

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 74028

REFUGEE APPEAL NO 74029

REFUGEE APPEAL NO 74030

AT AUCKLAND

<u>Before:</u>	M A Roche (Member)
<u>Counsel for the Appellants:</u>	V Naidu
<u>Appearing for the NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	4 & 5 April 2005
<u>Date of Decision:</u>	28 June 2005

DECISION

[1] These are appeals against the decisions 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, nationals of the Czech Republic.

INTRODUCTION

[2] The appellants comprise a *de facto* couple and the *de facto* husband's adult son. For ease of reference, appellant number 74028 (the husband) will be referred to as "the appellant", appellant number 74029 (the wife) will be referred to as "the appellant's partner" and appellant number 74030 (the son) will be referred to as "the appellant's son".

[3] The appellants arrived in New Zealand in October 2000 and claimed

refugee status a few days later, on 26 October 2000. They were interviewed by a refugee status officer on 1 March 2001. In decisions dated 7 September 2001, their applications were declined, leading to their appeals to this Authority. The appeals were originally scheduled to be heard on 9 May 2002. The appellants did not attend this hearing and their appeals were dismissed in a decision dated 16 May 2002.

[4] On 24 June 2002, an application to grant a re-hearing of the appellants' appeals was received by the Authority. This application was accompanied by an affidavit made by the appellant in which he provided an explanation for the appellants' failure to attend the hearing on 9 May 2002. The appellant explained that he had relied on an English-speaking friend to advise his then representative of his change of address. The friend failed to do this, despite assuring the appellant that he would, as a result of which the appellants' representative was unable to contact them and advise them of the hearing date.

[5] The formal requirements for a re-hearing are set out in *Refugee Appeal No 680* (27 February 1995). The Authority is satisfied as to the explanation for the appellants' non-appearance at the scheduled hearing and *prima facie* that there is some merit to their claims. Accordingly, the Authority grants leave to re-hear the appeals on their merits. The decision of 16 May 2002 is set aside.

THE APPELLANT'S CASE

[6] What follows is a summary of the evidence the appellant gave at the hearing. It is assessed later.

[7] The appellant is aged in his early 40s. He comes from town, AA, in the Czech Republic. For his first five years, he attended a special school like many other Roma children. After this, he was transferred to a "normal" school where he stayed until he was 15. While at this school, he suffered racial taunts from the other children who called him a "gypsy".

[8] After leaving school, the appellant completed a trade apprenticeship. Following the completion of his training, he worked for 10 years for X company which had sponsored his training. However, although he had completed an apprenticeship, he was relegated to cleaning duties while employed by this

company. He attributes this to his Roma ethnicity. He also received less pay than non-Roma workers.

[9] In the early 1980s, the appellant married a Roma woman. He and his wife went on to have three children, including the appellant 74030.

[10] In the early 1990s, the appellant left his job and became self-employed as a contractor. In 1995, ownership of the company passed to the appellant's brother A, and the appellant became the business director. The business was successful and allowed the appellant to provide for himself and his family. At the time the appellant left the Czech Republic in 2000, the business had 10 employees. It now has approximately 20 employees.

[11] The appellant became involved with the AA branch of an organisation for the promotion of Roma rights, the *Romska Obscanska Initiava* (ROI). He became the vice president of the branch and, in this capacity, represented Roma at meetings with local officials where Roma problems (for example, housing and education) were discussed.

[12] In 1994, a ROI meeting in AA was attacked by a large gang of skinheads. The appellant suffered a few kicks and slaps during this attack but managed to get away. He later learned that another ROI member had been murdered during this attack. The police in AA did not prosecute this murder. The appellant went to the police to make a complaint about the injuries he incurred in this attack. He was told by the police to return another day because they were busy. However, he did not do so.

[13] In 1995, the appellant bought an apartment in AA which he still owns.

[14] In 1997, the appellant visited his sister and brother-in-law in the town of BB. He was in a car with them when they stopped to buy cigarettes. The appellant left the car to go to a shop. While he was away, the car was attacked by skinheads who pulled his sister and brother-in-law out of the car and aimed a gun at the brother-in-law's forehead. When the appellant returned to the car, he was assaulted by the skinheads but managed to flee. When he returned, the car was gone, his sister and brother-in-law having gone to the police.

[15] The police investigated this incident, which led to a prosecution at a court in BB 18 months later. The appellant gave evidence at the court. The prosecution

was successful and the skinheads were sentenced to probation which the appellant and his family believe was an inadequate sentence.

[16] In 1998, the appellant ceased his active involvement in the ROI, although he maintained his membership.

