

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO 75883

REFUGEE APPEAL NO 75884

REFUGEE APPEAL NO 75885

REFUGEE APPEAL NO 75886

AT AUCKLAND

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| <u>Before:</u> | B A Dingle (Member) |
| <u>Counsel for the Appellants:</u> | R McLeod |
| <u>Appearing for the NZIS:</u> | No Appearance |
| <u>Dates of Hearing:</u> | 2, 3, 4, 30 & 31 October 2006 |
| <u>Date of Decision:</u> | 26 June 2007 |

DECISION

INTRODUCTION

[1] These are conjoined appeals against decisions of a refugee status officer of the Refugee Status Branch (RSB) of Immigration New Zealand (INZ) declining the grant of refugee status to the appellants, nationals of the Slovak Republic (hereinafter referred to as Slovakia).

[2] The appellants are a husband (*Refugee Appeal No 75883*), his wife (*Refugee Appeal No 75884*), and their two children (*Refugee Appeal Nos 75885 & 75886*).

[3] The appellants were heard jointly, the evidence of each appeal being treated as evidence in the appeal of the other. The children are represented by the husband pursuant to s141B Immigration Act 1987 and their claim is wholly derivative of their parent's claim.

[4] The appellants claim that they are at risk of being persecuted by the Slovakian police and other state officials because of their profile as former business owners who complained about their treatment at the hands of the police and aforementioned officials. They claim that the two underlying reasons for their past experience of mistreatment and their prospective fear of being persecuted are the husband's Roma ethnicity and the wife's gender.

[5] The essential issue to be determined in this case is whether the appellants' account is credible.

THE APPELLANTS' CASE

[6] The following is a summary of the account presented by the appellants. An assessment of their credibility will follow.

THE HUSBAND'S EARLY LIFE

[7] The husband is of mixed Romany/Slovak ethnicity and is identifiable as a Roma because of his surname. He was raised in the Christian faith. His parents both worked as professionals until their retirement.

[8] The husband experienced some discrimination during his childhood and early adulthood because of his Roma ethnicity. At primary school, he was teased by other children and, on occasion, Slovak parents of his classmates would complain that a Roma was in the class. These experiences led the husband to become withdrawn and suffer from low self-esteem.

[9] After completing his primary school education, the husband began studying at a technical school. After some further study, he attended a military academy and completed his basic training as a soldier, in addition to his technical qualifications.

[10] In 1983, the husband began working as a professional soldier and technician at a military base. This employment lasted for five years until 1988

when his employment was terminated in redundancy. He believes that he was one of the first staff members made redundant because of his Roma ethnicity.

[11] Soon after, the husband gained employment as a technician in a private enterprise. After that business closed in 1991, he found new employment, again as a technician. The new work was similar to his previous work, although he had more responsibility and the opportunity to earn extra money.

[12] In 1994, he transferred to a plant in L city where he was granted greater responsibilities and a further increase in salary. In 1995, that plant was privatised and the husband was made redundant. Again, he suspected that his redundancy was, in some part, related to his ethnicity. In late 1995, he obtained new employment in L city.

[13] The husband recalls being discriminated against in bars and other locations in his adulthood but he did not experience problems accessing medical or other social services.

THE WIFE'S EARLY LIFE

[14] The wife was born in L city and is of Slovak ethnicity. She was raised in the Christian faith. Her family were in an average financial situation compared with other families in the area.

[15] For the purposes of this refugee claim, the wife's early life was unremarkable.

[16] In mid-1989, she completed her secondary education and, later that year, she commenced employment as a civil servant in L city. She did not experience any difficulties in her employment between 1989 and 1996.

[17] The wife has one brother who lives in L city. Her mother lives in X, a small village approximately 10 kilometres from L city.

THE HUSBAND AND WIFE'S LIFE TOGETHER

[18] The husband and wife met socially in late 1995. In mid-1996, the husband moved into the wife's family's home in X village. The wife's parents lived on a different floor of the dwelling and the husband and wife continued to live in this house until they left Slovakia in 2005.

[19] During the course of their relationship, the husband and wife suffered negative attention from strangers, such as insulting comments about the husband's ethnicity. The wife also received insults about her relationship from colleagues and work supervisors. The husband and wife were refused permission to marry at their local church in X village.

[20] In late 1997, the wife ceased working and took maternity leave for the birth of their first child. During her maternity leave, she occasionally assisted her father in the running of his international transport and cartage business.

[21] In mid-1998, the husband imported a car and began the necessary process to have it cleared by customs and then registered with the police. However, after leaving the car at the customs office, the husband was unable to regain possession of it. He was initially given excuses why it could not be returned and, despite repeated enquiries and formal complaints, he was not able to locate the car. Nor was he able to secure any compensation for his loss. Some months later, the husband saw the car being driven in another city by an individual he believed was the son of the director of police for that area. He believes that the car was stolen from him because of his Roma ethnicity. Despite reporting the matter to the police, no substantive investigation of the matter was ever undertaken.

[22] In late 2000, when the wife indicated to her employers that she was pregnant again and would be seeking further maternity leave, she was pressured to resign from the position because they did not wish to keep it open for another leave period.

