

REFUGEE STATUS APPEALS AUTHORITY
NEW ZEALAND

REFUGEE APPEAL NO. 74754

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AT AUCKLAND

<u>Before:</u>	D J Plunkett (Chairperson) K Hastie (Member) B Burson (Member)
<u>Counsel for Appellant:</u>	Ms Hindman
<u>Appearing for NZIS:</u>	No Appearance
<u>Date of Hearing:</u>	15 and 16 October 2003
<u>Date of Decision:</u>	7 January 2004

DECISION DELIVERED BY B BURSON

[1] This is an appeal against a decision of a Refugee Status Officer of the Refugee Status Branch (RSB) of the New Zealand Immigration Service (NZIS) declining the grant of refugee status to the appellant.

INTRODUCTION

[2] This is a combined appeal by two Hungarian nationals who, for the purposes of this decision, will hereinafter be referred to as “the husband” and “the wife” respectively.

[3] The husband is 19 years of age, the wife is 18. Both are of Roma ethnicity. The appellants arrived in New Zealand together on 23 August 2002 and each completed a confirmation of claim to refugee status on 26 August 2002. They

arrived with the husband's immediate family.

[4] Both were separately interviewed by a Refugee Status Officer in November 2002. A second interview was conducted for each by another officer on 4 March 2003. The appellants responded jointly to the interview summary report on 2 May 2003 enclosing various items and country information in support of their claims. Their respective claims were rejected by decision dated 8 June 2003. Each separately appealed to this Authority in respect of those decisions.

[5] As the factual basis for their claims raise substantially the same issues and having regard to their marital relationship, a combined decision will accordingly be issued for each appeal. The appeals (numbered 74750, 74751, and 74752) of the husband's family were heard with these appeals but a separate decision has been issued. Counsel, who is representing all five appellants, confirmed that no confidentiality issues arise between these appellants or the husband's family.

THE APPELLANTS' CLAIMS

[6] The following is a summary of the evidence of each of the appellants as relates to incidents particular to that individual. Thereafter will follow an assessment of their evidence.

Events Particular to the Husband

[7] The husband was born in M in 1984 and began attending general school in E in 1990. He attended this school for five years after which he completed the remainder of his general education at a school in M.

[8] At both schools the husband suffered discrimination and harassment at the hands of both teachers and fellow students because of his Roma ethnicity. He was placed in a segregated class, although at the school in M, he was in a mixed class for the initial six months. He was teased on a daily basis by students and teachers. He was discriminated against in the marking of his work. Further, he was excluded from participating in school activities and excursions because of his ethnicity. On some occasions, incidents of harassment from other students would

escalate into physical fights. Despite being a victim, he always got the blame from the teachers.

[9] On one occasion, while at school in M, he gave his teacher flowers to celebrate National Ladies Day. She rejected his offering saying in front of the class she did not want to receive flowers from a gypsy. The husband felt very humiliated and hurt.

[10] While at school in E, his parents complained to the teacher about his treatment. They were told that if they did not like it, to take him out of school. This they did and his experiences in part prompted the entire family to move to M. When the husband reported similar treatment at school in M, his parents said there was nothing that could be done. Despite all of this, the husband nevertheless completed his general schooling, gaining the general school certificate in 1999.

[11] In 2000, the husband enrolled in a night course in a technical college in B. He would travel to and from his home to the school to collect his homework and assignments. The fees amounted to 31,000 *florints* in total and were paid by his father. The husband experienced no problems at this school and completed the course in 2002 obtaining grade four – the equivalent to a grade of “very good”.

[12] After completing his course, he tried to obtain employment in his trade without success. He was told either there was no vacancy or there was no work for gypsies. He did however manage to obtain employment from time to time with a white Hungarian called J doing various menial jobs. There was no set pattern to his employment. The work paid him enough money to cover his living expenses. In addition he remained living at home with his parents from whom he received pocket money from time to time in such amounts as they were able to afford.

