

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 76497

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AT AUCKLAND

Before: M A Roche (Member)

Counsel for the Appellants: The appellants represented themselves

Appearing for the Department of Labour : No Appearance

Date of Hearing: 29 April 2010

Date of Decision: 18 May 2010

DECISION

[1] This is an appeal against a decision of a refugee status officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellants, Slovakian nationals of Hungarian ethnicity.

INTRODUCTION

[2] The appellants are a husband (the husband), a wife (the wife) and their two children, a six year-old son and a three year-old daughter. The appeals were heard together as they are based on substantially the same set of facts. Each adult appellant gave evidence in support of all four appeals. The husband and

wife represented their children as responsible adults pursuant to s141B of the Immigration Act 1987.

[3] Both adult appellants have been subjected to violent attacks in Slovakia because of their Hungarian ethnicity. Both have been left traumatised by these attacks and are fearful that if they return to Slovakia, they will suffer further attacks in the future. They fear that their children will similarly be subjected to discrimination, harassment and violent attacks on account of their Hungarian ethnicity. The essential issues before the Authority are whether the appellants' genuinely held fears are objectively well-founded.

THE APPELLANTS' CASE

[4] The Authority heard evidence from the appellant and his wife and also considered items of documentary evidence detailed later in this decision.

The wife's evidence

[5] The wife is aged in her mid-20s. She was raised in a town that was predominantly populated by Hungarians although there was also a significant population of Slovaks who had moved to the town to work in various industries that had been established there. The wife attended a Hungarian school and was educated in Hungarian. Slovakian was a compulsory subject at her school. The appellant had great difficulty learning Slovakian and although she understands most of it she is limited in her speech and writing. The deficiencies in her Slovakian caused her difficulty in day-to-day life in Slovakia where Slovakian is the official language. For example, she struggled to fill out forms.

[6] Although the wife attended a Hungarian primary school, she lived in a neighbourhood where there were mostly Slovakian families. Slovakian children would frequently throw stones at her while she was walking to and from school.

[7] In 1999, when the wife was 14, she was attacked and raped by a Slovakian man who called her a "Hungarian whore". The wife's parents had a family friend who was a Slovakian policeman. They talked to this policeman about the attack and he advised them not to make a formal complaint to the police because it was unlikely that the wife would be believed. Accordingly, no complaint was made.

[8] Between 2000 and 2003, the wife attended a hairdressing college in a town 30 kilometres away. She had some difficulty at the college because she did not speak Slovakian well. A school friend who assisted her was assaulted by other pupils for helping a Hungarian. This school friend stopped assisting her after this.

[9] While at the college the wife would attend school for one week and then do work experience in a hairdressing salon on alternate weeks. On one occasion in 2002, the wife became aware that a group of Slovakian "bullies" from the college were waiting for her to leave the hairdressing salon when she finished her session there. She was afraid that they would physically attack her so remained inside until the car they were in left. The wife suffered psychological problems after this incident and stopped attending college for approximately three months. She returned, however, because she wished to complete her qualification.

[10] After the wife graduated from the hairdressing college she sought work in the hairdressing salons in her town. She was told, however, that because she needed to be able to converse fluently with Slovakian clientele she would not be employed. The wife made no further attempt to seek work as a hairdresser after this and stayed at home with her mother until she met and moved in with her husband.

[11] After meeting her husband the wife travelled with him to Spain on two occasions and to France for work. Her first child was born in Slovakia in December 2004 and her second child, a daughter, was born in France in March 2007. The daughter is not entitled to French citizenship and is a Slovakian national like the rest of the family.

[12] During their marriage, the wife assisted her husband with newspapers stands which he owned and operated and with a nightclub. The husband had difficulties with these businesses because he was harassed by the mafia. Eventually, the husband closed down or sold all of his businesses and supported the family by working as a pipe cutter. In or around August 2008, this work ceased. The husband was unable to find further work and the family supported themselves with their savings and the assistance of relatives.

[13] The wife has had various difficulties with medical specialists in Slovakia. In 2005, she took her baby son to an eye specialist. He pierced the son in the eye with a needle leaving him with a wound that took a year to heal. The wife

suspects that the specialist deliberately inflicted this injury on her son because of his Hungarian ethnicity.

[14] In or around May 2005, the wife experienced abdominal pain and was taken to a hospital. Although she was in severe pain, the only treatment she was given was being placed on a drip and having a bag of ice placed on her abdomen. She stayed in hospital overnight. The following day she was given abdominal surgery and believes that her appendix was removed. The abdominal pain she experienced has recurred in New Zealand and has been diagnosed as being caused by the presence of kidney stones. The wife believes she received inadequate medical treatment because she was Hungarian.

