time.

The husband's account

[26] The husband is now in his early 60s. He was born in what is now part of the Republic of Slovakia, but moved to the Czech Republic at the time of partition during the 1990s so that he could retain his employment with the Czech company for which he then worked. He has lived in C since the early 1990s and is now a citizen of the Czech Republic. He is a qualified tradesman and has been able to secure and retain employment throughout his adult life.

[27] In around 1995 or 1996, the husband began a relationship with a Roma woman, TQ. It ended tragically in 1998 when TQ died as a result of complications from injuries she received when assaulted in 1996. The assault occurred when the husband and TQ were walking home from a social event late one evening. They were attacked by three police officers. The husband escaped with comparatively minor injuries but TQ received a serious head injury from which she never fully recovered. She died after spending the last year of her life in hospital.

[28] The husband corroborated the mother's evidence as to how they met. He was on his way home from work one afternoon in mid-2003 when he heard a commotion in the local square. On investigating, he saw police officers beating the mother. When he intervened the police officers turned their attention on him. The police left when a friend of the husband came to his assistance.

[29] The husband said that the mother was dazed, upset and appeared to be hurt. She was helped home by other people but the husband went to see her a

few days later to find out if she had recovered. They became friends and before long the mother and her two younger children moved in with him.

[30] The husband and the mother were subjected to humiliating verbal abuse when in public. However, their real difficulties were with the police in C, who targeted them because of their mixed race relationship. The husband believes the police turned their attention to the mother and him after ZZ left the Czech Republic. He referred to several incidents involving the police over the next four or five years, including those referred to by the mother.

Other attacks

[31] The husband recalled one incident when he was shopping with the mother in about 2004. Police officers yelled obscenities at the mother and the husband and asked where ZZ and her husband were. The police then assaulted the husband and the mother. They both received cuts to their legs. The husband hit his head on the pavement and lost consciousness. By the time he came to, someone had called an ambulance. However the paramedics refused to treat the mother until a friend of the husband paid them to do so.

[32] The husband and the mother were assaulted again by four police officers outside their apartment building as they prepared to take their dog for a walk. Again, the police asked where ZZ and her husband were and shouted insulting remarks. One of the officers kicked the husband in the knee, damaging his ligaments. Again, an ambulance was called and again, the ambulance staff refused to treat the mother. The husband spent about a week in hospital after undergoing surgery on his knee.

[33] The number of incidents seemed to intensify toward the end of 2007 and 2008. In one, the husband was confronted by two police officers as he disembarked from a bus late one evening. They asked whether he was "still living with that black swine". A skinhead who had been talking to the police ignited a piece of fabric which had been doused in petrol. It was then thrown at the husband. His jacket caught alight and he suffered burns to his side and his wrist before he was able to put it out.

[34] Later in 2008, two police officers confronted the husband at his work place. He was hit with a baton in front of the husband's supervisor, and was asked if he was still living with the "black bitch". When the supervisor found out that the

husband lived with a Roma woman, he was fired. He was subsequently reinstated, but not before he had sold his motor vehicle to provide additional funds to support the family.

[35] The cumulative impact of these incidents led the husband and the mother to pursue the possibility of moving from C. In mid-2008, they went to look for new accommodation in D, about 20 kilometres from C.

[36] While driving there, they were stopped by a police patrol vehicle conducting a routine check. The officers, who did not appear to recognise either of the appellants, took the mother's and the husband's identification cards to another police vehicle for verification. Before long the officers returned and tried to pull the mother from the car. She was asked where her "bitch" of a daughter was. When The husband tried to defend her he was hit a baton. He got back in the car and drove off.

[37] This incident frightened the husband and the mother. They returned to C, collected BB and XX and drove back to D where they hid with friends for two months. The husband investigated the possibility of obtaining an apartment in D but said that he could not afford to pay the bribe required by the council. Eventually, the friends with whom they were staying became anxious about having the appellants present in their home. The appellants returned to C, but were afraid to leave their apartment.

[38] The appellants' predicament came to a head one evening in September 2008. When the husband answered a knock at the door, four or five police officers forced their way inside. They went through the entire apartment, breaking anything they could find. The husband was again knocked unconscious during this incident.

[39] The appellants moved into the vacant apartment of a friend for about a month while arrangements were made for them to leave the Czech Republic. The husband applied for a passport in his own name. He was scared that the mother would not be able to obtain a passport because of her ethnicity. He paid 5,000 crowns to a friend of a friend to ensure that passports were made available to the mother, BB and XX. In the meantime, ZZ had agreed to help the family to travel to New Zealand.

