

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

**REFUGEE APPEAL NO 76111**

**REFUGEE APPEAL NO 76112**

**AT AUCKLAND**

**Before:**

S L Murphy (Member)

**Counsel for the Appellants:**

R Smail

**Appearing for the Department of Labour:**

No Appearance

**Dates of Hearing:**

6, 7 and 8 November 2007

**Date of Decision:**

26 February 2008

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**DECISION**

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

**INTRODUCTION**

[2] The appellants are husband and wife. They arrived in New Zealand on 25 January 2007 and applied for refugee status on 2 February 2007. They were each interviewed by the RSB on 27 and 28 March 2007, and decisions declining their claims were delivered on 27 June 2007. It is from those decisions that they have each appealed to this Authority.

**THE APPELLANTS' ACCOUNT**

[3] The following is a summary of the appellants' evidence. They are referred to as "the husband" and "the wife" respectively and as "the appellants" jointly. Their evidence is assessed later.

### **THE HUSBAND'S EVIDENCE**

[4] The husband was born in Eastern Poland. His father, who operated a utensil-painting business, had been imprisoned in a concentration camp during World War II and died in the mid-1990s of cancer resulting from tests performed on him during his incarceration.

[5] The husband spent three years at a regular primary school where he was harassed on account of his Roma ethnicity. A decision was subsequently made by the school to transfer him to a special school for intellectually and physically handicapped students. His father was not particularly happy about the transfer but powerless to stop it.

[6] The husband found little difference between the two schools on a day-to-day basis. As he became older, he became the object of near-daily attacks from other students, on account of his Roma origin. He received bruises on his face and back on occasion. The school staff did little to assist him.

[7] In 1981 or 1982, the husband attempted to join a soccer club. However the coach levelled racist comments at him and would not allow him to join.

### **Employment**

[8] The husband graduated from school when he was 15 or 16 years of age, and undertook a house-painting course. He then alternated between house-painting and painting utensils in the family business until his departure from Poland. He had difficulties finding work as a house painter on account of his ethnic origin; for example, he would be advised by telephone that work was available, but when the caller met him and realised he was Roma they would claim that the position had been filled. On occasion, his clients would refuse to pay for work done, and instead chase him away, telling him that Roma should "work for a piece of bread just like the negro". After a period, he signed contracts with all employers in advance and his difficulties decreased, although sometimes the quality of his work would be disputed and he would be paid less than he was entitled by the client as a result.

[9] On occasion, he would attempt to obtain house-painting work through an agency. He would sometimes be told that Roma people could not get jobs through that agency, although some agencies gave him short term jobs. He had two lengthy periods of unemployment in the 1990s. From 2004 he could not obtain employment painting houses so worked instead painting utensils with his brother, who had taken over his father's business after his death.

### Housing

[10] The husband married his first wife in 1985 and they moved in with her parents.

[11] In 1987, he applied through a government agency to rent an apartment. He received an answer two years later that, because he lived with his parents-in-law, he did not need an apartment. Comments by the officials that Roma "like living on top of one another" led the husband to believe that his race had played a part in their decision not to give him an apartment.

[12] In 2004, the husband left his first marriage and married the wife (the second appellant) in the Roma tradition. They then went to live with the husband's brother in a different town. The husband tried on two to four occasions to rent an apartment through private real estate agencies. He was rejected on each occasion and was either told that the flat was unavailable or that he could not rent it because he was Roma.

### Attacks

[13] In 1997, the husband was attacked on the street by a group of skinheads. He was beaten severely on his face and cut on his chest and side with a broken bottle, subsequently losing consciousness. He was taken to a medical clinic by an ambulance, where he was given first aid. While he was at the clinic, the police questioned him about the attack. The husband was unable to give the police information about the attackers beyond the fact that they were skinheads. The police advised that they would try to find the attackers but, to the best of the husband's knowledge, they have not been found.

[14] In 1999, the husband was attacked at a disco after accidentally knocking over a man's drink. The man, an ethnic Pole, and his friends attacked the husband for several minutes before a security guard intervened. The guard, who

knew the husband's brother, drove the husband to his brother's house. The brother reported the incident to the police, and they came to the house. The husband was too ill to speak to them. He was then taken to hospital where he was treated for a broken jaw, broken nose and concussion.