[13] Since leaving school, he has experienced discrimination and harassment at the hands of the police, skinhead gangs and the general Hungarian population. As regards the police he was often stopped and asked for his identity papers. On one such occasion, in April 2001, after producing his papers upon demand by police, one of policeman swore at him and his friends. The officer grabbed his truncheon in a deliberate provocation designed to create an opportunity to assault them.

They did not take the bait however and the police left. This was the only occasion where he was racially abused by the police.

[14] The first time the husband was the target of skinhead violence occurred in spring 2001. While walking with friends, they encountered a skinhead gang carrying bike chains. Words were exchanged and they had to run away to avoid being harmed. They reported it the next day to the police giving a general description of their attackers but could not identify any distinguishing features. The police took statements. The husband heard nothing further and believes they did not take the complaint very seriously.

[15] The next incident occurred in 2002. While travelling to his trade school on a tram, two skinheads racially abused him and told him he was going to die. He believed he was going to be thrown off the tram. Fortunately the tram was nearing a station and he managed to escape without harm. He reported this incident to the police and gave a description of the two skinheads who were involved. One of them had a red scar on his forehead which he would recognise but could give no other distinguishing features. A statement was taken but no further action occurred to his knowledge.

[16] In mid 2002, he and his friends encountered the same gang who had previously threatened them. Noticing the gang appeared very agitated they simply ran away to avoid any confrontation. This was not reported to the police.

[17] The husband also experienced discrimination when trying to obtain entry to places of entertainment. On a number of occasions he and his friends were refused entry, being told by the doorman to go and mix with their own kind. As a result they only went to bars and events that were organised by the local Roma community and then only on very few occasions. He was generally subjected to racial prejudice and comments being made as he walked down the street going about his every day business.

[18] The taunts and discrimination the husband suffered had an adverse affect on his health while he was younger. He developed particular medical problems requiring him to be seen by the local doctor who in turn referred him on for psychiatric counselling. His condition was attributed to the stress and tension he

was suffering because of his experiences at school. He grew out of the condition in his early teens.

Events Particular to the Wife

[19] The wife was born in K in 1984. She began attending general school in S in 1991. This school consisted of eight years general education. She was placed into a segregated class for Roma.

[20] The wife suffered discrimination from both the teachers and fellow students. The students would not play with her and called her bad names because of her ethnicity. She very much felt isolated from the other students. The teachers also were not very helpful. Unlike Hungarian students, the teachers would not give the Roma children one on one education. As a result she felt her grades suffered. She was not given the grades her work or intellect demanded. She was unfairly punished.

[21] She was excluded from all class social activities and sporting activities. The wife was and remains very keen on dancing. She was however excluded from dance lessons and was not throughout the eight years of her schooling able to undertake any dance lessons whatsoever. She did nevertheless finish her schooling in 1999, and obtained the general school certificate.

[22] The wife did however manage to teach herself dancing at home. She has a natural ability in dancing, so much so, that after completing general school, she managed to obtain entry to a trade school with a specialist dance course. It was her ambition to join a professional dance company although she believed that gypsies were not normally employed by such companies. She hoped that her natural ability and desire would see her through. She was the only Roma in her class.

[23] At this school, everything went well initially. Towards the end of the first year however, a boy from S began attending. He let everybody know she was Roma, a fact which had been hitherto been hidden from both the teachers and students. After this became known, there was a fundamental change in the attitude of both the teachers and students towards her. She was shunned by her

Hungarian friends. The teachers turned their back on her. She noticed that her results suddenly became worse and she was not allowed to participate in competitions.

[24] In approximately September 2000, while returning from school, three Hungarian boys from the school stopped her in an underpass. They began interrogating her and pushing her roughly. She was under no doubt their intentions were sinister. She was very frightened and threatened to scream if they did not let her go. Fortunately, an older Roma person walked by and threatened he would call the police. The boys immediately let her go and ran away.