Attempts to complain

[40] The husband attempted to complain about the police treatment at police stations in F, C and D. He was prevented from doing so. None of the stations agreed to consider any complaint.

Account of BB

[41] BB is now in her early 20s. She was born in F and spent most of her life in C with the rest of her family. She attended normal schools along with non-Roma children. However, she was subjected to teasing and low level mistreatment by teachers and other students. She recalled being slapped across the face by a teacher when she was around 11 or 12. The mother went to the school to complain and was eventually removed from the school premises by the police. BB enrolled in a different school in G shortly after, where the environment was “a little bit” better.

[42] BB obtained various short term jobs after leaving school. During the year or so prior to coming to New Zealand she had a steady job at a manufacturing plant.

[43] BB confirmed that the death of her older brother PP had a devastating effect upon her parents. Her father began drinking heavily and he and the mother argued regularly. BB believes that her father still drinks heavily. She had little contact with him during the years prior to coming to New Zealand.

[44] BB recalled that her mother had been beaten by the police around the time that she met the husband. She also corroborated the mother’s claim that the family had been attacked in late 2008.

[45] BB was involved in three separate incidents involving the Czech police before she came to New Zealand. The last was when her family home was invaded by police officers late one evening towards the end of 2008. BB heard a commotion as several police officers forced their way into the house. They were shouting and screaming and threatening that BB and her family members would all die. She was terrified throughout the incident and cried. She tried to hide in her bedroom with her mother and her younger brother. The husband was lying injured on the ground. The police damaged a lot of the furniture and a lot of the family’s possessions before finally leaving.

[46] The other two attacks are described below.

First attack on BB

[47] The first attack occurred when BB was about 16 or 17 years old. Three police officers got out of a police car and walked towards her as she was going home from school. Something about their demeanour frightened her. She tried to run away, but the officers caught her. She was kicked and beaten until she lost consciousness. She awoke in hospital, where she remained for two days.

Second attack on BB

[48] BB recalled taking her friend's dog for a walk in the park adjacent to her family apartment one afternoon. While she was waiting for her boyfriend she was accosted by several police officers who pushed her to the ground and sexually assaulted her. The incident was interrupted by the arrival of her boyfriend, on whom the officers then turned their attention. BB and her boyfriend went home after the incident but did not lodge a complaint about it.

Evidence of ZZ

[49] ZZ came to New Zealand in 2004 with her husband. He is not Roma. They were granted refugee status by the RSB in early 2005. They have one daughter, who was born in the Czech Republic. For the purposes of her application for refugee status, ZZ provided a lengthy and detailed statement which was translated into English. The RSB found her to be a credible witness and accepted her account.

[50] ZZ recalled various incidents of discrimination and harassment throughout her childhood. This extended beyond general teasing at school and included incidents when she was deliberately run down by police officers while on a bicycle. She was seriously assaulted and woke in hospital. A few months later she was the victim of an opportunistic sexual assault, again by an officer in uniform, while attending a social event.

[51] More recently ZZ and her husband became the focus of attention of police in C because they are mixed race. She recounted numerous incidents of harassment which have already been outlined. She and her husband were also harassed by local skinheads and, on more than one occasion, had family pets killed in gratuitous acts of violence.

[52] They effectively went into hiding to escape the perpetual harassment and they travelled to New Zealand in 2004. ZZ recalled that the mother was assaulted by the police while she was in hiding.

Account of XX

[53] XX did not give evidence in person. The account relating to him is gleaned from evidence given by the remaining appellants and from the report of Ms McFadden dated 3 June 2010.

[54] XX's parents separated when he was about three or four. XX has significantly impaired hearing, which was discovered at about that time. He now wears bilateral hearing aids.

[55] Before his parents separated, XX's father had abused alcohol and had physically abused the mother. XX spent about a year in the custody of his father.

[56] The hearing loss may have contributed to developmental delays in XX. He is currently attending a primary school in New Zealand which is described as a "very positive place" by family members. However XX began his schooling in the Czech Republic. According to the mother, XX was originally enrolled in a normal school, but was subsequently transferred to a "special" school because of his disability. He found it frustrating to be schooled exclusively with children that had intellectual disabilities that he does not have. The mother had no power to do anything about the transfer.

