REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 71193/98

AT AUCKLAND

Before:	C Parker (Chairperson) C M Treadwell (Member)
Counsel for Appellant:	John McBride (Shieff Angland)
Date of Hearing:	1 and 5 March 1999
Date of Decision:	9 September 1999

DECISION

This is an appeal against the decision of the Refugee Status Branch (RSB) of the New Zealand Immigration Service declining the grant of refugee status to the appellant, a national of the Czech Republic.

THE APPELLANT'S CASE

The appellant arrived in New Zealand on 17 September 1998 with his wife and two children, LIZ and RZ, whose dates of birth are 30 May 1988 and 25 May 1991 respectively. The appellant is an ethnic Rom but his wife is an ethnic Czech and his children are, therefore, mixed race. All are nationals of the Czech Republic.

The appellant was born in P, the Czech Republic and his relatives (his mother, two sisters and a brother) all still reside there. The appellant attended school in the nearby village of R and, although he enjoyed school, he experienced some difficulties in that he felt that teachers did not like him and he was called “gypsy” by other school children. Of the 200 pupils at the school, approximately 25 percent of them were Roma. As the appellant got older these problems increased and

sometimes the Czech schoolchildren fought with the Roma and several times the appellant was beaten. Eventually the appellant did not want to go to school any more but could not stop because his parents would not have allowed this.

In his last year at school, the appellant applied to be accepted on a veterinary technician course which involved four years of study following which, students were awarded a diploma. However, the appellant was refused entry to this course and was instead offered a place on a three year course which led to the grant of a certificate and qualified students to undertake the repair of agricultural equipment. Although he was only 15 years old at the time, the appellant asked the authorities why he had been denied a place on the veterinary technician course and was told that they "did not want any gypsies on that course" and that he would not be able to manage. As far as the appellant understood, there was some form of internal assessment of academic achievement conducted by students' high schools prior to acceptance into tertiary courses. The appellant did not know how he had fared in such an assessment, but stated that he was always in the top half of the class and believed that because he had liked animals, ever since he was a child, he should have been accepted on the veterinary technician course. However, the appellant instead studied the repair of agricultural machinery and was awarded a certificate at the end of that course.

EXPERIENCES IN THE WORKPLACE

After leaving college, the appellant was bonded to an agricultural company who had sponsored his studies and, during the next three years, he worked for them and also completed his military service. During these years, the appellant felt that he was not treated as well as ethnic Czechs and, during military service, he was sometimes called bad names but otherwise experienced no other problems. The appellant said that there was a general atmosphere of anti-Roma discrimination and felt he often ran the risk of, for example, being thrown out of a shop.

In 1972, the appellant began work for V company and in 1974 he was promoted to the position of foreman, having passed an examination. The appellant was responsible for workers on his shift, which ran from 6am to 6pm. The appellant felt that he was resented following his promotion and that workers could not accept having a Rom as a foreman. He felt that his plans and instructions in the workplace were continually being sabotaged and undermined. When he complained to management about his treatment, the appellant was told that he

should be glad to have his position and would simply have to manage any difficulties that arose by himself.

The appellant originally had two Roma workers on his shift but they left because whenever anything went wrong or any property was lost or stolen, they would be questioned and held responsible. They felt that they could not take any more of this, and so left, saying they would prefer to work as labourers than continue working for that company.

The appellant experienced ongoing discrimination whilst working for V company, which included being called names. Workers would sometimes spit in his lunch. The appellant was also prevented from joining day trips for workers. He understood that there were several trips to Slovakia or to other countries but whenever the appellant asked about these, he was told that it was "too late" or that there was no trip being organised (although he knew that there was). The appellant knew that he was not wanted and stated, somewhat cynically, that sometimes he had to laugh about these matters.

On an occasion in 1986, the appellant was accused of having stolen some medical alcohol from his workplace. Although there were other employees who could equally have been responsible, only the appellant was arrested in connection with this matter. He was kept for two days in the police station and subjected to physical and verbal abuse. Several weeks later, the alcohol was found in another department at the factory, but nobody apologised to the appellant for the wrongful arrest and mistreatment.

In any event, after he had been a foreman for some 10 years, the appellant was demoted. According to management, there had been too many complaints about him and they claimed that he was not mature enough to continue in that position. The appellant stated that he had been approached on a number of occasions regarding complaints that he could not organise his work and that others had to finish his work but he claimed there was no substance to any of these complaints and they had been made with the intention of undermining his position.