ABC COMPANY

[23] During the latter part of 2000 and the beginning of 2001, the husband and wife began discussing the possibility of the wife establishing a transport business of her own. Although they both understood that there would be difficulties associated with a woman running such a business, the wife wanted the independence of being self-employed and, having worked periodically in her father's business, believed that she had the necessary skills and experience to undertake such a venture.

[24] The wife encountered immediate obstructions to starting the business. When she applied for the necessary concession document to enable her to start

operating, she was told that women do not run such businesses and was insulted on account of having a Roma partner. Notwithstanding the difficulties, she persevered and the company began operating in early 2001. Initially, the company (ABC Company) acted as a broker between those providing transport services and those wanting goods transported.

[25] The wife soon realised that the business would be more successful if they operated their own transport trucks. She complied with a range of bureaucratic requirements to facilitate this. Throughout all of these processes the wife experienced insults and harassment which she attributes to her being a woman seeking to operate in a male-dominated industry. These difficulties put pressure on ABC Company's financial viability and also took a personal toll on her in the form of stress and depression.

[26] Similar sorts of problems in fulfilling bureaucratic requirements were a recurring problem throughout the operation of ABC Company. For example, the wife inevitably had difficulties and delays in securing the necessary transport permits and this had an impact on the day to day operability of the company.

[27] In June 2001, the wife gave birth to their second child.

[28] Despite the setbacks, ABC Company was a profitable transport operation from its very first month of operation. In mid to late 2002, the husband and wife decided to lease two further transport vehicles.

[29] In approximately late 2002, soon after those new vehicles had been registered, the husband and wife received a summons from the police station in L city requesting their attendance at an interview. They attended on the requested day and were questioned separately by police officers. The focus of the interviews was the financial situation of ABC Company.

[30] During the interview, the husband was insulted and abused on account of his ethnicity, slapped on the face and then removed to a downstairs cell in the station. Before being locked in the cell, the husband was asked to remove all his clothes, which he did, leaving him wearing only his underpants. He was detained in that cell in the basement of the police station without food or drink until approximately 8am the following day. At that time, he was released without further incident. He was threatened by a police officer that if he complained about the police treatment, he would be killed.

[31] The husband and wife were very distressed at the treatment, but held out hope that the integration of the Slovak Republic into the European Union (EU) might herald an improvement in the treatment of Roma. They also hoped that the removal of permits and border controls between Slovakia and neighbouring countries would mean operations in the transport industry would be much more straightforward.

[32] However, the overwhelming effect of Slovakian entry into the EU was that competition in the transport industry increased and trucks travelling over the borders became an increased target for bribery and extortion from customs officers. The husband and wife believed that customs officers now had less opportunity to seek bribes in the issuing of permits and so they had turned their attentions to bribes at border control posts instead. Corruption and the pilfering of goods by customs officers was widespread and experienced by most, if not all, transport operators in Slovakia. However, the husband and wife believe that they were targeted more intensely than other operators because ABC Company was run by a woman and her partner was a Roma man.

[33] Other difficulties also arose. The company experienced ongoing difficulties with money transfers through the bank, in that funds which had been deposited into their account would take days, sometimes weeks, to clear. The company also experienced difficulties with social insurance and tax officials who seemed determined to obstruct the business and who would frequently demand bribes in order to facilitate ordinary transactions.

[34] Between 2002 and 2005, the husband and wife and ABC Company also became the target for police harassment. Police officers from the station in L city would arrive at the ABC Company office on the pretext of some fabricated issue and would proceed to insult the husband and wife and then demand payments for one reason or another. The demands for money would often be accompanied by threats of more sinister harassment if the money was not paid. The police officers also seemed to have information about ABC Company's day to day financial dealings because they would often arrive after a large payment had been made to the company and refer to that payment in their demands for money.

[35] Throughout 2003 and 2004, the husband and wife were also the subject of further police summonses requiring them to attend L city police station. Usually there would be no reason given for the summons and, once there, the focus of the interview was the financial situation of the company, the unusual situation of a

woman and a Roma running a successful business and insults about the husband's ethnicity.

[36] In late 2004, the wife's father died.

[37] By early 2005, the extortion of money and goods from ABC Company's trucks by customs and border officers from ABC Company's trucks had reached such a level that it was having a significant effect on the company's viability. The husband and wife went to the L city police station where they reported their complaints and provided evidence of the problems they had encountered. The focus of the complaints was on the actions of customs officers at the border but, once at the police station, they also detailed complaints they had with permit and transport officials and referred to harassment by police officers from the station. They hoped that because they were complaining to a superior officer, they would initiate some real action and not cause the local police officers to harass them further. The superior police officer listened to their complaints and assisted them in compiling a written statement but they are not aware of any other action having been taken in response.

[38] Approximately one month later, in March 2005, the appellants were involved in a car accident. The incident occurred as they were driving up a relatively steep mountain road on their way to visit friends. At a steep section of the road where there were no side barriers, a white car following them began to overtake the appellants and then veered into the left-hand side of the appellants' car, pushing it over the side of the road and down a bank. The appellants' car rolled and landed on its wheels and the appellants were able to get out of the car and were without serious injury. The husband and wife noticed that the occupants of the white car had stopped and were watching what had happened for a short time after the accident. The appellants believe the occupants of the white car were plain clothes police officers because they were in the type of car used by Slovakian police as unmarked cars.