[57] XX told Ms McFadden that he was a good student in the Czech Republic but that he was poorly treated. He could not play outside because other kids would tease him, steal from him, threaten him and beat him up. BB had said earlier given similar evidence. She said it happened because he is Roma and because he is hearing impaired.

[58] Ms McFadden describes XX as shy, sensitive and reserved. He appears to be at ease with his hearing difficulty and is able to communicate effectively.

Evidence of Ms McFadden about the mother

[59] Ms McFadden is a clinical psychologist with 10 years' post-graduate experience in private practice. She has worked in criminal, civil and family court settings and in connection with immigration and refugee work. She is a member of the College of Clinical Psychologists and the New Zealand Psychologists' Society.

[60] Ms McFadden was asked by counsel to assess the mental state of the mother with a view to placing the mother's testimony before the RSB in context. She had access to a considerable amount of background material and spent several hours with the mother, the husband and BB individually. Ms McFadden provided a comprehensive written report extending to some 19 pages. She spoke to that report before the Authority.

[61] Ms McFadden described the mother as a shy and softly spoken woman and described her thinking style as "concrete and literal". She recorded that the mother's orientation to time and place was poor and observed that she "appeared to lack insight and self awareness to her internal experiences". While finding that the mother did not present with an intellectual disability or cognitive impairment, she observed that in her professional view, the mother's "world view and comprehension were simplistic".

[62] Ms McFadden said that the mother's poor orientation to time and place could certainly contribute to her difficulty in placing events in time, two, three and four years ago. She observed that despite the difficulty with time awareness, there was integrity about the mother's recollection of particular events. In her opinion, the mother did not present as an intellectually sophisticated woman, nor did she give an overt impression of being sophisticated at deception.

[63] In Ms McFadden's stated that in her opinion the mother presents with a range of symptoms consistent with post-traumatic stress and a mood disorder.

Evidence of Ms McFadden about XX

[64] McFadden's brief related to XX's developmental period, disability, behavioural, emotional, social and cognitive functioning and the attachment relationship with his mother. Her assessment took place after a series of interviews with XX, the mother, BB (who was pregnant at the time she was interviewed) and the husband, together with an observation of XX in his classroom in Auckland, and a brief discussion with his current teacher.

[65] This contributed to developmental delays. After administering a series of tests Ms McFadden's view is that XX has experienced learning delays as a result of his significant hearing impairment. Ms McFadden believes that XX's intellectual ability is difficult to gauge.

[66] While his intellectual functioning was assessed as in the low average range, his listening comprehension was within the average range. Ms McFadden's noted that his current school in New Zealand (which is described as a "very positive place" by family members) provides him with a high level of support in respect of his hearing impairment. She states that this is coinciding with a "period of positive growth" in which his language and reading skills are targeted, along with his hearing impairment. In this context Ms McFadden states that;

Given his age and this level of support we would expect his level of ability and achievement to be fluid and to demonstrate an upward trend.

[67] Ms McFadden describes XX as shy, sensitive and reserved. She identified overt symptoms of anxiety and states that it is consistent with a history of exposure to domestic violence and possibly an enforced separation from his mother, with whom XX enjoys an open and close relationship.

[68] Ms McFadden's opinion is that there is no evidence of Michal holding a positive attachment to his father. On the contrary there is "strong evidence" that XX was subjected to harm within his relationship with his father and that the relationship between the parents was marked by domestic violence, possibly exacerbated by the father's alcohol abuse.

[69] She states that there is a possibility that anxiety has been present over an extended period of time. This may have been contributed to by exposure to domestic violence and possibly an enforced separation from the mother. It is also likely that this has been reinforced by stress and trauma reported by other members of the family. Further separation from the mother would be likely to have a number of negative effects including heightened anxiety and emotional distress.

Material Received

[70] Prior to the appeal hearing, counsel for the appellants wrote to the Authority on 11 November 2009, enclosing a Memorandum of Opening Submissions, a

letter from Dr Wansborough, dated 9 January 2009, a statement in the name of ZZ dated 9 November 2009 and the report provided by Amanda McFadden, a consultant clinical psychologist, dated 10 November 2009. During the hearing, counsel provided additional information in the form of a copy of the school report from XX's current school in New Zealand, copies of various photographs of the appellants and their family members, including photographs taken at the funeral of PP in around 1998.

[71] Following the conclusion of the hearing, counsel was provided with further time to consider what additional information, if any, to provide.