[15] The wife's experiences in Slovakia have left her fearful of living there. There is hostility towards Hungarians that is increasing. Her rape and the bullying she received at the hairdressing college has left her fearful of what Slovakian people will do to her. She fears that if her children grow up in Slovakia they will be mistreated. She fears that they will be subjected to violence and will have stones thrown at them in the way she experienced as a child. She is also fearful of the medical system there and how it treats Hungarians.

The husband's evidence

[16] The husband is aged in his mid-30s. Unlike his wife, he speaks fluent Slovakian. He is from the same town in Slovakia as the wife. He attended a Hungarian primary school and, like his wife, had stones thrown at him by Slovakian children while going to and from school. The appellant next attended a technical school where he was a weekly boarder. He and the other Hungarian pupils were discriminated against at that school where they were vastly outnumbered by Slovaks. They were given the worst uniforms and the worst rooms to stay in. When travelling by train from his hometown to the technical college the husband would take an indirect route to avoid the Slovakian students because they would beat him up on the train if they came across him. The police on the train would encourage this and the husband estimated that he was badly beaten more than 10 times during the three years that he attended technical college.

[17] In 1989, during a work assignment at his final year in technical college, the husband worked at a local brewery. He and the other Hungarians were given the worst jobs and unlike the Slovaks were not given eye and ear protection. After

graduating from technical college the husband worked as an apprentice until the company employing him went out of business. He then became self-employed producing ceramic figurines and pictures and working cutting and bending gas and water pipes.

[18] In late 1992, the husband began military service. He was subjected to discrimination because of his Hungarian ethnicity. He was beaten regularly by Slovak members of his unit and given an ill-fitting uniform and boots. He and other Hungarians were also allocated the worst jobs such as cleaning the toilets.

[19] On several occasions the appellant and two other Hungarian conscripts were subjected to sexual abuse. They were blindfolded and had their hands tied behind their backs and were made to lick the penises of Slovakian soldiers.

[20] In November 1992, the husband and two other Hungarian conscripts deserted from the Czechoslovakian military while on leave because they could no longer withstand the mistreatment they were experiencing in the military. They initially went to Spain seeking work. The husband also went to Hungary and France but returned to Slovakia in February 1993 and turned himself in at the military camp he had deserted from. After his return he was made to stand in front of all the soldiers and was called a deserter. He was then beaten and taken to a civil prison. He was beaten while in prison and sentenced to a period of nine months' imprisonment for breaking his oath of military service.

[21] In September 1993, he was released early from prison for good behaviour and was subsequently given a document certifying that he was psychologically unfit for military service. After leaving prison he lived with his parents and resumed his work producing ceramics and performing pipe cutting contracts. He had no particular difficulties around this time but encountered discrimination and hostility in a neighbouring town (where he went to socialise) if he spoke Hungarian there. He also avoided speaking Hungarian on trains and buses. He did not experience these problems in his own town which had a Hungarian majority.

[22] In 2003, the husband purchased three news stands which he operated. The same year he met his wife who assisted him with the news stands. Also during this year he was stopped while driving by a Slovak policeman who asked him to produce his identity card. When he produced a card bearing a Hungarian name the policemen assaulted him by punching him and kicking him and told him

“go back behind the Danube”. This incident left the husband with a distrust of the police and their treatment of Hungarians.

[23] In early 2004, the husband started a nightclub. It was successful until members of the local mafia began to frequent it and demand free drinks and also to help themselves to the door takings. There was nothing the husband could do about the mafia at his club because the police were also involved with them. The husband closed the club because of the financial difficulties the mafia's presence were causing him. His news agencies were also attacked and burgled by the mafia and as a result he either sold or closed them. The husband travelled with his wife to Spain and France for work during 2006 and 2007. Where ever they went, members of the Slovakian mafia were present as they operate all over Europe trafficking women from Slovakia to other countries and also extorting money from Slovakian nationals working abroad.

[24] In or around April 2007, the husband was having a conversation in Hungarian on his cell phone in the street. He had difficulty hearing the friend he was talking to and started to use the speaker phone of his telephone. A man attacked him by punching him in the mouth breaking some of his teeth and knocking many of them loose. The husband believes that the reason for the attack was the fact that he was speaking Hungarian. As a result of the attack all of his teeth were removed by a dentist. The husband then lived with no teeth for about four months before being supplied with dentures. The attack and the loss of his teeth left him feeling traumatised and humiliated. He did not complain to the police about it because he did not expect them to protect him as a Hungarian and because he thought that they would be unable to help him in any case, because he could not identify his attacker.