[15] The city guards came to the hospital and advised the husband that they would endeavour to investigate the attack. The husband is unaware whether anyone was ever arrested.

[16] On one occasion, the husband and wife were at a bus station during a shopping expedition when a group of skinheads approached them, held the husband and took the shopping from the wife. They dispersed after they saw the city guards approaching. The city guards followed the men but they managed to escape. The city guards reported the robbery on their mobile telephones and told the appellants that they would return their shopping to them if they located it.

[17] On another occasion, the husband was waiting for the wife in a park when he was approached by four or five boys who began to verbally abuse him. They subsequently started attacking him while the wife called for help. The attackers then left, after racially insulting them and warning them that they would be "finished" if they called the police.

[18] The latter attack was typical of racial violence experienced by the husband from members of the public two to three times per week. Other typical incidents would be racial abuse resulting in a fight between the husband and the abuser, on occasion resulting in injuries such a black eye or a cut lip. He was also subjected to regular verbal racial abuse on the street and was, on occasion, spat at.

[19] In 2002, the house the husband was living in with his wife and her family was attacked while they were all out. They returned home to find the door broken down, the rooms ransacked and fascist slogans on the wall. The police attended the scene. They took fingerprints in different parts of the house, took photographs of the scene of the crime, ascertained whether any property was missing, itemised the property that had been destroyed and wrote a report about the incident. The police told the family that they would inform them if they found the offenders. One or two months after the incident, the police sent the family a letter advising that the case was closed due to a lack of evidence.

[20] In 2004, the husband's brother's house was attacked while the husband and wife were living there. Only the wife was at home; the appellant and his brother were out of town. A group of boys started throwing stones at the window. Some of them then entered the apartment building and threw a burning bottle at the door of the appellants' apartment. The door was burnt as a result.

[21] After the incident, the husband contacted two Roma organisations and was advised that he should seek redress through the courts.

#### Social welfare

[22] The husband and his wife would sometimes try to get welfare payments during periods of unemployment. Unemployed persons were entitled to only six months of unemployment benefit at a stretch, after which time they would have to apply for work through an agency. At such times, someone from the department of employment would come and check the house, and ask questions about whether they were in fact working. Sometimes they would be given payments and, other times, they would be told that they should sell particular possessions for money.

#### Brother's problems with police

[23] In 1995, the husband's brother and nephew set up an association of Roma in GH town to teach Roma children to read and write. The husband's brother taught one group of children and the nephew taught another group. In 2001 or 2002, they were forced to shut down the association by the police as it was considered to be illegal. At the time, the police arrested the nephew. They beat him badly and told him that if he did not desist from teaching underground, he might lose his life. The police subsequently released the nephew. Shortly afterwards, however, he was arrested again and beaten before being released.

[24] The brother was also taken to the police station at the time but the appellant does not know for how long.

[25] After this incident, the brother and nephew continued running the association secretly from the brother's home. The husband and wife would visit them on occasion, during which they occasionally sat in on the school.

[26] Some time after the school was shut down, the nephew was again arrested. This time, he was picked up whilst driving and accused of driving while intoxicated. He was taken to a clinic to give blood and his car was subsequently confiscated and licence taken away. He then went to hospital and had his blood alcohol retested and the results were negative. The following day he went to a lawyer who set in train a process for return of his licence.

[27] The nephew was again arrested in 2004 whilst driving. He was held for 48 hours at the police station, interrogated and told that if he did not stop teaching children in an illegal school he would "leave the world". The husband does not know why the brother was not arrested at the time, but believes it was because the nephew "taught more vigorously at that school".

[28] The husband's brother engaged a lawyer. The lawyer was then attacked and beaten and subsequently refused to provide services to the brother or nephew.