[72] On 4 June 2010, counsel forwarded a copy of a further report by Ms McFadden in connection with XX.

THE ISSUES

[73] 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.

[74] 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

General observations about credibility

[75] Before addressing the principal issues identified it is necessary to determine whether the appellants are credible witnesses. The findings in this respect are complicated by several factors.

The mother

[76] The mother's manner was somewhat stunted, to the point of being inarticulate. At times she was able to provide so little detail about substantive events in her life that it is not surprising that the RSB concluded that she was not credible.

[77] The RSB also identified various discrepancies in her account. However it came to light during the RSB interviews with the appellants that the mother, who is illiterate, had not prepared her own statement. It was prepared by the husband and BB on her behalf. Unfortunately they embellished parts of "her" account, which gave rise to apparent discrepancies when the evidence she gave was inconsistent with the statement bearing her name.

[78] However, the Authority is able to consider the mother's evidence in a different light. Having had the advantage of hearing from ZZ, and from Ms McFadden, neither of whom gave evidence to the RSB, the Authority finds that the mother is a credible witness.

[79] Ms McFadden observed that the appellant has a limited and concrete thinking style, poor orientation to time and place and a simplistic world view. Having interviewed the appellant at length the Authority finds that these observations as to the mother's personal characteristics are apt.

[80] It is also apparent that the mother's evidence is affected by personal experience which gives rise to symptoms of post-traumatic stress. Ms McFadden states that the mother's stress disorder may be relevant to the assessment of her credibility in that it impacts upon the extent to which she would have observed peripheral details around traumatic events, and may also affect the way in which she is able to recall such events.

[81] The apparently idiosyncratic delivery of her evidence is therefore explicable in terms of her limited education and the traumatic personal background which she has experienced. Taking Ms McFadden's opinion into account, what were understandably perceived to be credibility issues by the refugee status officer may

simply be manifestations of the mother's limited ability to articulate her account, given her stress disorder.

[82] In addition, when the mother's evidence is considered in light of the evidence of her daughter, ZZ, there is a narrative consistency in her overall account of events.

[83] The Authority is therefore satisfied that the mother was not a disingenuous or evasive witness. On the contrary, her greatest difficulty appeared to be a simple lack of vocabulary. She did not attempt to elaborate or exaggerate aspects of her claim and the Authority finds that her testimony is credible.

ZZ

[84] The Authority also finds no reason to disbelieve the evidence of ZZ. In general her account was consistent with the accounts given by other family members. While there were some discrepancies between the accounts she gave to the Authority and that given in respect of her application for refugee status some years earlier, these were relatively minor and the Authority is satisfied that they are explicable by reference to the effects of the passage of time.

The other appellants

[85] In contrast, the Authority finds that the husband and BB have embellished aspects of their evidence.

[86] The Authority finds that the husband has exaggerated the difficulties he and the mother experienced during the year or so prior to the appellants leaving the Czech Republic. This culminated in his description of the incident when he and the mother were supposedly stopped as part of a routine police check. The husband claimed that the police attacked the mother after checking her identity on a police computer.

[87] He claimed that the subsequent attack by the police supposedly frightened the mother and the husband so much that they collected the two younger children and hid in D for two months.

[88] The mother did not recall any such incident and BB told the Authority that she did not live anywhere other than the family apartment in C during the 12

month period before the family came to New Zealand. When asked specifically if she had ever lived in D, BB said that she had not.

[89] The Authority rejects this aspect of the father's account as attempt to falsely imply that the mother's profile is nation-wide. The suggestion is that their (or at least the mother's) names are flagged on police compute records so that whenever their name is entered into the system the police will be alerted to their significance. The incident did not occur.

BB

[90] The Authority also rejects BB's claim that she was assaulted by the police in a park and that her dog was killed.

[91] In her written statement, BB described the assailants who were responsible for the second attack in the park as police officers. However when questioned by the refugee status officer she said that they were skinheads. She could not explain that inconsistency to the Authority and also gave entirely inconsistent versions about when the incident took place. On one occasion, she said that it might have been three or four years earlier. She then said that the boyfriend involved in that incident had been her boyfriend for about three months, and that she had only known him for about 12 months, prior to her coming to New Zealand. If that is the case, the attack could not possibly have taken place 3 or 4 years earlier.

[92] In addition, according to her written statement BB's dog was killed in front of her. However in response to questions from the Authority the mother and the husband indicated that the family had only ever had one dog and that it had been given to a family friend (alive) when the appellants left the Czech Republic to come to New Zealand.