Following his demotion, the appellant worked moving goods trains. He enjoyed this work and did not particularly mind being a worker again. His salary dropped by approximately 100-200 Czech Crowns (NZ$10-20) per month but according to

the appellant, although the drop in salary was “unpleasant”, it was manageable because he and his wife were both working.

In 1991, the appellant was injured at work. In the process of disconnecting two wagons, the wagons moved suddenly apart and the handle, intended to help workers to alight from the wagons, broke. The appellant hit his head and was dragged under the wagon for about 15 metres. He was taken to hospital and sustained two dislocated vertebrae and three fingers on his left hand were injured. The appellant’s branch manager visited him in hospital and asked the appellant to sign a form, admitting that he had been responsible for the accident. The appellant did not believe that the accident and had been his fault and, further, knew that if he signed the form, he would only be eligible for fifty per cent of the possible compensation that he might be awarded. However, the Branch Manager told the appellant that unless he signed the form he would not be reinstated, and the appellant signed.

The appellant spent the next nine months rehabilitating from this accident and, by the end of that period, he was able to move one of his injured fingers but is still unable to move the other two fingers properly. The appellant believed that the treatment he received whilst in hospital was somewhat inferior to that received by other patients, on account of his ethnicity. The appellant felt that the doctors did not take any great interest in him and that he could have been out of hospital within a week if his wounds had been cleaned and treated properly. Instead of this, he was kept in hospital for 14 days.

The appellant applied for reinstatement within one year of his accident, to which he was entitled under Czech law, but was offered a position painting fences and performing other light duties which only paid about 1200 Czech Crowns per month. The appellant stated that normally retired people do this work and are only able to do so because they also receive a government pension. The appellant complained about this but his employer stated that he could not offer the appellant any other work at that time, and thanked him for his work over the previous 20 years. The appellant received no termination payment or other compensation. The appellant did not complain about his treatment by his former employer, as he had become demoralised and felt that whenever he complained, nobody listened.

The appellant was then unemployed for approximately two years and applied unsuccessfully for approximately fifty positions. On four or five occasions the

appellant was told that he would not fit in with the other workers because he was "a gypsy" and several times he was told that the injury to his hand would prevent him from doing the work. Although prospective employers only told the appellant, on a handful of occasions, that his ethnicity prevented his appointment, the appellant believed that this was, in fact, the reason for him being refused employment on many other occasions. Although the unemployment rate was quite high at that time, the appellant believed that he would have been able to find work if he had been Czech.

The appellant and his family survived during this period as the appellant was able to obtain unemployment benefit of approximately 1550 Crowns per month and the appellant's wife was working in a laboratory at this time, earning 6-700 Czech Crowns per month, until she was made redundant. The appellant and his family were permitted to remain in accommodation provided by V company, notwithstanding the appellant's dismissal in 1991, as they had already resided in the accommodation for more than ten years by that stage and it was the practice to allow such long-term tenants to remain.

THE FAMILY BUSINESSES

In May 1994, the appellant and his wife decided, due to the difficulties they were having in finding employment, to open a restaurant, and leased a restaurant in the town of K, East Bohemia, a holiday location. The appellant and his wife also wanted to move away from P so that their children could live in a healthy environment and could be free from violence and discrimination. In order to encourage business when he first opened the restaurant, the appellant's prices for beverages were slightly cheaper. However, his food was more expensive than that of other restaurants in the town. After several weeks, the appellant received an anonymous letter threatening that, if he did not raise his prices, his restaurant would be burned down. The appellant went to the police but was warned that, as a Rom, he "could not do as he pleased". The police said that they did not like "gypsies" and the appellant was lucky that he had not had his face bashed up. When the police said this the appellant understood that he was being threatened by the police.

About a week after this, the appellant heard a noise in the night and went downstairs to find the door and some windows broken. He called the police, who arrived the following morning and told the appellant that he should be happy to be

alive. The appellant raised his beverage prices but, after this, the eighty seat restaurant which had previously been full and popular was patronised by only about twenty customers each night.