[25] After closing his club and selling his news stands the husband worked as an independent contractor cutting pipes. In late 2008, his contract finished and he was unable to obtain any other work. He had no income between then and his family's departure for New Zealand in July 2009.

[26] The husband does not wish to return to Slovakia. He feels unsafe there. Although there were no serious incidents of violence against him between July 2007 and July 2009 when he came to New Zealand, he believes this was because he did not go anywhere except between work and home during that time. He was fearful of being attacked again and fearful of the mafia who focus on Hungarians

because they believe them to be wealthy. He wishes to remain in New Zealand where he feels safe and where he believes that his family is safe.

DOCUMENTS RECEIVED

[27] The appellants filed a number of supporting documents. These were:

- (a) an email dated 22 April 2010 from the wife's mother. This email is written in Slovakian. An interpretation of its contents was given at the hearing. It provides information about the wife's abdominal surgery in May 2005 and the assault on the husband in 2007 that resulted in the loss of his teeth;
- (b) a letter dated 14 April 2010 from a dentist confirming that the husband attended his surgery on 17 July 2007 with "loose teeth with third degree damage" and that "the patient indicates accident: attack by unknown person". The letter records that following dental surgery and denture treatment, "on 14 November 2007 the patient received upper and lower dentures";
- (c) a copy of a psychological report (in Slovakian together with an English translation) dated 7 January 2002 concerning the wife. This report noted that the wife had been brought in for examination by her mother, that she was stressed and nervous and had problems at school with being bullied. It was recorded that she was fearful and closed and that she had lost tufts of hair. The conclusion was that she has "depressive neuropsychic, fragile survival features, with reduced tolerance to stress/reactive background."
- (d) a Spanish hospital record dated 5 June 2001 concerning the treatment of the husband. No translation was provided of this document which is largely illegible. The husband gave evidence that it concerned treatment he received after being attacked by members of the Slovakian mafia in Spain;
- (e) a number of supporting letters (from an English language tutoring organisation, a community resource centre, and the son's school).
- (f) A letter dated 28 April 2010 from an ophthalmologist in Tauranga concerning the son. The letter recorded that as a child he had "what sounds like probing and syringing for congenital nasolacrimal duct obstruction. The left lower punctum has been enlarged surgically". The report concluded that the examination was normal.

THE ISSUES

[28] 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."

[29] 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

[30] Prior to determining the framed issues it is necessary to make an assessment of the credibility of the appellants.

[31] The Authority found both the husband and the wife to be credible witnesses. Neither of them appeared to embellish their evidence in any way. Both appeared to be significantly traumatised by their experiences in Slovakia. The husband was frequently tearful while giving his evidence and at one point required a break to collect himself after becoming upset while recalling the incident when his teeth were knocked out. The wife similarly was tearful and upset when giving evidence about her experiences and the fears she holds for the safety of her children in Slovakia.

[32] Their evidence was corroborated by some of the documents filed. The letter from the dentist and from the wife's mother corroborated the claim that the husband had lost his teeth following an attack by an unknown assailant. The psychological report corroborated the wife's evidence that she suffered from psychological problems as a result of her treatment while at hairdressing college.

The ophthalmologist's letter confirms that a surgical procedure was carried out on the son's eye during his infancy.

[33] The evidence of the appellants is accepted in its entirety.

COUNTRY INFORMATION

[34] There is a large amount of country information on the file consisting of reports and other material sourced from the internet about the treatment of the Hungarian minority in Slovakia, corruption in Slovakia, and the mafia.

[35] The Hungarian minority comprises approximately 10 percent of the Slovakian population and is located mainly in the south of the republic along the Danube river: Council of Europe *Third report submitted by the Slovak Republic* (May 2009) at [11]. Hungarians are the largest ethnic minority in Slovakia and exceed 50% of the population in 432 townships: Minorities at Risk Project *Assessment for Hungarians in Slovakia* (31 December 2006) (the MAR assessment).