[39] The appellants called the police to report the incident and were told to wait at the scene. The police arrived approximately three hours later and, after examining the scene, asked the appellants to go to the nearest police station and complete formal statements. Once at the police station, the husband was interviewed first. He described the incident but was disbelieved by the interviewing officer when he suggested that the occupants of the white car had been police officers. The husband was insulted and ridiculed. He was then taken

to another room and asked to sign a statement provided by the police. When he refused to sign it, he was the subject of approximately six hours of threats and verbal abuse, by which time a typed police report, largely consistent with his oral statements, was produced for his signature. After signing it, the husband was released.

[40] The wife was detained until approximately 5am the next day because she insisted on signing a statement which recorded her belief that the occupants of the white car were police officers.

[41] In late March 2005, the husband and wife received a further summons to the L city police station. When the husband was questioned by police, he was slapped in the face, kicked and had his arms twisted. Neither the husband nor the wife were detained on that occasion.

[42] At the end of August 2005, a further summons required the attendance of the husband and wife at the L city police station. Although anxious about being questioned again, they were more fearful about the consequences of non-attendance and so attended.

[43] The wife was interviewed first. She was taken to an office near the rear of the police station where she was asked questions by one police officer while another man typed the information. She was asked to describe the car accident and, when she insisted that her statement include mention that the white vehicle was a police vehicle, the police officer became extremely agitated, shouting at her that she was not thinking clearly and that her version of events was not possible. The same sequence of questions was repeated approximately three times and the whole session continued for several hours. The wife was insulted and called obscene names and then a police officer slapped her, pulled her hair and she fell backwards from her chair onto the floor. The husband recalls that he heard his wife crying as he sat waiting in the reception area. Finally, the wife felt under so much pressure that she signed papers as demanded by the officer, the contents of which she was not made aware of.

[44] The husband was then taken into an office where he was presented with written papers which he was told to sign. He wanted to read the papers before signing them but the police officers became extremely angry, shouted at him and punched him hard in the face. The officers showed him that the wife had already signed the paper and so the husband signed also. The appellants now believe

that the papers were related to ABC Company. The husband was then released and, as he left, the officers threatened him that if he told anyone about the mistreatment, they would take action against his family.

DEPARTURE FROM SLOVAKIA

[45] The husband and wife felt so fearful after the incident that they immediately began discussing how they could leave Slovakia. After one or two days assessing their options, they made a decision to travel to New Zealand and seek refugee status.

[46] On 3 September 2005, the husband booked airline tickets, flying from Prague in the Czech Republic. They told nobody of their plans to leave and packed only the essential items in anticipation of their travel.

[47] On the morning they left, the husband sold their car. As soon as he returned home, they travelled to Prague by taxi. They paid a bribe at the border through the taxi-driver because they were fearful they would be detained at the border. They then picked up their tickets from a travel agent at the Prague airport and departed legally using their Slovak Republic passports. They did not experience any difficulties on departure.

[48] On 7 September 2005, the appellants arrived at Auckland International Airport where they were issued visitors' visas valid until 7 December 2005. Within two weeks of arrival, they enrolled their oldest child at primary school but within a short time, that child was taken off the roll at school because of her status as a visitor. Approximately one month after that, on 22 November 2005, the Refugee Status Branch received the appellants' confirmation of claims for refugee status.

[49] The husband was interviewed by the RSB on 25 January 2006 and the wife was interviewed on 26 January 2006. A decision declining refugee status to the appellants was issued on 31 May 2006 and it is from this decision that the appellants now appeal.

POST DEPARTURE EVENTS IN SLOVAKIA

[50] Since leaving Slovakia, the husband and wife have had intermittent contact with some family, friends and ex-employees of ABC Company. In summary, the news they have is that the company has been taken over by people associated

with the police officers responsible for harassing them. Two of the wife's employees continued to work for the "new owners" for a time before terminating their employment. The office and documents therein have been removed from the Village X address but there is no information about where the business is now operating from or in what capacity. The wife's brother reports having been harassed by police about their whereabouts, as do two of the former employees and a friend. None of the correspondents have been able to provide any further details about who took over the company, although they all refer to receiving threats about what would happen to the appellants should they return to Slovakia.

OTHER MATERIAL SUBMITTED IN SUPPORT OF THE APPEAL

[51] In support of their refugee claims, the appellants submit to the Authority:

- (a) a number of copies of email and letter correspondence (with accompanying translations) between the appellants and individuals whom they knew in Slovakia including the wife's brother, a friend of the wife and two former employees. These emails seek to corroborate aspects of the appellants' account and to record subsequent police attempts to locate the appellants.
- (b) patient medical histories for all of the appellants;
- (c) a supplementary statement from the husband and the wife;
- (d) country material relating to the situation for Roma in Slovakia and corruption in Slovakia;
- (e) a statement from the wife's brother, dated 20 September 2006, referring to aspects of her life in Slovakia;
- (f) a printout from a travel service agency website relating to ticket booking procedure; and
- (g) a bundle of documents accessed online from the Slovakian Trade Register and Companies Register relating to ABC Company and to the wife's father's business.

[52] Counsel has made both oral and written submissions and has submitted country information (referred to above) and, under cover of a letter of 1 December 2006, a translated excerpt from an internet information site relating to business

registration and the issue of trade licenses. Appellant and counsel submissions have also been received under cover of letters dated 29 November 2006, 30 December 2006, 15 May 2007 and 23 May 2007.