[17] Also in 1998, the appellant went to a disco with his brother-in-law in BB. They were refused entry to the disco because they were Roma. As they were leaving the premises, they were surrounded and attacked by skinheads. The appellant and his brother-in-law were both kicked until they were unconscious by skinheads who racially abused them and told them that gypsies should be gassed. The appellant did not report this incident to the police because he felt that there would be no point.

[18] In 1999, the appellant's wife left the Czech Republic with two of their children because she could no longer withstand the racism directed at Roma there. The appellant's son remained with him. In 1999, the appellant met his present partner who was from BB. The couple started living together, along with the appellant's son, soon afterwards.

[19] In 1999, the appellant and his partner were refused entry into a disco in BB. As they were leaving, they became surrounded by skinheads who started abusing them and beating them. The appellant was hit in the head during this attack and went to a doctor two or three days later about this. Neither the appellant nor his partner complained to the police after this incident.

[20] In addition to the incidents detailed above, the appellant suffered regular racial abuse from white Czechs as he went about his daily business. He was also assaulted on other occasions but not to the level of the incidents described above. He believes that his role in the ROI made him a target for such attacks and abuse.

[21] He suffered considerable distress and humiliation as a result of the racism he had to endure in his daily life and was distressed about the effects of this racism on his children.

[22] In September 2000, the appellant left the Czech Republic with his partner and son.

[23] The appellant fears that if he returns to the Czech Republic, he will be killed by skinheads in the course of racial violence and that his family will suffer

degradation and humiliation because of the racism they will inevitably encounter there. He believes that the measures being taken by the Czech government to combat racism and to improve police responses to racial attacks will not improve the situation for some decades.

THE APPELLANT'S PARTNER'S EVIDENCE

[24] The appellant's partner is aged in her mid-20s. She attended a "normal" primary school where she was subjected to racial abuse by the other children. She recalled being called names, being spat at and having her lunch thrown in the rubbish bin.

[25] Following the completion of her schooling, the appellant's partner completed an apprenticeship. However, she failed to gain employment. She applied for several jobs but was turned down for each of them, a matter she attributes to her race. On several occasions, she telephoned potential workplaces and was informed that there were vacancies, but when she appeared in person, she was told that there were no vacancies, a matter she attributes to her Roma appearance.

[26] The appellant's partner was not employed at all in the Czech Republic. Prior to moving in with the appellant in 1999, she lived at home with her parents and provided care for her mother who has a serious illness. She was financially supported by a benefit she received from the state.

[27] From time to time, the appellant's partner encountered racial abuse on the streets in the town where she lived, BB. She experienced difficulties when shopping. For example, on a number of occasions she was prevented from entering shops by shop security officers. She was also, on many occasions, denied access to bars, restaurants and other entertainment facilities.

[28] In 1998, the appellant's partner was at a disco with two other female Roma friends when the group was attacked by skinheads. In the course of this attack, she was pulled to the ground and kicked but managed to get away. She later learned that one of her friends had been hospitalised as a result of the attack.

[29] On another occasion in 1998, the appellant was attacked by skinheads while with a friend at a disco. Her ribs were broken during this attack, following which she was admitted to hospital. The skinheads also threatened to kill her.

Her mother was so concerned for her safety that she had her transferred from one hospital to another. After she was discharged from hospital, she lodged a complaint with the police about the attack. The police took the complaint and told her that they would investigate it. However, they did not contact her again in connection with her complaint. She made no follow-up enquiry with the police.

[30] In 1999, she met the appellant. Shortly afterwards, the appellant was attacked by a group of skinheads while she was out with him at a disco. The appellant was beaten with wooden bats by the skinheads during this incident and sought medical treatment a few days later because he was experiencing severe headaches.

[31] The appellant's partner believes that if she returned to the Czech Republic, she would suffer further incidents of racial violence and could even be killed. She does not believe that the Czech police would protect her because of her race. She has no confidence in the measures being taken by the Czech government to improve race relations in the Republic.

[32] The appellant and his partner have a four year-old son who was born in New Zealand. As a New Zealand citizen, he is not the subject of a refugee claim. The appellant's partner does not want him to experience the racism that Roma endure in the Czech Republic. She is extremely concerned about what would happen to him, should the family return there.

THE APPELLANT'S SON'S EVIDENCE

[33] The appellant's son is aged in his late teens and has recently completed high school in New Zealand. Like the appellant's partner, he attended a "normal" school in the Czech Republic where he was one of two or three Roma in his class. At school, he suffered constant verbal abuse and ostracism from the other children because of his race. The children called him a "gypsy" and a "black" and told him that he should be gassed. They also beat him from time to time. The appellant occasionally complained to his teachers about this treatment but they did not assist him because they were also prejudiced against Roma.