[25] The wife returned home and told her parents what happened. They were very worried about this happening again and therefore resolved to leave Hungary. The incident was not reported to the school or police as they felt it would not achieve anything. The situation for the wife had become so unbearable that she did not return to the course.

[26] In November 2000, the wife left with her family for Canada. The wife and her family members claimed refugee status which was declined. While in Canada, the wife's mother was diagnosed with a possible serious illness. Her parents decided to return home to Hungary for treatment to be pursued and she returned home with them. They all left without pursuing their appeals. On return to Hungary, the mother obtained treatment from the public health sector and was cured.

[27] On returning to Hungary the wife tried to find work but could not get any work because of her ethnicity – being told by way of excuse that there were no positions available at all or that they had just been filled. On one occasion, she then overheard the person who had told her this information giving the same job to another person who was a white Hungarian. She also experienced discrimination from the population when going about her daily business. She would be subjected to racially motivated comments and taunts. This happened about five times in total during June and July 2002.

Submissions and Country Information

[28] By letter dated 9 October 2003, counsel for the appellants filed a very comprehensive memorandum of the same date with the following country information:

- (i) UNHCR Guidelines Relating To The Eligibility Of Czech Roma Asylum Seekers Update December 1999 dated 10 February 2000;
- (ii) Facsimile message dated 4 January 2001 from New Zealand High Commission in London to NZIS enclosing part information supplied by the Immigration And Nationality Directorate of the United Kingdom Home Office regarding Czech Roma;
- (iii) International Helsinki Federation for Human Rights report: Human Rights in the OSCE: Hungary 2003 dated 24 June 2003;
- (iv) European Roma Rights Centre Report Nr 1-2 Will The Groom Adopt The Brides Unwanted Child? The Race Equality Directive, Hungary and Its Roma dated 25 May 2003.
- (v) Ringold, Orenstein, Wilkins: Roma In An Expanding Europe: Breaking the Poverty Cycle World Bank, 2003.

[29] Further at the conclusion of the hearing counsel made oral submissions. Counsel was granted leave to file further evidence relating to the welfare benefits position in Hungary. On 29 October 2003, further documentation was received comprising:

- (a) Internet Report: Organisation for Economic Co-operation and Development Hungary: Overview of the System Unemployment Insurance (undated): extracted from www.oecd.org.
- (b) Copy letter Dr Pintu Ferenc, Director, Office of Hungarians Living Abroad; Legal Administrative and Humanitarian Division, 21 October 2003 to A Hermos with translation.

[30] These documents and the written and oral submissions of counsel have been taken into account in reaching this decision.

THE ISSUES

[31] The Inclusion Clause in Article 1A(2) of the Refugee Convention relevantly provides that a refugee is a person who:-

"... owing to a 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."

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

- (a) Objectively, on the facts as found, is there a real chance of the appellant being persecuted if returned to the country of nationality?
- (b) If the answer is yes, is there a Convention reason for that persecution?

ASSESSMENT OF THE APPELLANT'S CASE

Credibility

[33] The Authority accepts the appellants as being credible. Despite some confusion over dates, the Authority finds that both the appellants were truthful in reliving experiences which were on occasion upsetting to them.

[34] Thus in respect of both appellants, the Authority accepts that they have been discriminated against on account of their being Roma in school, in obtaining of employment, and in the everyday enjoyment of their private lives. The Authority also accepts that the husband has been subjected to attempted attacks by skinhead gangs on three occasions and has been racially abused by the police on

one occasion. The Authority similarly accepts that the wife was assaulted by three Hungarian boys on the underpass on the way home from school. It accepts that no prosecutions have been brought in respect of any of these incidents.

[35] When asked what they fear when returned to Hungary, each of the appellants confirmed their fears that they would be subjected to skinhead attacks and may even be killed. They also fear widespread social discrimination to the point where they would face destitution on return. Each thought that the public pronouncements by the Hungarian Government as to the need for general integration of Roma into Hungarian society, and programmes designed to tackle anti-Roma violence were simply window dressing by the Hungarian Government to secure entry into the European Union.