The appellant never found out who was responsible for the anonymous letter or the damage to his restaurant. One of the customers at the restaurant was described by the appellant as a “trouble maker” and the appellant suspected that he may have been responsible but he could not be sure of this. The appellant did not believe that he would have experienced such difficulties had he been Czech. The police took a statement from the appellant concerning the break-in and inspected the premises. At a later date, they returned saying they had been unable to find the culprit

The appellant and his wife decided to close the restaurant and returned to their apartment in P on 16 November 1994. Upon their return, they discovered that there was a restaurant in nearby R which was for lease and the appellant and his wife decided to take on the business. The appellant and his wife had gone to K with less than 9,000 Czech Crowns and had returned with approximately 60,000 and were able to use this money to start their new business which they opened on 1 December 1994. The appellant and his wife were keen to continue in the restaurant business as they had obtained a restaurant licence for which they had to pay and had also completed a three month course. The restaurant seated a hundred people and at the beginning, it was successful as there were some engineers on contract who regularly ate there but they were sacked from their positions and the appellant was then dependent on local people for business and they tended not to eat there. The appellant and his wife ran this restaurant for three years and during this period, encountered a number of problems as a result of their racial background. According to the appellant, not one day passed without racial insults being made and this could occur between two and ten times a day. The appellant would be asked if he had washed his hands, whether he could count and was called a ‘black’. The appellant’s wife also received racial insults and was asked why she had married a gypsy and told that, if she had married a white man, she would be in a better position.

At the end of 1996, the restaurant was broken into and money was stolen from the gambling machines and spirits, cigarettes and sweets stolen. The appellant called the police who arrived and assured the appellant that they would try and find those responsible, although they also asked the appellant what he expected, being a

gypsy. The appellant stated that he wanted to complain about this and other problems he had encountered with the police, but did not believe that the authorities would be sympathetic to such a complaint from a Rom.

The appellant subsequently learned that the robbery had been committed by some 15 year old youths and as a result of the police's failure to pursue the parents of the young people for payment of damages, the appellant was unable (in accordance with the procedure in the Czech Republic) to receive any compensation from his own insurance company. The appellant, although he had no evidence, suspected that the insurance company may have paid the police "pocket money" not to proceed against the young people as this would have been less expensive than settling the appellant's insurance claim. However, he did not know if any such action on the part of the insurance company would have been motivated by economic or racial considerations.

In about March 1998, the appellant was abused by some drunk Roma who abused him because he was married to a Czech. A fight broke out and the appellant was pushed through a glass door, injuring his left hand and right arm, which required 15 stitches. Although there were Czechs in the restaurant at the time, none of them went to the appellant's aid, and when the police arrived, they took the Roma away in a police car. The appellant remained at the restaurant but was bleeding badly and it was only when the customers in the restaurant approached the police, that they agreed to call an ambulance for the appellant. The appellant believed that an ambulance would not have otherwise come to the scene of a 'gypsy fight'. Although the Roma who provoked the fight were prosecuted, the appellant was also prosecuted and fined for failing to keep order in his restaurant. He believes that he would not have been prosecuted had he been a Czech.

At the L restaurant which the appellant ran, apart from five Roma who were his friends, the appellant admitted Roma, but they were only allowed to remain if they caused no trouble and if they started trouble they would be made to leave and prohibited from returning. The appellant explained that he operated this "colour bar" as he believed that he had to choose whether to serve either Roma or Czechs or, in his words, "black or white and I wanted to let white". The appellant believed that, if the restaurant was frequented by Roma, Czechs would not go there. The appellant further explained that he had invested his money in the restaurant and if anything was damaged, he would have to pay for it. According to the appellant, his policy on Roma did not cause problems for him within the local Roma

community because once he explained to them why they were discouraged from patronising his restaurant, they generally understood. The appellant's approach to dealing with his own ethnic background was to try and merge with Czechs and to try and be the same as them. Although the appellant was aware of Roma who were attempting to foster pride in their ethnic and cultural background, he did not identify with any such group.

The appellant and his wife continued in this business until they left The Czech Republic although they moved to smaller premises in 1997 for about six months. The monthly profit from the business was approximately 6-7000 Czech Crowns and, according to the appellant, this was "just enough" to support the family.

THE APPELLANT'S FAMILY

The appellant first met his wife, LZ, in 1982 and they married on 23 April 1985. The appellant's wife is of Czech ethnicity. When they were first getting to know each other, the appellant and LZ would go out together but were verbally abused on a regular basis (approximately twice a week) and physically abused from time to time. The families of both the appellant and his wife were opposed to the marriage because they were afraid that the couple would encounter problems in the future, particularly once they had children. However the appellant and his wife were in love and once they made it clear that they intended to marry, their respective families resigned themselves to the situation, although they did not attend the wedding.