[29] In 2004, shortly after the appellants moved to GH town to live with the husband's brother, they were both called into the police station. They were asked questions about the Roma association and about the profit the brother received. The police seemed to be wanting to confirm the brother was still running the school. The husband was adamant that his brother had closed down the school. The police maintained that it was being run secretly, and that the nephew was creating difficulties by attending "different offices" and complaining that he was not allowed to continue with his educational work. They also asked the husband if he was planning to take part in the school, to which he replied that he was barely literate so would not. After five to six hours they were allowed to go home.

[30] On 17 October 2005, the nephew was killed in his car. The police claimed it was a simple car accident but the family believe it was the actions of the police. The husband was not in town at the time, but returned for the funeral. A week after his return, he went to the site of the accident. An elderly woman approached them and said that the police were present at the time of the accident and had told the locals not to discuss the accident with anyone. She told the husband that it was implausible that an accident could have occurred on the stretch of road where the car was found, as there were judder bars and potholes which precluded fast driving.

[31] The husband was subsequently shown a medical certificate which said that the nephew had severe internal injuries. The husband and brother attended the police station to find out what investigations had been undertaken with respect to the accident. The police said that they did not know anything more about it. The husband's brother told the police that it was their fault, but they responded by laughing and saying that the brother would be charged for making accusations against them.

[32] After the death of the nephew, the brother stopped operating the underground school. However, he helped other people organise Roma associations, because he was familiar with the paperwork involved. Roma children also continued to come to his house with their parents, but he had "conversations" with the children rather than educating them.

[33] In February 2004, a man attempted to rape the wife (see wife's evidence below). As a result, the appellants travelled to Ireland to seek asylum. They were advised that because Poland was poised to join the EU they could not apply for asylum, so they returned to Poland after about a week and continued living in GH town.

[34] After their return, the husband was periodically stopped and asked by the police for identification, particularly when he was with groups of Roma youths.

[35] The appellants departed for New Zealand, via London, in December 2006, after selling all their household possessions to fund the tickets.

### Post-flight events

[36] Approximately a month after the appellants arrived in New Zealand, the police started to come to the husband's brother's home, wanting to know why the appellants had gone overseas. They asked whether it was because the husband was unhappy in Poland, or whether he had left to work abroad. The brother asked why the police were looking for them, to which the police did not reply. The police visited again four or five times, asking the brother questions such as whether he has any contact with the husband. The brother, although in telephone contact with the husband two or three times per week, did not mention any contact. He did not tell the husband about the police visits in the telephone calls, even though he was aware that the appellants had sought refugee status, as he did not want to worry the appellant. He was also afraid that if he told the husband about the visits, the police might find out that the appellants were in New Zealand

[37] The appellant's brother arrived in New Zealand in September 2007 and has also applied for refugee status. His application has not yet been determined by the RSB.

### **THE WIFE'S EVIDENCE**

[38] The wife was brought up by her grandmother. Her father is Roma and her mother, whom she has never known, is Polish.

[39] The wife was beaten and taunted by the other pupils at primary school because she was Roma. The teachers were also unkind and would hit her on the fingers with a ruler. She stopped attending school when she was nine or 10 because of the racial harassment.

[40] On one occasion when she was a child, she was attacked by a group of girls near her home and hospitalised briefly.

[41] She and her grandmother suffered discrimination from neighbours who would, for example, smear paint on the apartment door.

[42] After finishing at school, she stayed at home with her grandmother. She married when she was 15, after which time she started trading at the market.

[43] Whilst working at the market, her goods would be taken by the city guards every time she set up her stall. The wife believes this was because she was



Roma. At times, they would throw her out of the market. Goods were also taken from her stall by other persons at the market.

[44] One time, she went to the police in light of the harassment but the officer said "As a police force we cannot help you. You will have to manage on your own in such situations."

[45] The wife attempted to obtain other employment during the time she worked at the market but was unsuccessful on account of her race.

[46] In 1997 or 1998, the wife was subjected to racial taunts in a grocery shop, her hair was pulled and she was knocked to the ground and kicked. She reported the assault to the police, without result.

[47] In about 2000, some people on the street started throwing stones at the wife. She believes it was because she was Roma.