Social Discrimination and Persecution

[36] Counsel at para 1.5 of the memorandum acknowledges that individually, most of the experiences of the appellants would not be seen as persecutory. However, counsel correctly observes that persecution may arise on a cumulative basis – see *Refugee Appeal No. 71427/99 [2000] NZAR 545,546* and submits that the cumulative experiences of each cross the requisite threshold, to be appropriately categorised as persecution.

[37] Discrimination *per se* does not amount to persecution and will not on its own bring the appellants within the scope of the Refugee Convention – see *Refugee Appeal No. 2039/93 re MN* (12 February 1996). Here, after reviewing earlier jurisprudence of the Authority, it was confirmed:

“New Zealand refugee jurisprudence accepts that refugee law ought to consider itself with actions which deny human dignity in any key way and that the sustained or systemic denial of core human rights is the appropriate standard: Refugee Appeal No. 1039/93 HPS and LBY (13 February 1995) 19-20 ...

While anti-discrimination notions underlie the Convention, it is important to bear in mind that discrimination *per se* is not enough to establish a case for refugee status. A distinction must be drawn between the breach of human rights and persecution, a distinction we have drawn previously in other contexts”.

[38] It is clear that in this case the appellants each have suffered discrimination, while at school. Under the International Bill of Rights, the right to education appears in two places. It is contained firstly in Article 26 of the Universal

Declaration of Human Rights (UDHR) and secondly in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR):

Article 26 UDHR provides:

- “1. Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
2. Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
3. Parents have the prior right to choose the kind of education to give to their children”

Article 13 provides:

- “1. The State Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedom. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship amongst all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.
2. The State Parties to the present Covenant recognise that, with a view to achieving the full realisation of this right;
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education, in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally assessable to all, on the basis of capacity, by every appropriate means, in particular by the progressive introduction by free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and material conditions of teaching staff shall be continuously improved;
3. The State Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose from their children schools, other than those established by public authorities, which conform to such minimum educational standards be laid down or approved by the State and

to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given to such institutions shall conform to such minimum standards as may be laid down by the state”.

[39] It can be seen the right to education is not an absolute or open ended right. While the customary international law status and a consequential binding effect of the UDHR on State Parties is open to some debate, Article 13 of the ICESCR plainly is binding under international law. However it is not immediately so. Rather State Parties are under a positive duty to “progressively” realise the enunciated rights, including the right to education to the maximum of available resources by all appropriate means – Article 2 (1) – see M Craven The International Covenant on Economic Social and Cultural Rights: A Perspective on its Development (1998) at pp 106 and 113-114.

[40] It is important to note that both the UDHR (at Article 2) and the ICESCR (at Article 2(2)) contain anti-discrimination provisions, prohibiting the enjoyment of rights contained therein on the grounds of *inter alia* race, colour, social origin, birth or other status.

[41] However, the right to education under the International Bill of Rights is understood generally to impose no more than a duty to provide compulsory free primary education – see *Refugee Appeal No. 732/92* (5 August 1994). It is thus not immediately obvious that there has been in fact a breach of any positive obligation by the state. Both the husband and the wife received primary education and they were not charged for it. They each obtained their general certificate. The husband received a form of technical education to the point where he received a certificate. The wife was admitted to her dancing course school.

[42] In this case, it is however arguable that due to the discrimination they encountered, their respective education was not directed to the full development of their human personality and their sense of dignity contrary to the goals which both the UDHR at Article 26(2) and the ICESCR at Article 13(1) expressly require education to be directed towards. However, there are two matters to note in relation to such an argument. Firstly, these specific provisions mandating a particular purpose of education can be seen to be aspirational in nature. They do not create any rights as such in contrast to the terms of Art 26 (1) and 13(2). They

represent an end to be achieved by the otherwise enunciated means. Secondly, and more generally, the right to education is a second generation, third level human right in the sense that it is not an absolute human right linked to civil and political status. It does not impose, as stated above, an absolute and immediately binding standard, the breach of which may be a strong indicator of persecutory behaviour – see Hathaway *The Law of Refugee Status* (1993) pp 108-111.