[93] When BB subsequently gave evidence before the Authority she said that it was not her dog that had been killed, but a dog that belonged to her friend. She explained that she had taken that dog for a walk because she loved it. The Authority rejects that explanation. If the dog had been her neighbour's there is no reason why she would not have recorded this in her statement. However in her statement BB refers to "our dog", and "my dog".

[94] The Authority finds that BB was forewarned about the clear conflict between her statement and the evidence unwittingly given by other witnesses at the appeal

hearing. She then came up with a disingenuous explanation to try to cover up her false claim.

[95] These discrepancies do not arise in connection with unimportant and peripheral details; rather they go to the essence of the attack described. The contradictions are entirely inconsistent with the truthful recollection of an actual event.

Summary of findings

[96] Despite finding that there are parts of the appellants' evidence which cannot be relied upon, the Authority is required to assess their claim on the basis of facts found rather than assertions rejected.

[97] In that regard the Authority finds that the mother, BB and XX are nationals of the Czech Republic. From their appearance it would be apparent to other Czechs that they are of Roma ethnicity. The husband is also a Czech national, but is not Roma and does not appear to be of Roma ethnicity.

[98] The Authority accepts that ZZ experienced difficulties that led to her departure from the Czech Republic in 2004. Her difficulties were predominantly with the police local to C and arose because she was married to a white Czech.

[99] The Authority also makes the following findings with respect to each of the appellants.

The mother

[100] The Authority accepts that ZZ's difficulties had ramifications for the mother. When ZZ and her husband effectively went into hiding from around mid-2003 the police turned their attention to the mother. Ironically in doing so they brought about another mixed-race relationship by bringing the mother together with the husband. The mother then became the focus for the adverse attention previously visited upon ZZ by the police in C.

[101] The Authority finds that the mother experienced a series of traumatic events over the course of a decade, including the apparently non-accidental death of her oldest son; the subsequent implosion of her marriage, attendant upon which were clinical depression, alcohol abuse and domestic violence. This was followed by a

succession of violent assaults on her older daughter, her younger daughter and herself.

[102] She was attacked in a random act of violence in the late 1990s, while holding her infant son. The C police attacked her again in 2003 or 2004. She was attacked on at least one more occasion on a date she could not recall, and was attacked with her family in their home in late 2008. These attacks were interspersed with frequent outbursts of racist invective and abuse.

[103] With the exception of the random assault by skinheads the mother initially had become the focus of such a campaign of violence because of her daughter's relationship with a non-Roma man. The mother subsequently became the focus because of her own relationship with a non-Roma .

[104] The cumulative effect of all of these incidents was to completely undermine any confidence that the police would investigate such crimes or offer protection from them. In most it was the police who were responsible for their conduct.

[105] The mother's experiences have left her insular and fearful. She has little education and little in the way of work experience. She exhibits symptoms of a mood disorder and post-traumatic stress.

The husband

[106] While disbelieving aspects of the account given by the husband, the Authority accepts that he was also the victim of the assaults experienced by the mother, and that he experienced ancillary problems arising out of his relationship with her.

[107] The Authority finds that the husband was also the victim of abuse and assaults from the police and skinheads because of his relationship with the mother. This extended up to the time that the family left the Czech Republic to come to New Zealand.

[108] The husband is not Roma, and did not experience significant difficulties when he was not in a relationship with a Roma woman. He has a trade and has many years of experience which has enabled him to maintain employment throughout most of his adult life.

BB

[109] Likewise, there is no reason to doubt that BB has also experienced harassment and discrimination faced by many Roma throughout the Czech Republic. While her claim to have been sexually assaulted by police or skinheads in 2007 or 2008 was rejected for the reasons outlined, the remainder of her account is accepted. Her account in that regard is accepted. It is plausible and consistent with country information.

XX

[110] XX is a young male of primary school age. He is hearing impaired and was forced to attend a “special” school rather than a mainstream school. His hearing impairment has led to developmental delays. He experiences anxiety as a result of his exposure to domestic violence and as a result of the traumatic events which have affected his close family members.

[111] It is on the basis of these findings that the principal issues identified above will be addressed.

Objectively, on the facts as found, is there a real chance of the appellants being persecuted if returned to the Czech Republic?