[36] Historically there have been tensions between Hungary and the Slovak Republic and also between Slovaks and ethnic Hungarians (also known as Magyars) within Slovakia: Jan Cienski "Slovakia and Hungary just won't get along: Historic and modern grievances keep relations between the two nations frosty" *Global Post*, 16 August 2009. Hungarians were traditionally dominant in the area (most recently in the form of the Austro-Hungarian Empire) until 1918 when Czechoslovakia was created. Many Slovak nationalists resent the long history of political subordination to Hungary and view the remaining Hungarian minority not merely as a minority but as "dispossessed former masters". Discrimination against Hungarians is based on entrenched anti-Hungarian sentiment and fears of the 'magyarisation' of the southern region. Hungarians have a higher unemployment rate and live in a greater degree of poverty than the majority Slovaks in other parts of the country: MAR assessment.

[37] During the communist era, ethnic Hungarians in Czechoslovakia had enjoyed minority rights, particularly in field of education where a system of Hungarian-language schools was maintained. Relations deteriorated in the post communist era due to the rise of Slovak nationalism and the fact that the division of Czechoslovakia left the Hungarian minority as a larger and more visible group: WRITENET *Ethnic Hungarian Minorities in Central and Eastern Europe* (1 June

1996). An increase in intolerance and hostility towards ethnic Hungarians has been documented recently in the report of the European Commission against Racism and Intolerance (ECIR) which noted:

“As indicated in other parts of the report, the rise in anti-Hungarian discourse by some political figures has created a negative public climate which has led to an increase in intolerance against the Hungarian minority in Slovakia as well as acts of racially-motivated crimes against members of this group. For example, in August 2006 an ethnic Hungarian university student Hedviga Malinova in Nitra was allegedly physically assaulted by two young men after they heard her speaking Hungarian: it appears that the case is still on-going. ECRI considers that this case illustrates the intolerance against members of the Hungarian minority created by political figures’ negative discourse, who, as indicated above, have not been subjected to the legal or political consequences this type of discourse warrants.”
ECRI 2009 *Report on Slovakia*, 26 May 2009 at [115].

[38] Language has long been a source of tension between Slovaks and the Hungarian minority. Following the 1968 shift to federalism in Czechoslovakia policies of assimilation were implemented including the progressive Slovakisation of education, elimination of Hungarian place-names from signs, bans on using Hungarian in administrative dealings and in institutions and workplaces and pressure to Slovakise Hungarian names. In addition, the political and economic opportunities of Hungarians were limited by their refusal to integrate and learn Slovakian: MAR assessment.

[39] Following the 1989 Velvet Revolution, Slovak national sentiment led to a series of laws restricting the use of the Hungarian language. These laws were strengthened recently by the June 2009 amendment to the State Language Act. This amendment requires the use of the Slovak language in the public sphere and restricts the uses of minority languages. It has been criticised by representatives of the Hungarian minority as discriminatory and a restriction on their right to free speech and defended by Slovakian politicians as an effort to promote the use of the Slovak language. The law has fuelled ethnic tensions and has been the subject of large scale protests and demonstrations: Daniel McLaughlin “Ethnic Hungarians in Slovakia march against new law” *The Irish Times* (3 September 2009); Gyorgy Schopflin “The Slovak language law is discriminatory and restrictive” *www.euobserver.com* (10 July 2009); United States Bureau of Democracy, Human Rights and Labor *2009 Human Rights Report: Slovakia* (11 March 2010) (DOS report).

[40] Hungarians are represented in Government. The Hungarian Coalition Party (SMK) which was established in 1998 and joined together the Hungarian Christian

Democratic Movement, Coexistence Party and the Hungarian Civic Party currently holds 20 of the 150 seats in the National Council; DOS report.

IS THERE A REAL CHANCE OF THE APPELLANTS BEING PERSECUTED IN SLOVAKIA?

[41] Persecution has been defined in refugee law as the sustained or systemic violation of basic or core human rights such as to be demonstrative of a failure of state protection (see Hathaway, *The Law of Refugee Status* (1991, Toronto) 104 to 108, as adopted in *Refugee Appeal No. 2039/93* (12 February 1996) at 15).

[42] The threshold is not whether an appellant will be persecuted, but whether there is a “real chance” of them being persecuted if returned to their country of nationality. 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.

[43] The country information reviewed above establishes that there are long standing tensions between Slovaks and ethnic Hungarians. Hostility and intolerance towards ethnic Hungarians has increased since the 1993 establishment of Slovak Republic.