The appellant and his wife were allocated an apartment by his employer after their marriage and the appellant remained the tenant of this apartment until he left the Czech Republic to come to New Zealand. The appellant stated that it was very rare to find privately rented accommodation and the majority of people in the Czech Republic are allocated either government or company accommodation. He believes that the apartment may now have been taken back by the company because the appellant had not told them that he was leaving the Czech Republic; because there is a housing shortage; and, finally, because the appellant had stopped paying rent. The appellant's apartment was one of five in a single story building and each apartment comprised three rooms, a kitchen and two other rooms. There was no power or central heating when the appellant took over this apartment which was in very poor condition and, according to the appellant was "only for gypsies". The appellant held out little hope of he and his wife being

allocated better accommodation and so he saved money and paid an electrician to reconnect the electricity supply.

There were a number of incidents in the following years which the appellant believed to be racially motivated. The appellant, who loved animals kept chickens, a duck, rabbits, dogs and geese. On one occasion, the appellant returned home and found all his animals dead, their throats having been cut and a racist note left. The police arrived and told the appellant that he should be glad to be alive, but the appellant was very distressed about this matter. On another occasion, the appellant and his wife were in bed and at about midnight they heard a window being broken and heard laughter. Upon inspection, it appeared that a stone had been thrown through the window. The appellant, when he later went to the local shop, had a feeling that people knew what had happened and were pleased about it. On other occasions, the washing of the appellant and his wife was stolen from the washing line and sometimes their clothes were cut into pieces.

One night in 1986, the appellant was attacked and robbed on his way home from work by two men. His bicycle and other belongings were stolen and he was badly beaten. The appellant was treated in hospital and could not work for two weeks. The appellant believes that these incidents were all racially motivated. The appellant did not complain about this matter to the police because he had complained so many times before about similar incidents and received no assistance. The appellant believed that he was not assisted by the police because of his ethnic origins and, had he been Czech, he would have been helped. The appellant had known of only one Rom in his local police force who was an officer when the appellant was about seven years old but all the local Roma were very afraid of him.

One night, when the appellant and his wife were out dancing, they were verbally abused and a fight broke out. The appellant could not remember who struck the first blow but the fight soon spread and the appellant was taken to court and given a six month prison sentence, suspended for two years. Four Czechs gave evidence against the appellant. The appellant said that once he claimed to have been attacked he felt that he had no real chance and that the police would not take his side.

In the mid 1980s the appellant was asked by the police in P to become an informer, as many cars had been stolen and Roma were suspected. The

appellant refused to assist the police and they were very unhappy about this but otherwise took no further action against him.

The appellant's children experienced problems as a result of their ethnic background. LZ was born in 1988 and at the age of six months he began exhibiting signs of asthma. The appellant's wife took the baby to hospital for a full medical check but was accused of making the whole thing up. She was also told that if his father had not been a Rom there would not be any problems with the child. Although the appellant's wife repeatedly took LZ to hospital when he exhibited symptoms of asthma, she was always accused of inventing symptoms and disbelieved. The hospitals repeatedly gave LZ a clean bill of health and the appellant's wife was told that once he got older, he would stop coughing and being breathless. However at the age of six, LZ was finally diagnosed with asthma and sent to a rehabilitation hospital where he stayed for three months. At the age of seven, LZ experienced a bad asthma attack which resulted in him being hospitalised for about fifteen days. The appellant's wife requested formal acknowledgement in P that they had misdiagnosed LZ but they refused to provide this. The appellant's wife believed that he would have been treated differently if he had been Czech. The appellant's wife was subjected to racist remarks by other doctors. On another occasion she was told by a doctor that if she had not married a Rom, the child would not be sick and that Rom belong to a "lower race". The appellant and his wife were forced to buy Ventolin as a treatment for their son's asthma from overseas, because it was not available in the Czech Republic. They spent approximately 500 Czech Crowns every two months just for this, until he reached the age of seven.

LZ started school at the age of six and attended a school at which approximately 25 percent of the pupils were Roma. LZ was a quiet boy who would often come home from school crying, having been attacked by other children because he was Rom. Although, according to the appellant, his son was a good student, he would often be ignored by the teachers. . He did not have the disposition to fight back and after approximately six months, he did not wish to go to school any more.

The appellant and his wife visited the school and complained about what was happening but they were just told that the school could not look after all the children and that the appellant and his wife should look after their own children themselves. They stated that LZ had to manage his problems in class by himself, and LZ's teacher said that when she saw students fighting, she generally turned

away and ignored what was happening. Although the appellant's younger son, RZ, encountered similar problems at school, he had a different personality and was better able to cope with the situation.