[48] The wife stopped working in the market in 2001. After this time, she lived off the income of her first husband. She registered with the social welfare office but was not eligible for an unemployment benefit because she had never had full-time employment. She applied approximately once a month to get a one-off payment from the social welfare agency. At times, a person from the social welfare agency would come, check the home and say that they could not get a payment unless they sold some of their possessions. The assessors would make racist comments on every occasion, for example that she should find work such as telling fortunes on the street because she was Roma. Once every six to 12 months, she would secure a payment. She also received money from her grandmother and from her father once or twice per month.

[49] The wife registered with an employment agency. She attempted to get cleaning jobs through the agency on four or five occasions, but the employers did not want to employ her because she was Roma.

[50] The wife left her first husband in 2004 for the husband, with whom she had a traditional Roma marriage.

[51] The wife was alone in the house when it was attacked in 2004. The husband and his brother were in Warsaw. She was doing housework when she heard people shouting racist slogans outside the window. Stones were then

thrown at the window causing it to break. She looked out the window and saw that the attackers had shaved heads.

[52] One attacker, who had a mask on his face, subsequently came into the building and threw a burning bottle at the door.

[53] After the skinheads had left, the wife tidied up the house so that when the husband and his brother returned two days later they did not see what had happened. The wife waited until the next day to tell her husband about the attack as she was frightened about his reaction because he has a nervous temperament. The appellants did not call the police because they had never previously helped with anything.

#### Attack on wife in 2004

[54] In February 2004, the wife was returning home from the husband's family in the evening when she was sexually attacked by a Polish man in the stairwell of the apartment, who started racially insulting her and taking off her clothes. When she shouted for help, her husband and cousin came downstairs and the man let her go. The husband and cousin then had a "small fight" with the man. She did not call the police.

[55] After the incident, they left for Ireland where they unsuccessfully claimed refugee status. They returned to the same apartment in GH town in Poland but never saw or heard of the man who had attacked the wife again.

[56] The wife found out about the nephew's death before the husband did, from one of the nephew's daughters. They were out of GH town at the time. The daughter begged her not to tell the husband until after the funeral, which occurred before they returned.

[57] On one occasion, the wife went to a medical clinic and was told to come back the next day as it was closing in a few weeks. She believes she was denied treatment because she was Roma.

[58] The wife had problems at every step of her life because she was Roma, for example, racism from officials and racial abuse on the streets.

[59] On 20 December 2007, the appellants' counsel submitted a summons in the name of each appellant dated 12 October 2007. The covering letter advised that

the summonses had arrived the previous week, and the appellants had only been advised of their existence in recent weeks when telephoning relatives in Poland, who subsequently sent them to New Zealand. The summonses required each appellant to report to the police station on 4 November 2007 as a "suspect".

## **DOCUMENTS**

[60] The documents submitted by the appellants include the following.

- a. a written statement dated 18 October 2007 of appellants;
- b. a summons dated 12 October 2007 in respect of the husband; and
- c. a summons dated 12 October 2007 in respect of the wife.

[61] Counsel tendered written opening submissions and country material on 31 October 2007 and made further submissions by way of letter on 20 December 2007.

## **THE ISSUES**

[62] 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."

[63] 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**

[64] The first task of the Authority is to assess the credibility of the evidence. The Authority found the evidence of both witnesses to be mobile, exaggerated, and in key aspects fabricated.

#### Existence of the Roma association and death of the nephew

[65] The Authority rejects the appellants' evidence regarding the past and present police interest in them resulting from the activities of the husband's brother and his nephew. The evidence was flawed in the following respects.

[66] Notwithstanding the centrality and significance of this evidence, the appellants made no mention of any difficulties faced by the brother and nephew on account of their involvement in a Roma association in their applications forms, or in any of their evidence to the RSB including in the interview and in their written response to the interview report. Nor did they make any reference to having been questioned themselves by the police on account of their connection with the brother and nephew.