[43] It is however unnecessary to reach any final conclusion on this issue. In so far as their right to education was breached in the past, this discriminatory breach does not *per se* amount to persecution. There is no evidence that serious harm has resulted therefrom. The husband's condition, while distressing for him, was relatively minor and in any event has subsided. It is true that the wife's aspirations to become a dancer have been dashed but this itself does not amount to serious harm for the purpose of the Refugee Convention.

[44] As regards wider socio-economic issues – both have had adequate housing. When the husband had medical and psychiatric problems, he received state supplied medical care. The wife's mother also received such care when she had a possible serious illness. While not being able to find employment in his trade in the short time between his completing his course and leaving for New Zealand, the husband nevertheless found work. As for the wife, her attempts to find work were limited and thus while she encountered discrimination falls short of providing a basis for concluding that she suffered serious harm as a result. As the husband's past experience shows, with perseverance it was possible to obtain some employment.

[45] When the husband reported the attacks to the police, statements were taken. There is no evidence of a blanket refusal to do anything about these incidents. The descriptions that the husband could give of his attackers were of a very general nature and it cannot thus be inferred without more that the reason the husband heard nothing further from the police as regards these incidents was because his ethnicity.

[46] Whilst it is true that the husband has on one occasion been racially abused, by the police, this was a single isolated incident, as was the assault on the wife by the three boys. While this is not determinative of persecution neither incident resulted in serious harm to the appellants.

[47] In light of the above and recalling that persecution requires the existence of both serious harm and the failure of state protection – see *Refugee Appeal No 71427/99 [2000] NZAR 545, 569*, the Authority concludes that neither the husband nor the wife has suffered serious harm as a result of their past experiences of discrimination. The cumulative experiences of the husband and the wife respectively do not amount to persecution for either of them. There is neither “a single act of oppression” nor a “series of co-ordinated acts” that reach the threshold level to constitute persecution – see counsel’s memorandum at para 2.1. They have thus not established that they have experienced past persecution.

Past Persecution Not Determinative of Future Risk

[48] There is of course no requirement in law for either of the appellants, in order to establish a real chance of being persecuted in the future, to show that they have been persecuted in the past – see *Refugee Appeal No. 70366/96 re C* (22 September 1997). Past persecution may however, provide a useful but not determinative indicator of what may await them on return. There is thus necessitated consideration of the chance of the appellants being persecuted now if returned to Hungary. This can only be undertaken by an analysis of recent country information regarding the situation of Hungarian Roma.

The Situation of Hungarian Roma

[49] That the situation of Roma in Hungary remains one of socioeconomic marginalisation is confirmed by country information. Thus, for example, the United States State Department *Country Reports on Human Rights Practices 2002: Hungary* (31 March 2003), referred to by counsel in written argument, notes in its introduction:

“Anti-Semitic and racial discrimination persisted and a number of racially motivated attacks, particularly against Roma, occurred during the year. Societal discrimination against Roma was a serious problem”. (See p 1).

[50] This report details that Roma:

- (i) remain at increased risk of police brutality (section 1c);

- (ii) are subject to discrimination from within the judicial process (section 1e);
- (iii) have suffered arbitrary interference with their privacy and home (section 1f);
- (iv) were subjected to attempted expulsion by some local authorities from some towns (section 2d);
- (v) were commonly victims of police abuse but many were fearful to seek legal remedies or notify Non Governmental Organisations (section 5);
- (vi) were subjected to violent attacks in respect of which police failed to intervene (section 5);
- (vii) faced continuing widespread discrimination in education, housing and access to public institutions such as restaurants and pubs (section 5 at pages 13-17).