On one occasion in about November 1997, RZ and some other Roma friends were attacked by Czech schoolchildren who threw stones at them. RZ sustained a serious injury to his head and suffered headaches for about one month afterwards. He received stitches to his head and the appellant produced a medical certificate, dated 17 December 1998, from Dr T Wansbrough who confirmed the existence of a scar in the right temple region of his head. She stated that the scar was consistent with having been struck by a stone and recorded that the appellant had told her that RZ was struck by a stone at school, thrown in ethnic related fighting.

In May 1998, LZ was sexually assaulted by a man in some woods near to the appellant's home. The appellant reported the matter to the police, who interviewed LZ and subsequently showed him some photographs of potential suspects. LZ was able to identify the person responsible, and he was told by the police not to go out and not to tell anyone he had identified a suspect from the photographs. The person identified by LZ was a Czech and the appellant's wife felt sure that he was never apprehended for racial reasons. The police did not, according to the appellant's wife, provide the necessary safeguards and protection for LZ when he was interviewed by the police. Further, they did not recommend that he see a psychiatrist which meant that he did not get any help to deal with the effects of the assault, which included crying at night, nightmares and being afraid to go out. The appellant's wife telephoned the officer in charge of the case on a weekly basis after the assault but was always told that she should leave the investigations to the police and that they were dealing with the matter. She had the feeling that the police did not like being held to account.

The appellant was attacked on a number of occasions by skinheads.

The appellant acknowledged that laws had been passed to reduce discrimination against Roma, but as far as he could tell, there had been no actual progress or change. In fact, he believed that the anti-discrimination legislation had inflamed public opinion against Roma to a certain extent. The appellant believed that these laws had been introduced in order to improve the image of the Czech Republic in the eyes of the international community.

The appellant and his wife decided to leave the Czech Republic because they wanted a better life, especially for their children, who they wanted to live in an environment of safety and not of fear. The appellant and his wife further referred to the poor economic situation in the Czech Republic. The appellant and his wife sold a property which they had inherited from a grandmother and used those funds to make the trip to New Zealand. They decided to leave in May 1998, at the end of the children's academic year. The appellant and his wife came to New Zealand with the intention of obtaining refugee status. According to the appellant's wife, it was the attack on LZ when he was sexually assaulted that finally convinced them that they must leave the Czech Republic. She said that it was possible to bear discrimination and other mistreatment as an adult but it was unbearable when it happened to a child. The appellant said that if he returned to the Czech Republic, he would not have anywhere to live and would be unemployed. The appellant was especially concerned that his children would not have a good life in the Czech Republic. According to the appellant, there was nowhere in the Czech Republic where Roma could live safely. The appellant described policies of certain political parties which were aimed at building 'ghettos' for Roma so that they would live separate from other Czechs. Although this had not happened, the appellant believed that this was an example of the attitude of many Czechs towards Roma. According to the appellant the police "help one in a hundred gypsies".

The appellant applied for refugee status on 23 September 1998 and a letter dated 19 November 1998 was sent to him by the RSB offering him an interview with them on 25 November 1998. The appellant did not attend that interview and his application was declined by the RSB by letter dated 26 November 1998. It is from this decision that the appellant now appeals. The appellant has subsequently explained his failure to attend the RSB interview. By the time the RSB wrote to the appellant, inviting him for an interview, he had moved from the address he had provided to the RSB but had asked those living at that address to forward his mail. This was not done and he did not learn of the interview date before the decline of his application.

THE ISSUES

The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly 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, is unable or, owing to such fear, is unwilling to return to it."

In terms of Refugee Appeal No. 70074/96 (17 September 1996), the principal issues are:

1. Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?

2. If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Before turning to consider the issues in this case, the Authority must first make an assessment of the appellant's credibility. The Authority accepts in its entirety the accounts of the appellant, and his wife, who corroborated each other's evidence.