[34] The appellant's son excelled at soccer and entertained dreams of being a professional soccer player. However, his team-mates who were all white Czechs did not want him in the team and called him names, leading him to cease his activity in the sport.

[35] On one occasion when he was still quite young, the appellant's son was assaulted by a group of skinheads in a park. They held him while one of them cut him on the arm with a knife. He was terrified by this incident but did not tell anybody about it because the skinheads had threatened him that if he did so, they would kill him. He explained his injury to his father by saying that he had fallen over at school.

[36] The appellant's son enrolled at high school after arriving in New Zealand. His experience of school in New Zealand contrasted considerably with his experience in the Czech Republic. He enjoyed attending school, made friends and was not mistreated by anyone. While at school, he mastered English and had some success in examinations.

[37] The appellant's son fears returning to the Czech Republic. He believes that people there will hate him because of his distinctively Roma appearance and that he will be subjected to racial attacks there by skinheads. He wishes to remain in New Zealand where he is happy and where he believes he has a good future.

DOCUMENTS AND SUBMISSIONS FILED

[38] On 1 April 2005, counsel filed written submissions containing a summary of country information. At the hearing, the appellant tendered an undated medical certificate from a hospital in AA, together with an imperfect translation. This certificate described the appellant as "chairman of the vice president who was chosen to help roma people of ROI in AA". The certificate recorded that the appellant had been abused by skinheads and had spent several days in hospital for stress and head pain.

[39] On 17 June 2005, counsel filed a medical certificate dated August 1998, apparently written by a doctor who treated the appellant's partner for migraine and stress-related symptoms two months after she was attacked by skinheads.

THE ISSUES

[40] 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."

[41] 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

[42] Before the appellants' accounts can be assessed, it is necessary to determine their credibility. The Authority finds that the appellant's son was a credible witness and accepts his account in its entirety. The Authority finds that neither the appellant nor his partner was a completely truthful witness. Both of them embellished their accounts and both gave evidence that was at variance with details they had given at their RSB interviews in 2001. Accordingly, the Authority rejects certain aspects of their accounts. These are the appellant's claims to have had a high profile in the ROI and to have been targeted by skinheads as a result, his claim (made late in the hearing) to have had difficulty operating his business because of his race, and the appellant's partner's claim to have been attacked by skinheads in 1998 and to have had broken ribs as a result of that attack.

[43] The Authority's reasons for rejecting these parts of the appellant's and his partner's accounts are set out below.

APPELLANT'S EVIDENCE ABOUT ROI

[44] The appellant claimed that his problems were to some extent caused by his role in the ROI. Some of his evidence regarding this involvement contrasted with details he gave at his RSB interview.

[45] At his RSB interview, he claimed that his involvement with the ROI ceased in 1998 because the ROI ceased to exist at that time. He went on to say that he had no knowledge of the details surrounding this because the decisions were all made in Prague. At the hearing, the Authority asked the appellant whether the ROI had ceased to exist while he was still in the Czech Republic. He said that it

had not. When the statements he had made at his RSB interview were put to him for comment he claimed to have stopped any active involvement with the ROI in 1998 but to have retained his membership. He denied making the statements that were attributed to him on the RSB interview transcript and claimed that there must have been a misinterpretation.

[46] The Authority does not accept this claim. The appellant made several remarks about the ROI ceasing to exist at his RSB interview and it is not accepted that they could be the product of misinterpretation.

[47] The inconsistency of the appellant's evidence about the ROI causes the Authority to reject his evidence of involvement in that organisation leading to his specific targeting by skinheads. We do however grant him the benefit of the doubt and accept that he was a member of the ROI and that he was attacked at an ROI meeting in 1994.

[48] In any case, it is noted that apart from the 1994 incident, the three serious incidents of skinhead violence perpetrated against the appellant were unrelated to his ROI membership. They all occurred in BB, rather than AA (the site of his claimed ROI membership). All three of these attacks were random and not premeditated in character. Essentially, each of these attacks occurred as a result of the appellant being in the wrong place at the wrong time.

APPELLANT'S CLAIMED DIFFICULTIES OPERATING HIS BUSINESS

[49] The Authority also rejects evidence given by the appellant late in the hearing about claimed difficulties in operating his business. Initially he gave evidence that his business was successful and that he employed 10 people at the time of his departure from the Czech Republic. The Authority asked him on a number of occasions whether he had ever had difficulties with the Czech authorities or bureaucracy concerning his business, particularly whether he had difficulties in obtaining or renewing his licence to operate the business. He replied that he did not and commented that his licence did not record his race.