[53] This material has been considered and is taken into account herein.

THE ISSUES

[54] 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."

[55] 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

CREDIBILITY ASSESSMENT

[56] The Authority, having heard the appellants over a period of five days, does not accept the credibility of their evidence. Important aspects of their evidence were marked by inconsistencies, implausibilities and at times collusion between the husband and wife. The Authority's finding on credibility is made for the following reasons.

HUSBAND'S DETENTION IN 2002

[57] The husband had told the RSB that before he was detained overnight in the cell in the L city police station in 2002, he was asked to empty his pockets and

remove his keys. In his statement submitted prior to the RSB interview, he also recorded that he was asked to empty his pockets. In contrast, he told the Authority that before being detained in the cell, he was asked to remove all of his clothing except his underwear and that he was required to stay in the cell overnight in that state of undress and without a blanket.

[58] When asked to account for the discrepancy between being asked to empty his pockets and having to remove all of his clothes, the husband told the Authority that he did not think there was a discrepancy. He asserted that the apparent difference was because he did not give details about the incident in his RSB interview or statement. Counsel also submitted that the husband's statement referred to the fact that further details would be given during the (RSB) interview and that this explained the omission from the statement.

[59] The Authority does not accept either the husband's explanation or counsel's submissions as to why the inconsistency arose. If the husband had been required to strip and remain without clothes in a cell overnight, it is inexplicable that he would have failed to mention such a degrading and dramatic aspect of the incident in favour of the more benign version of mistreatment which was given in his statement and to the RSB. The fact that the statement did include the small detail about being asked to empty his pockets underscores the significance of the omission to mention having to remove all of his clothes. Furthermore, counsel's submission does not address the fact that despite being questioned in detail about the incident at the RSB interview, the husband again failed to provide what he now alleges is the complete account. The inconsistency has not been adequately explained and the Authority finds that the incident is part of a fabricated account.

COMPLAINT LETTERS

[60] The husband and wife gave inconsistent evidence about complaint letters they compiled regarding harassment and mistreatment against them. The husband told the Authority that he and the wife sent at least two complaint letters, one to the Minister of the Interior and one to the Ministry of Transport, complaining about mistreatment by customs and border control officers and police officers. The husband also said that one of the complaint letters, referring to mistreatment from police at L station, had been referred back to that station for investigation and had resulted in a significant intensification of police harassment. He further

recalled that he and his wife had been summoned to the police station specifically in relation to one of the complaint letters referred back there for investigation.

[61] In contrast, the wife told the Authority that neither she nor the husband ever sent complaint letters to any government authority be it a minister, a ministry or a department of the police. She recalls that she had gone to the L city police station on one occasion in early 2005 and, while there, she had recorded complaints she had in a written statement with the assistance of a police officer. The wife's evidence to the Authority accorded with her evidence to the RSB where she stated that she did not make any written complaints to any person.

[62] When the inconsistency was put to the husband, he maintained that letters of complaint were sent and suggested that his wife may have forgotten because of her mental state at the time.

[63] When the Authority asked the wife to explain why her evidence was inconsistent with that of her husband, she was unable to provide any direct explanation for the inconsistencies. She referred to the complaint she made at the L city police station in January 2005 and stated that she had taken various written documents with her at that time.

[64] Neither the husband's nor the wife's response to the inconsistency satisfy the Authority that the inconsistent accounts can be reconciled. Had complaint letters in fact been written to the Minister or Ministry of the Interior, it is implausible that the wife would not have been aware of it and recalled it in her evidence both at the RSB interview and the appeal hearing. The Authority also notes that the husband did not previously mention sending complaint letters at his RSB interview or in his original statement. The husband's original statement is 24 typed pages long and includes 148 separate paragraphs. Seven of those paragraphs deal specifically with seeking help from the police and the statement as a whole contains a detailed account of the appellants' claimed difficulties in Slovakia. Given the level of detail contained in the statement it is reasonable to expect that had complaint letters in fact been written, the husband would have referred to them in this statement. The fact that he did not further strengthens the Authority's view that his evidence in this respect is false.

Complaint to Police in January 2005

[65] The appellants' evidence concerning their complaint to the L city police in January 2005 is inconsistent and implausible.

[66] As noted above, the wife told the Authority that when she went to make the written statement at the police station she took a bundle of documents with her in which she had detailed the incidents of mistreatment by customs and border control officers. In contrast, the husband stated that neither he nor his wife took any written documents with them. When the inconsistency was put to the wife, she maintained her evidence to the Authority that she did have those documents with her and used them to compile her statement.

[67] When the husband was asked about the inconsistency he responded that he could not really answer the question because he was not with his wife when she made the complaint. When he was reminded that he had told the Authority he was with his wife at that time, he conceded that he had gone to the police station with her but suggested that he was not with her while she made the actual complaint. This does not accord with his earlier evidence and the Authority does not accept this explanation. Earlier in the hearing, the Authority had specifically asked the husband whether or not he and the wife had taken a written complaint or (at another point in the hearing) whether or not they had taken any unsent complaint letters with them. His answer to both questions was an unequivocal no. Had the wife taken written documents to the police station for the purposes of compiling a complaint report, the husband would have been aware of that and would not have given contrary evidence.