[112] For the purposes of refugee determination, “being persecuted” has been described as the sustained or systemic violation of basic or core human rights, such as to be demonstrative of a failure of state protection; see *Refugee Appeal No 2039/93* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60; [2005] INLR 68 at [36] to [125]. Put another way, it has been expressed as comprising serious harm, plus the failure of state protection; *Refugee Appeal No 71427* (16 August 2000).

[113] The threshold is not whether an appellant will be persecuted, but whether there is a real chance of the appellant being persecuted if returned to the Czech Republic. In that context, the Authority has consistently adopted the approach set out in *Chan v Minister for Immigration and Ethnic Affairs* (1989) 169 CLR 379 (HCA), in which it was held that a well-founded fear of being persecuted is established when there is a real, as opposed to a remote or speculative, chance of such persecution occurring. The standard is entirely objective.

[114] For reasons set out below the Authority finds that the answer is different for each of the appellants.

Discrimination experienced by Roma in the Czech Republic

[115] Counsel provided the Authority with a bundle of materials relating to the situation for Roma in the Czech Republic. However the approach she has taken to dealing with these materials in her supporting submissions is entirely broad-brush. She has not made specific submissions about how any of these particular documents apply to any of these appellants.

[116] For the most part, the Authority will also refer to country information in broad terms. One reason for this is that in a previous decision relied upon by counsel the Authority conducted a thorough and detailed analysis of conditions for Roma in the Czech Republic; see *Refugee Appeal Nos 76257 and 76258* (31 March 2009) [paras 53-66].

[117] The Authority will not traverse all of that information again. However, in summary, the Authority found that Roma in the Czech Republic have endured a long history of discrimination in the areas of housing, education, health care and employment.

[118] Added to this is a history of racially-motivated violence against Roma by skinhead gangs. While, the police actively provide protection to Roma in many cases, and while those responsible for such acts are prosecuted, there are also instances where the police response is entirely unsympathetic and unhelpful. There is also country information consistent with the experience of the appellants, namely that in some areas the police themselves are responsible for committing acts of violence against Roma.

[119] The Authority outlined how successive annual reports by Amnesty International from 2006-2008 have documented the persistent nature of these problems. While the Czech government has taken steps to improve conditions for Roma since the mid-1990s, discrimination and violence against Roma persist amidst an environment in which high levels of anti-Roma sentiment continue to exist among the majority of Czech citizens.

[120] Against this country information, the Authority now turns to the particular circumstances of the appellants.

[121] If the appellants were to return to C there is a real chance that they would face a continuation of the same treatment they experienced collectively as a family before their departure from the Czech Republic.

[122] The mother and the husband have been targeted by some members of the local police force over a period of some years. The serious assaults they have experienced in the past would amount to serious harm in the future. Their aggravating characteristic appears to be that they are a mixed-race couple. Their profile augments the profile of ZZ before them.

[123] While the attacks have not previously focussed upon BB or XX, it is possible that the attack in October 2008 marked a change in approach. Given the prolonged history of assaults and abuse focussed upon this family the Authority cannot state that the chance of either BB or XX being seriously harmed is speculative to the point of being remote.

Can the appellants access meaningful state protection elsewhere in the Czech Republic?

[124] Having found that the appellants have a well-founded fear of being persecuted for a Convention reason in the Czech Republic, it is necessary to determine whether they have what is called an “internal protection alternative”.

[125] For the reasons more fully explained in *Refugee Appeal No 76044* [2008] NZAR 719 (NZRSAA) and *Refugee Appeal No 71684/99* [2000] INLR 165 (NZRSAA), once a refugee claimant has established a well-founded fear of being persecuted for a Convention reason, recognition of that person as a Convention refugee can only be withheld if that person can genuinely access in his or her home country domestic protection which is meaningful. This requires:

1. That the proposed internal protection alternative is accessible to the individual; the access must be practical, safe and legal;
2. That in the proposed site of internal protection there is no well-founded risk of being persecuted for a Convention reason;
3. That in the proposed site of internal protection there are no new risks of being persecuted or of being exposed to other forms of serious harm or of *refoulement*; and
4. That in the proposed site of internal protection basic norms of civil, political and socio-economic rights will be provided by the State. In this inquiry reference is to be made to the human rights standards suggested by the Refugee Convention itself.

[126] Recognition of refugee status can only be withheld if each of these four elements is satisfied.