[50] At his RSB interview, the appellant had claimed that the Czech authorities retracted his licence in 1998 telling him that there was no work for Roma and thereafter the appellant had supported himself by doing carpentry. When asked to explain this inconsistency, the appellant claimed that his contracts with the telecommunications company had ceased and that from 1998 the business

operated in his brother's name. The appellant's initial evidence about the success of his business and his lack of difficulties in obtaining and renewing his business licence was clear and unequivocal.

EVIDENCE ABOUT BROKEN RIBS

[51] The reason we reject the appellant's partner's claim to have had her ribs broken in a skinhead attack in 1998 is the extreme mobility of her evidence about this incident.

[52] Initially, she described an attack on herself and two girlfriends at a disco in 1998 which led to the hospitalisation of one of the friends. When asked, she said that she had not complained to the police about the attack. She was then asked if she had ever complained to the police about something. She said she had complained about an incident where she was beaten up by skinheads at a disco and was hospitalised with broken ribs. She said that this attack was also in 1998. When asked whether this was the same or a different attack from the one where her friend was hospitalised, she said it was the same. When she was reminded of her earlier evidence that there had been no police complaint in respect of this attack, she then claimed that it was a different attack. She was then asked who she had been with when this second attack in 1998 took place. She replied that she had been with her friend C at a disco in BB.

[53] At her RSB interview, the appellant claimed that she had had her ribs broken in an attack when she was in town with a "little" Roma girl and that the skinheads had surrounded her and begun to kick her. She went on to say that it was lucky that "nothing happened to the little one". The inconsistency between this account and her evidence to the Authority that she had been attacked at a disco while with a friend was put to her for comment. She then claimed that the little girl had been her four year old sister who had attempted to follow her to the disco before being sent home. The Authority does not accept this explanation and finds that the appellant's partner failed to remember the account she gave at her RSB interview.

[54] The Authority has considered the medical certificate referred to at paragraph [38] above. It was filed more than two months after the appeal interview. No explanation was advanced by counsel or the appellant for the surprisingly late production of a document seemingly written seven years previously. The certificate is a photocopy rather than an original. No explanation

for this has been provided, nor has counsel or the appellant advised the Authority of the whereabouts of the original. Although the certificate has purportedly been issued from a hospital, it has been printed on plain paper rather than letterhead. The certificate contains a gratuitous description of the attack and resulting injuries. Among these is a broken nose, which is not an injury the appellant's partner has mentioned before at any stage of the refugee status determination process.

[55] In light of the concerns about the appellant's partner's evidence and the problems with the medical certificate identified above, the Authority places no weight on it. Although she may have suffered broken ribs in the past (and the Authority notes the absence of any satisfactory medical evidence in this regard) it is not accepted that she had her ribs broken in a skinhead attack as she claimed.

SUMMARY OF FACTS AS FOUND

[56] The Authority accepts that all three appellants were discriminated against within the Czech education system. As children, all three were subjected to frequent racial harassment and episodes of physical abuse at school, from which the school authorities made no effort to protect them. It is accepted that they were frequently discriminated against on the ground of their race when they attempted to access goods and services. For example, they were barred entry to shops, bars and nightclubs.

[57] Both the appellant and his partner were discriminated against in their employment. The appellant was relegated to cleaning duties at X company, despite his completion of an apprenticeship. The appellant's partner was refused the few jobs she applied for because of her race. Both the appellant and his partner have been subjected to racial attacks. For the appellant these attacks occurred in 1994 (the attack on the ROI meeting), 1997 (the attack on his brother-in-law involving the use of a gun), 1998 and 1999. The appellant's partner was attacked in 1998 (in the incident when her friend was hospitalised) and was with the appellant when he was attacked in 1999. The appellant's son was attacked by skinheads as a child.

CURRENT COUNTRY INFORMATION AND THE CASE BY CASE APPROACH TO CZECH ROMA REFUGEE CLAIMS

[58] Country information regarding the situation for Roma in the Czech Republic has been reviewed at length in several of the Authority's decisions in recent years.

See for example, *Refugee Appeal No 73688* (23 June 2003) [44]-[51], *Refugee Appeal No 73607* (26 February 2004) and *Refugee Appeal Nos 74776, 74777 & 74782* (10 May 2004). As a large number of other decisions of the Authority concerning Czech Roma have noted, these decisions record that following the overthrow of the communist regime in 1989, Czech Roma have been subjected to widespread discrimination and racial violence in respect of which there has often been an inadequate police response. These decisions have also noted that conditions for Roma in the Czech Republic do not warrant recognition of refugee claims on a *prima facie* basis. Rather, each case must be determined on its own particular facts.