[68] That a complaint was made to the police in January 2005 is also implausible in the context of the appellants' previous harassment and mistreatment by officers from that very police station. Both the husband and the wife gave extensive evidence about the harassment, threats, frequent occurrences of unjustified summons, interrogations and extortion from police officers based at the L city police station. The husband also stated that this negative attention had intensified after a formal complaint about the police officers had been referred back to L city police station for investigation and action. Both the husband and wife also gave evidence that they felt very fearful of the police and dreaded receiving summons for questioning there because of the mistreatment they had already suffered.

[69] Given this context of harassment and increasing fear about police actions, it is implausible that the husband and wife would have gone to the L city police station in January 2005 to make a further complaint about customs officers and police mistreatment. Based on their previous experience, the only response they could have plausibly expected was a further increase in intensity of police harassment and mistreatment.

[70] When asked to explain why they lodged a formal complaint with the police station in early 2005, neither the husband nor the wife gave a sensible explanation. Initially the husband conceded that he did not know how the complaint would have helped but it was the only avenue of complaint they felt was open to them. When pressed further on the point, he suggested that because they complained to a senior police officer who was distinct from the ordinary “justice and investigation police” they believed the response might be more effective. This suggestion makes no sense in light of the husband’s previous evidence that they had already complained to a higher police authority in the Ministry of the Interior and had experienced increased harassment as a result.

[71] When the wife was asked why she complained to the police in the context of her previous police mistreatment, she too was unable to give a sensible explanation. Initially she suggested that there was no-one else to complain to and she thought the police might be able to help. When the Authority suggested that it might have been more useful to send a complaint letter to the Minister or someone in higher authority and not directly connected with the police station concerned, the wife stated that when a complaint letter is sent to a “higher place” it is inevitably referred back to the specific police station. Neither of these responses satisfy the Authority’s concerns. Had the appellants been harassed and mistreated by the L city police for a period of up to three years, and suffered an increase in harassment following a previous complaint, it is implausible that they would have gone there and attempted to lodge another formal written complaint. The evidence is rejected.

[72] The Authority finds the evidence about complaints, verbal and written, to be unsatisfactory. In addition to the matters referred to in [66] to [71], there were various other references in the husband’s and wife’s evidence to telephone or verbal complaints made about their treatment. This evidence was marked by inconsistencies and mobility about timing and frequency such that none of it is accepted by the Authority.

Evolving claim about being targeted for harassment

[73] The claim that the husband and wife were singled out from other transport operators for harassment and negative police treatment has been an evolving one. The appellants' original statements and RSB evidence indicated that their own experience of mistreatment, corruption and extortion by customs officers and police was mirrored by the experience of the wife's father and, albeit to a lesser extent, by other transport business operators. In contrast, the evidence at the appeal hearing gave the Authority the clear impression that the appellants are now attempting to portray themselves as having been specifically targeted for mistreatment that no-one else in a comparable business situation in Slovakia experienced.

[74] As to her father's difficulties, the wife wrote the following paragraph in her original statement:

"My father had the same problems like me. He often cursed the customs officers for their greediness. He complained about the state authorities about how they treated him and what everything they were capable off how they always asked for money and withheld the trucks at the borders. For being exposed to so much stress in December 2004 he had strong heart attack and he died." [sic]

[75] In her RSB interview, the wife further detailed her father's mistreatment at the hands of the authorities and police. She told the RSB that she first started to fear living in Slovakia after her father passed away in December 2004. When asked what caused her fear, her answer is recorded as follows:

"My father was pushed so much by police investigations and questionings as they did to me and this caused a strong heart attack – he was blackmailed, spied on, questioned and interrogated in the same way I was and his health, his heart couldn't cope any longer and I feared something like that I can expect also."

[76] Still later in her RSB interview, the wife was asked whether she knew of anyone else who had suffered mistreatment by the police similar to her own experience. She answered by saying: "Yes, my father". After further questions, she also indicated that other business owners experienced similar problems. She also told the RSB that her father had bank problems similar to her own.

[77] In contrast, at the Authority hearing the wife was at pains to distinguish her experience from that of her father. She told the Authority that her father had to pay some bribes but she repeated on several occasions that the bribes were not as big and that they did not have a significant impact on the operation of her father's business. When the Authority asked if her father had serious problems

with bribes, she said “I think it was just a normal acceptable level”. When asked why she had suggested in her statement that her father’s problems had caused his heart attack, she suggested that the cumulative nature of having to pay bribes had caused him stress such that he had a heart attack. This suggestion struck the Authority as a spontaneous attempt to reconcile her previous evidence with that given to the Authority.

[78] The wife also told the Authority that her father had not had any problems with police or with other officers and that it was usual to pay bribes. When the Authority referred her to her RSB evidence (see [74] and [75] above), the wife stated that she may have been too emotional in the RSB interview because she loved her father very much. Her explanation is rejected because her evidence at the RSB was specific and unequivocal. Furthermore, she gave evidence at least two different times in the RSB interview that her father had been seriously mistreated at the hands of the police.

[79] The same evolving pattern can be discerned in the husband’s evidence. In his confirmation of claim form, the husband was asked at question E4 when his fear in Slovakia began. His answer is recorded as follows:

The first real fear was December [2004] when police harassed my father-in-law – he then died – after that they focused attention on us...”