[51] Other country information confirms this position. Thus the International Helsinki Federation For Human Rights report Human Rights in the OSCE Region: Hungary 2003 notes:

“Also noted by the European Commission, members of the Roma population – the largest minority group in Hungary with an estimated population of 450,000 – 600,000 persons – have been the primary victims of discrimination in many fields, including healthcare, employment, housing, criminal justice, and especially in the field of education, due to the widespread segregation of Roma students in schools – (see page 8)

[52] The Hungarian Government has however, been taking a more active role than some other countries with Roma populations to address both the existence of prejudice and their relatively poor socio-economic situation. In a study commissioned by the World Bank, Ringold, Orestein and Wilkins *Roma in an Expanding Europe: Breaking the Poverty Cycle* (2003) note:

“Since 1989, more policy and project activity related to Roma has taken place in Hungary than in any other country in Central and Eastern Europe. Considerable research has been conducted; a wide range of Roma-related NGO’s have been set up; and numerous projects and pilot projects have been implemented. Successive governments have played an active role in policy setting. Nevertheless, Roma remained amongst the most marginalised group in Hungary. As chapter two

illustrated, the socioeconomic conditions remain well below the national average. There is still room for improvement in the development of effective policies for Roma and integration into Hungarian society". (At page 92.)

[53] The report goes on to detail

"Successive Hungarian governments have played an active role of policy making in establishing institutions to address minority policies and Roma issues in particular. Perhaps most notably, in 1993, Hungary adopted the Minorities Act which granted considerable cultural, educational and linguistic rights to Hungary's 13 recognised minorities through a system of national and local minority self government (MSG's). This system is unique to Hungary. The country has also established an Office for National and Ethnic Minorities and the Independent Minorities Ombudsman to oversee minority rights and protection. Most recently, following elections in 2002, the government established a new Roma Office under the Office of the Prime Minister, to co-ordinate Roma policy across the government". (At page 94.)

[54] The report, at page 95, goes on to note that the National Office for Ethnic Minorities was one of the first new institutions established in 1990. This office has taken a leading role in developing and overseeing the implementation of the government's medium term package for Roma. The medium term package was first adopted in 1997, seeking to further the social integration of Roma in Hungary through various measures. There have been periodic reviews of this package. In October 2002, 1,317 minority self Governments were established following local elections in Roma settlements, increasing the number overall to 1,811 – see United States State Department *Country Report on Human Rights Practices for 2002: Hungary* (ibid at pp 9-10).

[55] Regarding the existence of such policies and initiatives, counsel correctly submits at para 5.3 of her memorandum, that the fact the Hungarian Government may be willing to deal with racial intolerance is not determinative of the forward looking assessment of risk. Thus a residual inability to protect will, despite any State willingness, nevertheless constitute a failure of state protection for the purposes of the Article 1A (2) analysis – see *Refugee Appeal No. 71427/99* [2000] NZAR 545.

[56] Therefore, that there may exist Governmental willingness as manifested in these policies and programmes is not the determinative factor. The question must always be whether, despite whatever action Government is taking (if any), the individual claimant nevertheless continues to possess a well-founded fear of persecution for a Convention reason.

[57] Turning to this question it is clear that the impact of the Government efforts should not be overstated. Country information suggests they have had a limited effectiveness in terms of achieving their aims of social integration of and reducing levels of discrimination against Roma. Thus, the authors of the World Bank report themselves conclude that barriers remain to the effective functioning of this network of governmental and non governmental entities – see Ringold, Orenstein and Wilkens (ibid at pp109 – 110). Similar observations about uneven and ineffective implementation are made in the Helsinki Federation for Human Rights report (ibid at p 8 – 10). As for police abuse of Roma, counsel correctly acknowledged an improvement over previous years – see para 3.4 of memorandum. The figures quoted at para 3.5 do not relate to police misconduct against the Roma population.