[67] Their explanation for their failure to mention their own and their family's problems with the police to the RSB was that they were afraid that they would be sent back to Poland if they revealed that they had difficulties with the police; thus, the husband had resolved not to talk about it and had also forbidden the wife to talk about it. They also, contradictorily, stated that they had in fact attempted to tell their lawyer, through an interpreter, about the death of the nephew, but the interpreter told them that the lawyer had said that it would not be relevant, and that they subsequently found out that the interpreter had not in fact translated the information about the death of the nephew to the lawyer. The wife's evidence on the latter matter was however mobile. When the Authority asked the wife why they had raised the police matter with the lawyer when her husband had forbidden her to talk about the matter for fear of deportation, she said "we didn't speak with our lawyer about the police". However, this contradicts both her earlier evidence and the written statement submitted to the Authority in respect of the matter. We reject their explanations for their failure to mention these crucial matters to the RSB.

[68] There were also discrepancies between the evidence of the husband and the written statement that the husband's brother had submitted to the RSB prior to the hearing. The husband claimed that the front of the nephew's car was slightly dented in the accident as if it had hit the post of a gate. In contrast, the brother said in his statement that the car was in "perfect condition" and there was "not one

mark on the car". The husband's response to this discrepancy was that the car was "technically perfect". We reject this explanation. The two descriptions of the car's exterior are irreconcilable.

[69] The husband's brother also said in his statement that he had engaged a lawyer after the nephew's accident. However, the husband told the Authority that he persuaded his brother not to carry on with further investigations and that a lawyer was accordingly not engaged. He even commented that they would have had "even bigger problems" if they had engaged a lawyer, and that the lawyer would also have faced problems. When the Authority advised the husband of his brother's evidence that he had in fact engaged a lawyer after the accident, the husband said that it is possible that his brother did engage a lawyer even though he had advised him not to. However, the husband's evidence was that he was living with his brother at the time of the nephew's death and took an active involvement in events subsequent to the death. It is implausible that he would not have been aware that his brother had engaged a lawyer.

[70] Similarly, the husband said that he had gone to visit the police with his brother after the accident, during which time his brother was threatened with arrest. However, his wife was unaware as to whether he had attended the police station. It is implausible that the wife would be so ignorant, given that she was living with the husband and the brother-in-law at the time, and given the significant event that occurred at the police station (that is, the threat to arrest the brother-in-law).

[71] In addition to the appellants' failure to make prior mention of the police having questioned them in 2004, the wife's evidence on this matter was unsatisfactory. The wife initially said that when they were questioned by the police they had not been questioned about the husband's nephew but only his brother as the nephew had already died. However, after giving that evidence, the wife started counting years on her fingers, and then changed her evidence to say that the nephew was indeed still alive and that the police had in fact asked about him. The Authority finds it surprising that she would have difficulties in recalling whether she was questioned by the police before or after the death of the nephew, and found her evidence on this point mobile and lacking in spontaneity.

Post-departure interest by the police

[72] It is surprising that the appellant's brother did not make any reference to the police having visited and questioned him about the appellants after their departure in his frequent telephone calls to the husband. The husband endeavoured to explain this by saying that his brother did not want to worry him, and that he was afraid that the police might find out he was in New Zealand if his brother told him about the visits. The latter reason is illogical and the explanations generally unconvincing. The brother was aware of the appellants' refugee claims and the importance of ongoing interest in the appellants by the police would be unlikely to escape him.

[73] The evidence about the number of police visits was also inconsistent. The husband told the Authority that the police had visited his brother asking questions about him every month since he departed from Poland, that is, approximately nine times. However, in his written statement made just before the appeal hearing he said that the police had visited his brother "about four times". When the Authority asked him why he had said in his statement the police had visited about four times his response was "I don't know."

[74] For the above reasons, we reject the appellant's evidence of police interest in them resulting from the husband's brother's involvement in a Roma association, and we therefore place no weight on the summonses presented to the Authority after the hearing. Their lack of authenticity is underscored by their late appearance and the implausibility of police summonses being issued against the appellants in Poland when the police were aware that they were out of the country and had been so for a long time.

#### Evidence about attacks

[75] The Authority disbelieves that the appellants were attacked in 2004 in light of discrepancies in the evidence.

[76] The wife told the RSB that four or five men attacked her, and that they were wearing masks. However, she made no mention of them wearing masks when describing their appearance to the Authority. When the Authority advised her that she had told the RSB that the attackers were wearing masks, she said that one attacker had a mask on, being the one who came into the house. This does not resolve the discrepancy, given that in her previous evidence she had said all the attackers wore masks.