[59] The most recent United States Department of State (DOS) report on human rights practices in the Czech Republic noted that despite some measures taken by the Czech authorities to improve the situation, skinhead violence and discrimination against Roma remained a problem. The same report also noted the exclusion of Roma by some restaurants, bars and shops and that some of these businesses had posted signs at their entrances to this effect. Also noted was the disproportionately high Roma unemployment rate: United States Department of State *Country Reports on Human Rights Practices 2005: Czech Republic* (25 February 2005) (the DOS report), Section 5, National/Racial/Ethnic Minorities.

[60] Country information, such as the DOS report, does not evidence any decrease in discrimination or violence against Roma in the Czech Republic. However, neither does it justify any departure from the Authority's case by case consideration of Czech Roma refugee claims.

OBJECTIVELY, ON THE FACTS AS FOUND, IS THERE A REAL CHANCE OF THE APPELLANTS BEING PERSECUTED IF RETURNED TO THE COUNTRY OF NATIONALITY?

[61] 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: *Refugee Appeal No 2039* (12 February 1996) p16.

[62] The Authority's enquiry is forward-looking. The question to be answered is whether the appellants face a well-founded fear of being persecuted in the Czech Republic now. It is however relevant to consider whether the treatment they have experienced in the past amounts to persecution, as past treatment can be a useful indicator of what may be expected to happen in the future: *Refugee Appeal No 70366* (22 September 1997) [78].

[63] The appellant was subjected to some discrimination within the Czech education system. However, despite this discrimination, he completed an apprenticeship and went on to run a successful business which allowed him to own his home and to provide a satisfactory standard of living for his family.

[64] As noted above, the appellant was the victim of skinhead violence on four occasions in 1994, 1997, 1998 and 1999. Apart from the 1994 incident which took place at a ROI meeting, each of the other assaults was random and isolated in nature. It is also noted that each of these random attacks occurred in BB rather than the appellant's own town, and that at the hearing the appellant stated he would never again return to BB.

[65] Country information, such as the DOS report referred to above, does not establish that individual Czech Roma face a real, as opposed to a random, chance of being persecuted in the Czech Republic. As was noted in *Refugee Appeal No 72643-6* (24 September 2001) [77], violent attacks on Roma do occur. However, they are sporadic and do not occur at a frequency that would enable the Authority to find that there is a real chance the appellant will be attacked if returned to their country of origin: [77]. Although the Authority cannot discount the risk that the appellant may again be subjected to racist violence in the Czech Republic, the chance that this will occur is remote and does not rise to the level of a real chance needed to establish a well-founded fear of being persecuted.

[66] The Authority finds that the appellant does not have a well-founded fear of being persecuted.

[67] The appellant's partner experienced discrimination within the Czech education system. However, she completed nine years of primary education and an apprenticeship. Although she was discouraged by the racism she encountered when she made her few job applications after completing her apprenticeship, she did not persist in her attempts to obtain employment as she was required to care for her unwell mother. She received a state benefit while doing this and provided no evidence to the Authority of any difficulty in accessing this benefit.

[68] The appellant's partner was assaulted by skinheads on one isolated occasion in 1998 when at a disco with friends. She did not complain to the police about this incident.

[69] The Authority does not consider, even when taken cumulatively, that the appellant's partner's experiences in the Czech Republic amount to persecution. Having not experienced persecution there in the past, the Authority finds that her fear of being persecuted in the future is not well-founded.

[70] Similarly, the Authority finds that the appellant's son's past experiences in the Czech Republic (racial taunting at school and a single attack by skinheads resulting in a minor injury) do not amount to persecution. Again, we find that his fear of being persecuted in the future is not well-founded.

[71] A return to the Czech Republic may be a matter of considerable hardship to the appellant's son who was brought to New Zealand as a child and who has, as a result of his New Zealand education, become assimilated into New Zealand and been able to enjoy living without the racial prejudice he will experience in the Czech Republic. However these matters, and similar issues regarding his four year-old New Zealand-born brother, can be characterised as humanitarian concerns and, as such, fall outside the jurisdiction of this Authority.

[72] The Authority finds that the appellant's son does not have a well-founded fear of being persecuted.

[73] The Authority finds that for each of the appellants the first principal issue is answered in the negative. This being the case, it is unnecessary to address the second issue of Convention ground.

CONCLUSION

[74] The appellants are not refugees within the meaning of Article 1A(2) of the Refugee Convention. Refugee status is denied. The appeals are dismissed.

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M A Roche
Member