[80] His written statement records the following:

110 “This kind of problems experienced not only [the wife’s] company but many other freight companies, especially [the wife’s] father. His business also had to battle this problems ... the customs officers and their greedy behaviour, the government authorities, the police because he always had some problems with them and he was no longer able to pay the amounts they were asking for. [the wife’s father’s] business was bigger and therefore the expectations and the financial demands from various authorities were extremely big.”

111 “All these increasing problems and mainly the gluttony and greediness of the officers, who started literally blackmailing [the wife’s] father and developing psychological pressure upon him resulted in December 2004 in [him] having a fatal heart attack.”

[81] Later in his statement the husband again likens his wife’s situation to that of her father.

[82] In contrast, the husband’s evidence to the Authority was clearly intended to distinguish the wife’s situation from her father. When asked whether or not the wife’s father had to pay bribes, the husband told the Authority that he did not know how big the father’s bribes were but his situation was quite different. When the Authority asked if her father had ever been blackmailed the husband stated:

“He never mentioned to us he was blackmailed and I am sure he didn’t have that problem as we did – didn’t have to pay as high a bribe as we did.”

[83] When reminded of the content of paragraphs 110 and 111 of his statement, the husband’s evidence became vague and he suggested that he did not know the detail of his father-in-law’s problems and that either he may have been confused about who his father-in-law had to pay bribes to or there may have been some confusion in the recording of the evidence about who the bribes were being paid to. The Authority is not persuaded by the husband’s explanation and finds that his evidence to the Authority cannot be sensibly reconciled with his earlier confirmation of claim form, statement and evidence to the RSB.

[84] Stepping back from the detail of the evidence about which particular government officer or agent was bribing the wife’s father, the Authority is in no doubt that the fundamental nature of the evidence about the wife’s father has changed so markedly that it cannot be relied upon.

[85] The same change in emphasis can be seen in relation to evidence about the experiences of other business operators. For example, when the wife was asked in her RSB interview “Do you know anyone else apart from your father [who has suffered police mistreatment]?”, she is recorded as stating:

“From the account of other transport and similar companies I know these things were common – when it comes to corruption, extortion, blackmailing”. [p65]

[86] Again, this evidence changed during the Authority hearing, when both the husband and wife asserted that they were singled out for negative attention which was significantly different in nature and extent from all other business operators. As above, the evolving nature of the evidence leads the Authority to conclude that it cannot be relied upon.

COMPANIES REGISTER AND TRADE REGISTER RECORDS FROM SLOVAKIA

ABC Company – dates of operation

[87] During the hearing, the wife produced a copy of an entry in the Slovakian Trade Register (accessed at <www.zrsr.sk>) relating to ABC Company. These documents corroborated the wife’s account to the extent that she is recorded as operating ABC company as, among other things, a transport brokerage and the address accords with that provided by the appellants as their home and office

location. The register entry also confirms the wife's evidence in regards to the identification number (IČO) assigned to ABC Company. However, the register entry indicates that ABC Company's trade validation was from 2001 to 2003 which contrasts with the wife's evidence that she continued to operate the company until late 2005. The wife was unable to explain why the register might be inaccurate and simply asserted that her previous evidence was correct. Given the other credibility concerns detailed in this decision, and in the absence of other documentary evidence corroborating the wife's assertion, the Authority prefers the view that the register records represent a true record of ABC Company's trade validation dates.

XYZ Company and the husband

[88] Prior to the Authority hearing, the husband claimed to have been employed in his technical capacity until 2001 at which time he started working with the wife in ABC Company. When the Authority asked the husband whether he had had any private business interests, he stated unequivocally that he had never participated in any private business in Slovakia at any time.

[89] Contradicting the husband's evidence, the Authority located an entry in the Slovakian Companies' Register (accessed at www.orsr.sk) which contained the husband's name, address and telephone number and listed him as a joint shareholder of XYZ Company with another individual, Mr AA. The Authority was initially alerted to the husband's interest in XYZ Company because his name was given in an internet business directory as the contact for the company. The business directory also contained a phone number, which he gave earlier in the hearing as the contact number for the ABC Company.

[90] When asked to account for the information indicating he had been involved in XYZ Company, the husband maintained his evidence that he had never owned, operated or been a shareholder in a business in Slovakia. He denied knowing anything about XYZ Company, although after some reflection he suggested that it might be the name of a transport company he had heard of. When pressed as to why such an entry in the Companies' Register would exist, the husband suggested that perhaps it was related in some way to the police harassment and the person listed as a joint director and shareholder of the company was one of the policemen involved in taking over the wife's company.

[91] The wife also denied any knowledge of XYZ Company and could not advance any further explanation of why such a register entry would exist.

[92] Throughout the remainder of the hearing, and as part of post-hearing submissions, further detailed information in relation to the registers, and the information contained therein, has been submitted. The husband and counsel have both made a range of assertions about the Companies' Register and the Trade Register in support of their contention that the information therein is not accurate and cannot be relied upon.

[93] The main submissions are summarised below in italics, following which the Authorities response is recorded.

