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**ADMINISTRATIVE COURT OF APPEALS
OF THE REPUBLIC OF ARMENIA**

DECISION

8 July, 2014

Yerevan

The Administrative Court of Appeals (hereinafter Court of Appeals) of the Republic of Armenia

FINDINGS

1. *The judicial history of the case*

Mouayad Rafik Abbas (representative – Suren Robert Baghramyan) submitted an appeal on 20.08.2013 to the Republic of Armenia [RA] Administrative Court (hereinafter Court) with the request to recognize the decision of the State Migration Service of the Ministry of Territorial Administration of the RA number Ռ-17/13-Ա as invalid.

The appeal was refused by the decision of the Court dated 14.03.2014.

2. *The grounds, substantiations and request of the appeal*

Because of the war in the Syrian Arab Republic Mouayad Rafik Abbas (hereinafter referred to also as the Claimant) was not able to return there because in case of return his life would be threatened. Because of such a fear on 06.02.2013 he applied to the State Migration Service of the RA for asylum.

The Claimant notes that from observing the decision it is obvious that the decision does not have a reasoning part.

The Respondent has not presented any substantiation and evidence emerging from the RA legislation that any of the grounds set by the 2-4th points of the Article 38 of the RA Law on the Fundamentals of Administration and Administrative Proceedings exists.

According to the Claimant, it can be reported that the substation for the adoption of the mentioned decision contradicts the imperative requirements of the RA legislation because the Respondent has applied and implemented the requirements of Article 10 (3) and Article 53 of the RA Law on Refugees and Asylum wrongly, and has not applied Article 33 of the Convention on the Status of Refugees, Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, Articles 4, 6 8, 21, 37, 38, 55, 57 of the RA Law on Fundamentals of Administration and Administrative Proceedings,

Articles 5, 6, 9, 11, 45, 49, 51-53, 56 of the RA Law on Refugees and Asylum, Articles 5, 43 of the RA Law on Legal Acts, and the legal position expressed in the decision of the Cassation Court ՎԴ/0016/05/08 dated 26.12.2008.

3. The facts having significant importance for the review of the appeal, the motivations and conclusions of the Court of Appeals

The Court of Appeals concludes that the request presented in the appeal is subject to rejection based on the following motivation.

1. According to the letter number 2/2/3-714 dated 30.05.13, Mr S. Melkonyan, the head of one of the departments of the National Security Service of the RA Government, has stated that a Syrian citizen, Mouayad Rafik Abbas, born on 27.03.1980, poses a potential danger to the RA's national security, and that it therefore is advisable to refuse to grant him refugee status in the Republic of Armenia.

2. On 27 June of the present year the Service, according to the RA Law on Refugees and Asylum and on Fundamentals of Administration and Administrative Proceedings, initiated administrative proceedings on ceasing the asylum granted to Mouayad Rafik Abbas by the state Migration Service. The National Security Service has informed the State Migration Service in the letter number 2/2/3-714 dated 30 May 2013 that the citizen of the Syrian Arab Republic Mouayad Rafik Abbas poses a potential danger to the national security of the Republic of Armenia.

Article 6 of the RA Law on Refugees and Asylum adopted on 27 November 2008 has reproduced word-for-word the mentioned provision of the Geneva Convention, stating in its first part that a refugee is a foreign national 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/her nationality and is unable, or owing to such fear, is unwilling to avail himself/herself of the protection of the country of his/her nationality; or who, not having a nationality and being outside the country of his/her former habitual residence, is unable or, owing to such fear, is unwilling to return to it.

According to the Article 2 of the RA Law on Refugees and Asylum:

1. "Asylum is a form of protection granted in the Republic of Armenia to a foreign national or stateless person, which guarantees the application with respect to him/her of the principle defined in Article 9 of this Law, as well as all the rights granted under the Convention, this Law, and other legal acts of the Republic of Armenia to persons recognised as refugees in the Republic of Armenia.

2. Asylum, as defined in part 1 of this Article, extends also to a foreign national or stateless person recognised as a refugee by another State, if he/she has entered the territory of the

Republic of Armenia in the prescribed manner and holds a residence status — granting the right of residence — prescribed by the legislation of the Republic of Armenia.

3. The atmosphere of the process of granting asylum must be peaceful and humanitarian, and it [the granting of asylum] must not grow into an unfriendly attitude, as it does not imply any criticism of the country of nationality or former habitual residence of a refugee, or of any other country.”

According to the Article 33 of the 1951 Convention on the Status of Refugees (hereinafter referred to also as Convention):

“1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.”

According to the Article 10(3) of the RA Law on Refugees and Asylum, asylum granted in the Republic of Armenia to a refugee shall be ceased, if, owing to well-founded reasons, he/she is regarded to be dangerous for the national security of the Republic of Armenia, or if he/she has been convicted of committing a serious or particularly serious crime.