[127] In *Refugee Appeal Nos 76257 and 76258* (31 March 2009), the Authority found that country information does not establish that Roma generally have a well-founded fear of being persecuted throughout the Czech Republic. It found that violent incidents occur at random throughout the country, but “their frequency is not such that individual Roma face a real chance of being the victim of such violence” (para [66]). It found likewise that the levels of discrimination and harassment do not per se reach the level of serious harm. The Authority is not aware of any country information which would presently support a finding to the contrary.

[128] However, every appeal turns upon its own facts, and the Authority therefore turns its attention to whether the four elements identified are present in respect of each of the appellants.

[129] Before doing so, the Authority reminds itself that the appellants were targeted by police in C. However it finds that there is no credible evidence to suggest that the police in C would take steps to locate them elsewhere in the Czech Republic. Further, there is no more than a remote chance that the police in C would somehow learn of the appellants’ whereabouts if they were to relocate.

The mother

[130] The mother is a Czech citizen. As such there is no restriction on her entry to or movement around the country. There are undoubtedly a number of areas where she could settle, to which the access would be practical, safe and legal. Likewise there is no reason why she would not be able to access the basic norms of socio-economic rights in the Czech Republic. While she may have little prospect of obtaining or retaining meaningful employment, she has in the past been able to access state welfare benefits that have enabled her to accommodate and support her family. Accordingly, the first and fourth elements referred to at para [125] above are satisfied in respect of the mother.

[131] However the Authority is not satisfied that the mother can avoid exposure to other forms of serious harm.

[132] Ms McFadden's stated that in her opinion the mother presents with a range of symptoms consistent with post-traumatic stress and a mood disorder. Ms McFadden stated that at times of increased stress and anxiety the mother would probably meet criteria for a major depressive episode, which Ms McFadden infers is likely to be recurrent rather than a single episode. In addition her stress disorder causes her "high levels of distress".

[133] There is widespread discrimination across most aspects of life in the Czech Republic. The Authority has already found that country information does not establish that this gives rise to a well-founded fear of being persecuted for all Roma. However the discrimination is so pervasive that the Authority is satisfied the mother will inevitably be subjected to discrimination in various aspects of life. These include employment and vulnerability to random acts of racially motivated violence. She will also be subjected to verbal abuse in her day to day life.

[134] In the mother's case the Authority is satisfied that the effect of harassment and discrimination may affect her fragile psychological state to such an extent that it will, for her, reach the level of serious harm. The Authority finds that there is no alternative location in the Czech Republic where the risk of exposure to such forms of serious harm is eliminated for the mother.

[135] Accordingly, the Authority finds that the mother has a well-founded fear of being persecuted in the Czech Republic. No internal protection alternative exists for her.

[136] The Authority finds that the mother has a well-founded fear of being persecuted in C for the convention reason of race.

The husband

[137] The husband is in a different situation to the mother. Like the mother, his problem in C arose out of his mixed-race relationship. However there is not a real chance that the police in C would attempt to or by coincidence locate him if he were to settle elsewhere in the Czech Republic.

[138] It is possible that the husband might again attract a level of discrimination elsewhere as a result of his relationship with the mother. However the husband is not Roma and he would not be perceived to be Roma. If he were to return to the Czech Republic he would not face the discrimination that Roma face from the

populace as a whole by virtue of their ethnicity.

[139] The husband has a long history of employment and has a trade upon which he can rely for work. He stated that in the past he has lost three different jobs when his employers discovered he was married to or living with a Roma woman. However he also stated that it was not uncommon for employers to lay off staff and then to re-employ them, and he confirmed that this had happened to him. The husband stated that he had not faced problems on his own account when he was not living with a Roma woman.

[140] The Authority is satisfied that any discrimination he faces would not rise to the level of serious harm equated with being persecuted.

[141] In short, the Authority finds that each of the four elements identified at para [125] are present in respect of the husband.

BB

[142] BB may experience discrimination in obtaining housing, employment and in respect of everyday encounters with other non-Roma citizens. However the Authority is not satisfied that she would not be provided with the basic norms of socio-economic rights in the Czech Republic. She was able to obtain and retain employment before her departure in 2008. If she were to need state assistance there is no reason why she would not receive it, as her mother has in the past.

[143] The Authority accepts that there is a real chance that BB will be subjected to harassment and racial abuse. However, such treatment does not rise to the level of persecution or serious harm. Taking into account the available country information and all of BB's personal characteristics, the Authority finds that there is an internal protection alternative for her in the Czech Republic.