- (a) *The Trade Register does not include the husband's name in its internet entry relating to XYZ Company and that where "[XYZ Company] is entered as a search word under "Business Subject", the search results confirm that [the husband's] name is not contained anywhere in the list of directors or owners of the business" (submissions 30 November 2006). On the basis of these search results, counsel submits that the lack of results contradicted the information in the Commercial Register (referred to in this decision as the Companies' Register), which indicated that the husband was a shareholder of XYZ Company. He further submits that "[t]he inexorable conclusion arising from this evidence is that the [Companies] Register information must be incorrect." The husband makes similar assertions.*
- (b) The Authority does not accept the assertions made by either counsel or the husband that, because different information is contained in the two registers, the Companies' Register information is incorrect. As already noted by the Authority in its letter of 27 April 2007, there is no inherent contradiction in the two sets of information. The Companies' Register contains, *inter alia*, information relating to the establishment and constitution of XYZ Company and this information is summarised in the internet entry. By contrast, the Trade Register records, *inter alia*, the natural or legal person (ie business entity or company) applying for a trade license and, in the case of a legal person, the statutory body (*statutárny* organ) of the company to whom the license is issued. Therefore, in the case of XYZ Company, the legal person who has applied for the trade license is XYZ Company and that is why the relevant record is searchable by any one of business name, municipality, street, address of workroom or

IČO number rather than the names of individual shareholders. For the same reason, a search of Mr AA's name does not provide any results which link him with XYZ Company either, even though his name is listed in the Trade Register entry as the statutory body.

- (c) The fact that the husband's name is not included in the Trade Register entry is explained by the fact that he is not listed as the "statutory body" of the company (as identified by reference to the Companies' Register) and it is the statutory body *only* whose name is listed in the Trade Register internet entry. This is confirmed by the translated excerpt of the trade license application form provided by the appellants (under cover of a letter dated 23 May 2007) which only requires details of the statutory body to be filled out. Therefore, in the case of XYZ Company, it is Mr AA who is named in both the Companies' and Trade Registers as the statutory body. There is no requirement for the husband to be listed in the Trade Register and, as a corollary, there is nothing contradictory in the fact that he does not appear in the Trade Register entry.
- (d) Furthermore, the fact that documents including details of the company shareholders need to be produced for the application of a trade license does not, as the husband and counsel suggested, lead to the conclusion that all that information would then be recorded in the internet entry of the Trade Register (husband's statement under cover of a letter 15 May 2007 and counsel's Final Submissions, para [4.4]). If that were so, the Articles of Association, specimen signatures and other required documents would all be available online. They are not and this is clearly because the internet register entry represents a summary of the information relevant to that particular register.
- (e) *Much was made by the husband of the fact that the trade license process was of great importance in establishing a business and required detailed applications and submission of documents.*
- (f) The Authority takes no issue with those assertions and a full reading of the relevant Trades Licencing Act (No.455/1991 Coll. Of October 2, 1991) confirms the significant detail required. None of that however rebuts the finding above that there is no contradiction between the information in the two internet register entries with regard to XYZ Company.

- (g) *The husband has also relied on a search of the postal codes on the Slovakian Postal Service site to suggest that because the “Registered seat” address (which appears to be a street or building address) given for the XYZ Company did not return a postal code, the address does not exist and “thus can’t be the seat of the company [XYZ Company]”.*
- (h) The Authority observes that a search of the village X into the postal code search reveals the postal code which features in the address of XYZ Company. The Authority also observes that if the street address of the appellants’ home and the registered office of ABC Company are entered into the same search facility, they do not return a valid postal code either. This simply suggests that village X as a whole shares the same postal code and that individual streets in village X are not coded separately. The Authority therefore finds that this submission can not be given any weight.
- (i) *The husband asserts, as does counsel, that the Companies’ Register has been fraudulently manipulated to include the husband’s name. Counsel has submitted that this is related to the claim that “the Slovakian police must have deliberately manipulated the system in order to take over [the wife’s] business....”*
- (j) The Authority is unable to accept these submissions. First, no sensible explanation has been given as to who would perpetrate such a fraudulent manipulation and why they would do so. On its face, it is counter-intuitive to suggest that, in order to harass someone, their name would be *added* to company records and they would be recorded as equity shareholders in a company to which they had not contributed capital. Second, there is no discernible link between the claimed problems with ABC Company and the husband’s registered interest in XYZ Company. Third, the dates in the relevant register entries relating to XYZ Company all pre-date the escalation of problems claimed by the appellants in 2005, which reinforces the Authority’s view that the two issues are not linked. There is simply no basis on which the Authority is prepared to find in accordance with the submissions.

[94] In conclusion, the Authority finds that there is no inherent contradiction between the two registers and, in fact, the Trade Register contains a direct link to the online Companies’ Register, which entry lists the husband as a shareholder of

the company. The two registers are separate in purpose and content but linked in terms of providing official information about XYZ Company.

[95] The other aspect of the husband's involvement with XYZ Company which has remained unexplained is that he is listed in conjunction with the company as being in debt to the government for the non-payment of social security insurance of approximately NZ\$10,000 (accessed online at <<http://www.socpoist.sk>>). In the absence of any sensible explanation as to why such a listing exists, the Authority finds that it is further evidence that the husband was involved with XYZ Company.