The abovementioned legal provisions state the possibility of protecting foreign nationals or stateless persons by the means of granting asylum in the Republic of Armenia.

However, both the provision of the mentioned Convention and Article 10 of the RA Law on Refugees and Asylum set an exception to the non-refoulement principle: the imperative requirement of ceasing the granted asylum in the case when the refugee is considered dangerous for the national security of the country where he resides. The danger should be threatening for the security of the country where the refugee is.

According to Article 35(1) of the RA Law on Refugees and Asylum, the Authorised Body for National Security Issues shall, upon the request of the Authorised Body [the State Migration Service], assist the latter in the verification of the identity of an asylum seeker and in the examination of the facts presented by an asylum seeker in the course of the asylum procedure, as well as issue an opinion on the potential danger posed to the national security of the Republic of Armenia by an asylum seeker.

According to Article 1 of the RA Law on the Bodies of National Security, the national security of the Republic of Armenia refers to the protection from internal and external threats of the security of the person, society and state, the territorial integration, sovereignty, constitutional order, regular economic development of the country, material

and spiritual values of the society, the protection of the rights and freedoms of the citizens, and of the environment.

According to Article 2 of the same law, the bodies of national security are an integral component of the RA system of guaranteeing the security and within their authority ensure the security of the person, society and state.

According to Article 52(1) of the RA Law on Refugees and Asylum, the Authorised Body shall, with respect to an individual asylum application, gather all the information provided by the asylum-seeker or any other interested party and file it, in the prescribed manner, in the individual file of the asylum-seeker concerned.

According to the facts of the present administrative case, in the letter number 2/2/3-714 dated 30.05.2013 Mr. S Melkonyan, head of a Department of the National Security Service of the Government of the Republic of Armenia informed that the citizen of the Syrian Arab Republic Mouayad Rafik Abbas, born on 07.09.1980, poses a potential danger to the national security of the RA, thus it is advisable to refuse to grant refugee status in the RA.

Based on the abovementioned, on 12.07.2013 the State Migration Service adopted the Ռ-17/13-Ա decision on Ceasing the Asylum Granted to the Citizen of the Syrian Arab Republic Mouayad Rafik Abbas in the Republic of Armenia, in which the State Migration Service, referring to the writing number 2/2/3-714 of the National Security Service dated 30 May 2013 and being regulated by the Article 10(3) of the RA Law on Refugees and Asylum, decided to cease the granted asylum.

The Court of Appeals states that the National Security Service is the Authorized body which, guaranteeing the security of the person, society and state, is authorised by the law to identify the asylum-seeker and to provide a conclusion on posing a possible threat to the national security of the Republic of Armenia. The Court of Appeal believes the information provided by the National Security Service was a sufficient ground to cease the granted asylum.

According to Article 25 of the RA Administrative Procedure Code, the Court identifies all the essential facts by means of the examination and assessment of the acquired evidence. Evidence is the testimony of a witness, the conclusion (testimony) of the expert, written evidence, material evidence.

According to the Article 27 of the RA Administrative Procedure Code, the Court, assessing all the evidence available in the case, determines that the facts are proven, based on the its own belief formed on the basis of a comprehensive, complete and objective investigation. The court shall motivate the formation of such a belief.

It can be seen from the analysis of the mentioned provisions that the Court identifies all essential facts for the determination of the case based on the examination and assessment of the evidence. Moreover, the court identifies the issue of the fact being proven based on the internal belief formed on the comprehensive, complete and objective investigation, as well as identifies the relevance of this or that evidence.

The court, assessing the facts of the case, has correctly concluded that “the Respondent, lawfully taking into account the fact that the claimant is a danger to the RA national security and that these circumstances form a ground for ceasing the refugee status, adopted the decision Ռ-17/13-Ա to cease the asylum granted to the Claimant in the Republic of Armenia. That is, in such circumstances the fact that a recognized refugee is considered to pose a threat to the Republic of Armenia according to the information received takes precedence over the right of the Claimant to benefit from Article 33 of the 1951 Convention on the Status of Refugees and the prohibition of the Contracting Party to deport and return the person. In such conditions Article 33(2) of the same Convention is applicable.

Based on the abovementioned provisions, facts, substantiations and conclusion, the Court of Appeals states that the Court has adopted a judicial act which decides the case correctly, hence the appeal is subject to rejection.

Based on the abovementioned and being regulated by Articles 60, 145 and 146 of the RA Administrative Procedure Code, Based on the abovementioned and being regulated by Articles 60, 145 and 146 of the RA Administrative Procedure Code, the Court of Appeals

DECIDED

To reject the appeal, to leave the judgment of the RA Administrative Court dated 14 March 2014 regarding the case number ՎՌ/7373/05/13 unchanged.

The decision enters into legal force one month after the promulgation and can be appealed to the Cassation Court of the Republic of Armenia in the same period.

RESIDING JUDGE

Q. MKOYAN