Turning now to the issues the Authority notes the decision in Refugee Appeal No. 71253/99 (8 July 1999) which summarises and comments upon country information concerning the treatment of Roma in the Czech Republic in the following terms:

> "The discrimination experienced by Roma in the Czech Republic, particularly since the collapse of the Communist regime in November 1989 is well documented. See Human Rights Watch/Helsinki: Czech Republic, Roma in the Czech Republic, Foreigners in their own Land, Volume 8 No. 11(D) (June 1996) DIRB: Response to Information Request No. CZE26377.EX (21 March 1997). UNHCR: Guidelines Relating to the Eligibility of Czech Roma Asylum Seekers, (10 February 1998). United States Department of State Country Reports on Human Rights Practices for 1997: Czech Republic 1058 (March 1998) and also for 1998 (April 1999), page 1226.
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> In summary there can be no doubt that Roma in the Czech Republic are subject to widespread discrimination in such areas as education, housing and employment while anti-Roma prejudice is widespread throughout Czech society. Racial insults and violence towards Roma by skinheads and other disaffected elements are particularly nasty manifestations of an historically entrenched prejudice which receives encouragement from extremist political groups such as the Republican Party under its leader Miroslav Sládek. Roma regularly complain of the absence of effective protection particularly from the police and other local authorities....
>
> The appellants' experiences in this regard are confirmed by the United States Department of State Country Report on Human Rights Practices (April 1999) at page 1231 - 1236. Section 5 details extensively with the position of Roma and highlights that efforts by NGO's, individuals and the Federal authorities to improve conditions for Roma have had only minimal impact due to the attitudes or intransigence of local authorities who continue to remain impervious to change.

> One of the more notorious examples of current local authority attitudes to Roma, which received international condemnation, occurred in the city of Usti Nad Lamben, where city authorities in May 1998 announced their intention to construct a 15-foot high wall to separate a primarily Roma apartment complex from other neighbours. This step was said "to be necessary to separate 'decent people' from the 'problematic community'". The Report refers to various successful convictions for racially motivated crime during 1998, although notes that in a number of cases involving the killing of Roma, prosecutors failed to attribute racial motivation to the crime, or sentences imposed were surprisingly light. Tension between Roma and law enforcement personnel during 1998 are reported to have escalated to the point where there were a number of Romany instigated assaults on local police officers, in one case resulting in several Roma being arrested and charged with racially motivated crime."

This panel of the Authority finds that this summary accords with the country information which resulted from our own research and with the copious and helpful country information submitted by Counsel. However, as the Authority stated in Refugee Appeal No. 71253/99 (8 July 1999):

> "Discrimination, even if widespread in a society, does not necessarily constitute persecution. It is therefore important in an assessment of any claim based on general social discrimination to focus on the nature of the rights and freedoms threatened or denied and/or the cumulative effect on the individuals concerned."

As far as this appeal is concerned, the Authority finds that the treatment to which the appellant and his family were subjected was not as serious as that experienced by the appellant in Refugee Appeal No. 71253/99 (8 July 1999). However, the appellant and his wife were subjected to treatment which, when considered cumulatively is found to amount to persecution. The Authority notes that the appellant experienced discrimination as a result of his own ethnic background but further that he (and his wife and children) also suffered discrimination as a result his mixed race marriage. The appellant's family were, therefore, due to this additional element of mixed race marriage, subjected to serious discrimination, over and above that experienced by most Roma.

The Authority has paid particular regard to the state of mind of the appellant and his wife, each of whom presented to the Authority as drawn and emotionally stressed. It might be that in another case of similar discriminatory practice against Roma, the Authority would find differently. Here, however, the profound effect of the appellants long experience of involuntary abasement was plainly visible to the Authority and due weight has been given to it. Past persecution is, of course, not a basis for the granting of refugee status (see Refugee Appeal No.70366/96 (22 September 1997)) The task of the Authority is to make prospective assessment of whether the appellant will be persecuted in the future, if he returns.

There is no indication, in the information we have sighted, that country conditions for Roma in the Czech Republic are likely to improve in the near future and the Authority finds that, if the appellant were to return, there is a real chance that he and his family would continue to experience discrimination (which had built cumulatively to the level of persecution). It is clear that, in the past, the appellant and his family have not been able to access meaningful state protection and they must be given the benefit of the doubt that it would not be available to them in the future. However, in reaching this finding the Authority notes that the appellant's circumstances were on the borderline between discrimination and persecution and it is only by considering the discrimination cumulatively and by a generous application of the benefit of the doubt that the Authority finds the appellant to have a well-founded fear of persecution.

Issue one is therefore answered in the positive. As to the second issue, the Authority finds that the appellant would be at risk of persecution by reason of his race.

CONCLUSION

For the above reasons, the Authority finds that the appellant is a refugee within the meaning of Article 1A(2) of the refugee convention. Refugee status is granted. The appeal is allowed.

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Member