[77] The wife told the Authority that the husband saw the singed door on the night he returned from Warsaw but that she told him it was nothing serious. However the husband told the Authority that he did not notice the singed door upon his return from Warsaw. When the Authority advised the wife of this discrepancy, her response was that there were still burn marks on the door after she had cleaned it. Again, this does not resolve the discrepancy.

[78] The wife's evidence about whether or not they called the police after the incident was also flawed. She said that they did not call the police because the police never helped them with anything. However, she gave a very different reason to the RSB, namely that the skinheads had threatened her with death if she called the police. When the Authority alerted her to this difference, she changed her evidence to say she had indeed not called the police because the skinheads had threatened her. Her initial failure to recall a reason as traumatic as a death threat by skinheads undermines the credibility of this evidence.

[79] The husband exaggerated significantly when he said that he was subjected to racist violence two to three times a week. There are two reasons for this finding. Firstly, the husband did not tell the RSB about suffering such sustained and ongoing violence, instead indicating that the racial violence against him was occasional only. Secondly, the husband's evidence of this was also at odds with the evidence of the wife. The wife said that she was only aware of two incidents of violence against the husband. When the Authority alerted her to the husband's evidence that he was subjected to violence two to three times a week, she changed her evidence to say that at times he came home with bruises or scratches but that he would say it was not important when she asked him what had happened. We do not accept the explanation and find it implausible that the wife would have no knowledge of the ongoing racial violence that the husband claims to have been subjected to, particularly given that they have left the country to jointly claim refugee status on the basis of their race.

#### Evidence about discrimination

[80] The wife's evidence about difficulties she faced during her employment was grossly embellished. She initially claimed that she started working in the market when she was 15 but had to stop working in the market permanently after a few months because all her produce would be taken and she would be chased out of

the area. This is at odds with her evidence before the RSB, which was that she worked in the markets from 1992 to 2003 or 2004, that is, for about 12 years.

[81] Seemingly forgetting her earlier evidence, the wife subsequently changed her account to say that she stopped working at the market in 2000 or 2001. However, she indicated that she experienced extreme harassment while at the market; that the city police would raid her stall every time she set it up; that other market-goers would steal her goods; that she would be spat at; and that this collectively had caused her to stop working at the market. However, this was at odds with her evidence to the RSB where she made no reference to being harassed by the city guards at the market place, and said that she had stopped working at the market because the lease was too expensive.

[82] Her explanation for her failure to mention harassment by the city guards in the market was that her husband had forbidden her to speak about the city guards and the police. Her explanation for the discrepancy between her evidence to the RSB that she had stopped working at the market because of the high cost of the lease and to the Authority that she was harassed out of the market, was that the “the lady who was an interpreter then she did not understand me”. We reject that explanation. There was ample opportunity for the wife to have expressed concern about the interpreting and to have corrected her evidence at the time she received the RSB’s interview report to review. She did not. Her evidence as to serious harassment in her employment at the market is disbelieved.

[83] We also find that the wife exaggerated the extent of difficulties experienced with the welfare agency in her evidence before the Authority. She claimed to the Authority that, during her period of unemployment, she applied every month for social welfare payments, and every month the relevant official would make racist comments. However, in her evidence to the RSB, she referred to racist comments by social welfare officials as happening on only one occasion.

[84] Similarly, the husband exaggerated difficulties faced in his employment. He told the Authority that, on occasion, he would not get paid for a painting job by people who would make racist comments and chase him away from the house. However, this contrasted sharply with his evidence before the RSB which was that, on two occasions, he was not paid after completing the job, but it was unconnected with his race and was because he had neglected to sign a contract. In his explanation for this discrepancy he reiterated the evidence that people refused to pay him on racist grounds, further highlighting the discrepancy.



[85] We also note that the husband initially claimed to have been unemployed from 2004 until his departure from Poland, saying that he did “no work whatsoever”, but later said that he worked with his brother in the family business from 2004.