[96] For the sake of completeness, the Authority notes that whether or not the husband was shareholder in a business which is not the focus of this refugee claim is, to some extent, a peripheral issue. If the appellants' account was credible in all other respects, the Authority's findings about XYZ Company would present a troubling but possibly not determinative issue with regard to the refugee claim as a whole. However, even in the absence of findings about XYZ Company, the Authority is in no doubt that the refugee claim advanced by the appellants is not credible. In the circumstances, the concerns with regard to XYZ Company have been discussed to further illustrate that the appellants have not given an accurate account of their life in Slovakia and to ensure that the Authority has responded to counsel's and the husband's detailed submissions on the point.

Emails and letter received before and during the Authority hearing

[97] The appellants have submitted several emails and correspondence from friends (including ex-employees) and the wife's brother. The overwhelming impression created by this correspondence is that it is contrived and self-serving and was written to be read by third parties for the purpose of bolstering the appellants' fabricated claims.

[98] For example, one email from a former driver of ABC Company recited detailed facts about the appellants' lives which were superfluous and contrived, given he was writing to the people who had experienced the difficulties first-hand. Conversely, he omitted important details about who had allegedly taken over ABC Company, despite claiming to have worked for the new owners for some time.

[99] The two emails from a former office worker of ABC Company were also inherently contradictory. In the first email, the ex-worker stated that she was writing "...because I wanted to write a few words and say [h]i to you." Later in the

email however, the writer stated that she was so terrified of being found to have contact with the appellants that she had opened a special email account specifically to write the email and would be closing the account as soon as she had sent it. It strikes the Authority as implausible that the writer would bother to write “a few words and to say hi to you” when she was so anxious about the contact. Furthermore, the husband did receive further correspondence from the writer from the same email account some weeks later, indicating that her claim to be so scared that she opened the account for sending one email only was untrue. Also surprising, is the fact that after the appellants left Slovakia, the writer “stayed with the [ABC Company] for some time”. Despite this, her email did not contain any useful detail about where the company had moved to, who had taken over, or how the claimed illegal takeover had been effected.

[100] The Authority finds that all of these factors, in concert with the other credibility concerns in respect of the claim, undermine the genuineness of the submitted correspondence. It is given no weight. It follows that the Authority also rejects counsel’s submission (Further Memorandum of Counsel, dated 29 November 2006, paragraph [8.5]) that the appellants’ claims have been corroborated by the written evidence of others.

Counsel’s submissions

[101] In closing oral submissions and in written submissions (dated 29 November 2006), counsel has made various submissions with regard to the credibility of both the husband and the wife and their refugee claim. Some of these have already been addressed in the credibility section above. His other submissions assert that the totality of the evidence given by the appellants was consistent; that the discrepancies and other concerns noted by the Authority do not go to the core of the claim; and that the demeanour of each of the husband and wife was impressive. The Authority is also reminded that it must be “sure that the evidence given by these appellants is untrue before it can reject the accounts” (ibid [8.7]).

[102] The Authority rejects counsel’s submissions and has no doubt that the appellants’ account is untrue for the reasons given above. The credibility concerns do go to the core of the appellants’ claim and leave no credible basis for the finding of a genuine refugee claim. The Authority also notes that the demeanour of the husband and wife was not impressive. Both of them became vague and sometimes mobile when pressed for detail outside of the learned

account and, at times, presented mobile evidence in the face of credibility concerns.

[103] The Authority also notes counsel's submission that the wife's poor psychological condition during the last year of her residence in Slovakia may have contributed to inconsistencies and vagueness on her part. While the Authority accepts the evidence that the wife was depressed and on medication at that time, and has considered her evidence with that circumstance in mind, it also notes that there has been no medical evidence submitted to support the assertion that her condition or medication would have had a particular adverse affect on her memory. For that reason, the Authority is limited in the weight it can give to counsel's assertion. Furthermore, many of the inconsistencies in her evidence are inconsistencies which arise between her RSB and Authority evidence and therefore cannot be explained by her psychological condition in Slovakia.

[104] Finally, the Authority notes counsel's submission that the evidence given by the appellants was "consistent with country information documenting widespread societal discrimination and abuses against Roma within the Slovak Republic". The Authority does not dispute the country information but notes that it is of limited relevance in the present case. The husband came from a middle-class family with two working professional parents. The husband also had tertiary training and although he was twice made redundant, he always found professional work relatively easily until he went to work for ABC Company. He suffered some discrimination in the form of verbal abuse and discrimination on the street or in restaurants or clubs and at the local church. However, he did not have difficulties accessing housing, medical care or other social services. If anything, his life experience in Slovakia appears to be marked by high achievement relative to many other Roma. That is not to say his treatment as a Roma has been without difficulty but his experience certainly falls well short of the sustained or systemic breaches of core human rights that constitute "being persecuted" for the purpose of the Refugee Convention: *Refugee Appeal No 2039* (12 February 1996) and *Refugee Appeal No 74665/03* [2005] NZAR 60.

Conclusion on credibility

[105] Considered cumulatively, the above concerns cause the Authority to find that the appellants' claims to refugee status are not truthful. While the Authority accepts the wife's evidence that she operated a transport business for a period,

the remainder of her claims are rejected. There is no credible basis on which the Authority can make any finding that any of the appellants have a well-founded fear of being persecuted should they return to Slovakia.

CONCLUSION

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

.....
B A Dingle
Member