[58] There does however appear to be a real reduction in the level of skinhead violence. The Canadian Research Directorate Immigration and Refugee Board (DIRB) Report: *Roma in Hungary: Views of Several Specialists* (February 1999) notes at section 4:

“All sources agree that skinhead activity has dramatically declined in the last few years; according to information provided to Holtzl, skinhead activity is now approximately two to three percent what it was at the beginning of the 1990s; there are perhaps a few hundred individuals involved in such activity.”

In her closing submission acknowledged that skinhead activity had decreased.

Conclusions on the Chance of Being Persecuted

[59] In light of the above country information, it is accepted that there is, despite all of the policy initiatives and programmes, a real chance the appellants will suffer similar sorts of treatment they have encountered in the past. They may well encounter difficulties in securing employment and suffer harassment, discrimination and verbal abuse from white Hungarians in going about their daily business. There is also the risk they will suffer official discrimination as the country information shows.

[60] The Authority does not accept however, the appellants’ contentions that they will suffer serious harm by being forced to become destitute and starve if returned to Hungary. There is no basis upon which the Authority could conclude that this is anything other than a highly remote or speculative possibility. The

husband has found work in the past. There is no reason to believe a real chance exists that he will not do so in the future. There are extended family members present.

[61] Both appellants stated they would not be eligible for state benefits because, regarding unemployment benefit, they had not worked the requisite period and regarding child support, because their child expected to be born in April 2004, might not be born in Hungary. Given the Authority's finding regarding the husband's employment, whether or not he would obtain the unemployment benefit is not material. In any event, the Authority does not find he would be discriminated against in the receipt of any unemployment benefit. Country information shows that unemployment benefits are available to Roma – see United States State Department *Country Report on Human Rights Practises for 2002: Hungary* (ibid) at page 14; DIRB; *Roma In Hungary: Views Of Several Specialists*(ibid) at section 6.1, 6.4.

[62] Regarding child benefit, the internet report produced by counsel from the organisation for Economic Co-operation and Development at para 6, deals with family benefits and does not show any requirement of birth in Hungary as an eligibility requirement before the wife could receive child support.

[63] Similarly, it remains possible that each of the appellants may be at some risk of assault by skinheads, the police or the sections of Hungarian society, as the problem of anti-Roma violence has not been entirely eradicated. While the chance of this happening cannot be discounted in any absolute sense, anti-Roma violence is at a level where the chance of it occurring is of a random, opportunistic nature. It is an entirely a speculative chance and does not reach the threshold requirement of a real chance.

[64] In both her memorandum and in closing argument Counsel submitted that social discrimination remains. The Authority agrees with counsel. However, the law is clear – the fact that there is a real chance of these appellants facing ongoing social discrimination does not per se amount to persecution. The Authority does not accept that this discrimination will lead to any form of serious harm for these individual appellants. It does not find there is a real chance of persecution arising.

[65] With respect to counsel, whose written and oral presentation of her clients case the Authority found to be of a high standard, the question posed at para 5.6 of the memorandum, as to how much the appellants are required to suffer in order to deserve refugee status is not the question. It is not a matter of deserving refugee status or otherwise. The appellants present as very decent young adults, deserving not to be discriminated against simply by reference to their ethnicity – nobody ever is. That is a fundamental essence of international humanitarian law. The international community has signalled the importance of combating racial discrimination in all its forms through the entry into force of the UN Convention on the Elimination of All Forms of Racial Discrimination 1966.

[66] However, putting to one side issues of cessation and exclusion, the task for this Authority is always and only to assess whether the particular factual circumstances of the appellants, viewed against the backcloth of objective country information, meet the inclusion criteria set out in Art. 1A(2) of the Refugee Convention. Any wider humanitarian considerations such as may or may not exist in this or any other appeal, and the legal implications thereof, are beyond the jurisdiction of this Authority to investigate let alone answer.

CONCLUSION

[67] The first principal issue is answered negative for each appellant and it is therefore unnecessary for the second issue to be considered although plainly this is a case with its foundations in the Convention ground of race.

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

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B Burson
Member