[86] The husband also exaggerated difficulties he had in securing accommodation. He told the Authority that he tried on several occasions after 2004 to rent accommodation through a private agency but was rejected on account of his race. However, his evidence to the RSB was that the only housing difficulties he had were his attempts to obtain government accommodation in the 1980s, and that he could, at that stage, have rented a flat through a private agency.

### **CONCLUSION ON CREDIBILITY**

[87] In sum, the appellants have significantly exaggerated and in several respects invented the difficulties faced by them in Poland. In light of the extent of their lies and embellishments, the Authority is unable to rely on any of their evidence as to their difficulties in Poland. What the Authority can accept is that they are Polish, of Roma ethnicity, and, like other Polish Roma, have faced some discrimination in the past including, potentially, the occasional attack.

### **COUNTRY INFORMATION**

[88] The Authority has considered the position of Roma in Poland in one previous decision; *Refugee Appeal Nos 72672, 72673 & 72674* (28 March 2002). In that case, the Authority concluded that Polish Roma are subjected to widespread discrimination and occasional serious incidents of violence.

[89] In spite of Poland joining the European Union in 2004, the situation appears to have changed little. The most recent United States Department of State *Country Reports on Human Rights Practices for 2006: Poland* (6 March 2007) summarises the situation for Roma in Poland as follows:

“There were incidents of racially motivated violence and verbal and physical abuse directed at Roma and persons of African, Asian or Arab descent...

Societal discrimination against Roma continued. In some cases local officials discriminated against Roma by not providing adequate social services. Romani leaders complained of widespread discrimination in employment, housing, banking, the justice system, the media, and education. During the year the IOM began a project as part of an EU-wide undertaking called EQUAL to combat unemployment and improve the situation of “disfavoured” groups on the labor market. Under the

program the IOM established four small Roma-run enterprises which have special legal status and tax privileges.

The Roma Association claimed that more than 50% of Romani children did not attend public school out of fear that teachers would try to assimilate them and uproot them from their Roma traditions. The association also noted that the gaps in education made it impossible for Roma to end their poverty; approximately 90% of Roma were unemployed.”

## **IS THERE A REAL CHANCE OF THE APPELLANTS BEING PERSECUTED?**

[90] The task of the Authority is to assess whether there is a real chance of the appellants being persecuted, in the context of the country information and their personal situation. The Authority has defined persecution as “the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection”; see Hathaway, *The Law of Refugee Status* (1991) 104-108, as adopted in *Refugee Appeal No 2039/93* (12 February 1996).

[91] It is accepted that upon their return to Poland, the appellants may continue to face some societal discrimination like other Polish Roma, including potentially, the occasional attack. However, the discrimination they would face upon their return is of insufficient seriousness to amount to persecution. While the Authority recognises that serious acts of discrimination may cumulatively amount to persecution, the discrimination the appellants risk facing in this case, even considered collectively, falls well short of that threshold.

[92] It is accepted, as submitted by counsel, that some discrimination the appellants may face upon their return may interfere with their ability to exercise certain rights under the International Covenant on Economic, Social and Cultural Rights. However, the Refugee Convention is not designed to guarantee persons each of the array of rights set out in the various international human rights conventions. Such an approach would extend the protections available under the Refugee Convention vastly beyond its purpose. Its purpose is to provide international protection only for persons at risk of serious harm. There is nothing on the evidence to suggest the appellants, upon return to Poland, would face circumstances which individually or collectively would amount to serious harm in the nature of “the sustained or systemic denial of basic or core human rights such as to be demonstrative of a failure of state protection”

## **CONCLUSION ON WELL-FOUNDEDNESS**

[93] The issue is whether persons having all of the characteristics of each of the appellants, in their respective circumstances, face a real chance of being persecuted. We have taken regard of the fact that both appellants are married Polish Roma who have suffered instances of discrimination and will likely do so again. Although both appellants risk further discrimination, nothing in the evidence demonstrates that there is a real chance of either of them being persecuted if he or she returns to Poland.

[94] Accordingly, the first framed issue is answered in the negative and the second framed issue does not arise.

**CONCLUSION**

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

"S L Murphy"

S L Murphy  
Member