[44] Despite the tensions and discrimination against ethnic Hungarians that do exist, there are few reports of ethnically motivated violent attacks against them. The alleged 2006 attack on Hedviga Malinova and ongoing litigation concerning this event is widely reported but appears to have been an isolated incident as there are no similar reports concerning ethnically motivated attacks on other ethnic Hungarians. The situation can be contrasted with the widespread and pervasive discrimination and violence against ethnic Roma which is widely reported, see for example Amnesty International *Slovak Republic 2009*.

[45] Both adult appellants have been subjected to serious incidents of violence and abuse against them on account of or related to their Hungarian ethnicity. The experiences of each (the rape of the wife, the sexual abuse and violence against the husband during his military service and the assault which resulted in the loss of his teeth) can properly be described as grave violations of their human rights. However, the Authority’s assessment is forward looking. The question is not

whether the appellants have been persecuted in the past but whether there is a real chance that they will be persecuted in Slovakia in the future: *Refugee Appeal No 70366* (22 September 1997) at pp17-32.

[46] The evidence does not establish that any of the appellants face a real chance of being persecuted if returned to Slovakia. The wife suffered a single serious assault when she was a teenager. She does not claim to have been subjected to violence on account of her ethnicity at any time afterwards. She endured ethnic harassment as a student and then difficulty obtaining employment because of her lack of fluency in Slovakian. It is notable that she applied for only two jobs in her local town and thereafter appears to have stayed at home, first with her mother and then with her husband as a matter of choice. The evidence does not establish that she would be prevented from obtaining employment on account of her ethnicity should she return to Slovakia. She suspects that she and her son both received deliberately negligent medical treatment in Slovakia. However, despite her strongly held suspicions there is no evidence that this was the case. There is an absence of country information establishing that Hungarians receive inferior medical care in Slovakia. The likelihood that any of the appellants would be discriminated against in such a manner in the future is slight.

[47] The husband was in employment and self-employment throughout his adult life until being laid off from his pipe cutting contract in late 2008. His failure to obtain work between then and his departure for New Zealand is attributable to the downturn in the economy rather than discrimination on the basis of his ethnicity. He has not claimed otherwise. Although the attack he suffered in April 2007, which resulted in the loss of his teeth, was serious, he experienced no other ethnically motivated violence for a period of approximately two years before his departure. The likelihood of being subjected to further such attacks in the future is speculative and is not at the level of a real chance.

[48] The husband was a victim of extortion by the Slovakian mafia when he operated businesses (a night club and newspaper stands) in Slovakia. He does not claim that he continued to be of interest to them after he ceased operating the businesses.

[49] The husband and wife fear that the child appellants will experience stone throwing and other forms of ethnically based discrimination and harassment should they return to Slovakia. While this may be the case, it is not established that the treatment that the children can be expected to face amounts to a

sustained or systemic violation of their basic or core human rights. While their expectations of some discrimination (particularly language based) are realistic, their fears that the children will be persecuted is not objectively well-founded. The appellants are from, and are likely to return to, an area where Hungarians, if not the majority, are a sizable proportion of the population. There is nothing to suggest that the social services available to them in Slovakia, including their education and healthcare, would be inadequate.

[50] Country information shows that there are ethnic tensions in Slovakia and discrimination against ethnic Hungarians. There is no evidence, however, that the incidents of serious violence that the adult appellants have experienced in the past are widespread or typical. Their fears that they or their children will be subjected to similar attacks in the future, although genuinely held, are speculative. Although Hungarians experience higher levels of poverty and unemployment than other Slovak nationals, it is not established that their conditions are marginalised to a level that engages the Refugee Convention. The adult appellants both received primary education, post primary training and, until the husband's job loss in late 2008, an adequate income. Neither reported any difficulty obtaining an adequate standard of housing. The ethnically based discrimination that they and the children can expect to face in Slovakia does not rise to the level of a sustained and systemic denial of their human rights and therefore does not amount to being persecuted.

[51] For completeness it is noted that in a statement on her file, the wife expressed a fear that the Slovakian government will come to know that the appellants have claimed refugee status in New Zealand and that they will be mistreated as a result. There is no country information indicating that failed asylum seekers are mistreated on return to Slovakia. Nor is it likely that the fact that the appellants have claimed refugee status will come to the attention of the Slovakian authorities. They entered and departed Slovakia legally on legitimate passports and presumably will return in the same manner.

[52] The appellants have not established that they have a well-founded fear of being persecuted in Slovakia. The question of Convention ground does not therefore arise.

CONCLUSION

[53] For the reasons given, the Authority finds that the appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is declined in respect of each appellant. The appeals are dismissed.

"M A Roche"

M A Roche

Member