XX

[144] Before coming to New Zealand in 2008 XX was placed in a special or "practical" school in which he was educated alongside children with mild intellectual disabilities.

[145] A recent report provides some insight into the nature of such schools and their impact upon the education of Roma; *Amnesty International* "Injustice renamed" (2010) (the AI report). The report indicates that such schools are

ostensibly set up to deal with pupils that have “mild mental disabilities” (the AI report p4). It also asserts that criteria for the placement of children in these schools are “opaque” and that assessment processes are inaccurate and inadequate (the AI report p4).

[146] The AI report cites research published by two non-governmental organizations in 2008. It refers to the examples of three areas of the Czech Republic with significant Roma populations where Roma children account for more than 80 per cent of the pupils in such schools. The report also quotes an extract from a letter from the Minister of Education to Amnesty International in August 2009 in which the Minister concedes that the numbers of Roma children educated in such environments “continues to be higher than what corresponds to a possible number of children with mental disabilities in any population”; *Amnesty International* “Injustice renamed” (2010) (p16).

[147] The report makes various other points. It states that Roma, with perhaps three percent of the population, make up approximately 90 percent of the population of such schools. (AI pp 7 and 6 respectively).

[148] It asserts that such schools offer a “reduced curriculum” (the AI report, p16), and, often, an inferior education (p4).

[149] While it is theoretically permissible for students from the practical school background to be integrated into the mainstream elementary schools:

Due to the gap between the curriculum taught in practical elementary schools, reintegration of pupils into a mainstream elementary school is almost impossible in practice. (European Roma Rights Centre and Roma Education Fund -ERRC and REF- Persistent Segregation of Roma in the Czech Education System, 2008; p 20 as cited in the AI report, section 3.3, p 27).

[150] If he were to return to the Czech Republic, there is a real chance that XX, who is now 12, would again be placed in a “practical’ school, irrespective of his or his mother’s wishes. He does not have an intellectual disability but would be placed in the school because he has a physical disability and because he is Roma.

[151] This is clearly discriminatory. The issue is whether it is of such a nature that it constitutes serious harm. The Authority finds that in respect of this particular child appellant it does.

[152] XX is at a significant learning disadvantage not just because of his ethnicity but because of his hearing impairment. This places him at an even greater

disadvantage than other children who may also be disadvantaged by receiving such an education.

[153] Ms McFadden referred to the positive impact for XX of a supportive and proactive school environment in New Zealand. This was redressing in part the developmental disadvantage the appellant had experienced because of his disability. Further, she expected this to have a cumulative benefit in respect of his intellectual development.

[154] In the circumstances there is a real chance that returning to the “inferior” education offered by the practical schools in the Czech Republic will affect not just XX’s education but his development as a person.

[155] It is arguable that the education XX is likely to receive in the Czech Republic will be such that his rights under the Convention on the Rights of the Child will be breached; in particular Article 28, which provides that primary education should be available to all on the basis of equal opportunity and, read together with Article 2, without discrimination based on race, ethnic or social origin.

[156] There is also evidence that XX’s level of anxiety will also be seriously increased if he were to return to the Czech Republic without the mother, to whom he has a close attachment (and who is found to be a refugee).

[157] Taking these factors into account, and also taking into account the level of harassment and discrimination that he will face as a Roma, the Authority is satisfied that the risk of serious harm is not eliminated for XX.

Conclusion on internal protection alternative

[158] The Authority is satisfied that neither the mother nor XX can access meaningful protection elsewhere in the Czech Republic.

[159] The Authority finds that the husband and BB have an internal protection alternative.

CONCLUSION

[160] With respect to the mother and XX the first principal issue identified for determination is answered in the affirmative. The Convention reason is race.

Neither the mother nor XX would be able to access meaningful state protection elsewhere in the Czech Republic.

[161] The Authority finds that the mother is a refugee within the meaning of Article 1A(2) of the Refugee Convention. She is recognised as a refugee. Her appeal is allowed.

[162] The Authority finds that XX is a refugee within the meaning of Article 1A(2) of the Refugee Convention. He is recognised as a refugee. His appeal is allowed.

[163] With respect to the husband and BB, the principal issue identified for determination is answered in the negative. That being the case, the second principal issue does not fall for consideration in respect of those appellants.

[164] The Authority finds that the husband and BB are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined to each of them. Their appeals are dismissed.

"A N Molloy"
A N Molloy
Member