

DECISION

IN THE NAME OF UKRAINE

October 4, 2012

Case № 89539/12/9104

Lviv Administrative Court of Appeal composed of:

Chief judge

Obrizko I.M.

judges

Glushko I.V., Svyatetskyi V.V.

with participation of the secretary of the court hearing

Ignatovych Y.I.

considered in the open court hearing in the city of Lviv the appeal of the State Migration Service of Ukraine on the decision of Lviv District Administrative Court of April 6, 2012 in the case of PERSON_1, PERSON_2 against the State Migration Service of Ukraine, the State Committee on Nationalities and Religions of Ukraine to abolish the decision and commit to take action -

FOUND:

Plaintiffs appealed to the court to revoke the decision of the State Migration Service of 31.10.2011, № 533-11 and № 625-11 and requested to oblige the State Migration Service of Ukraine to grant them a refugee or complementary protection status.

By protocol decision of Lviv District Administrative Court of 28.02.2012, the State Committee on Nationalities and Religions of Ukraine was involved in the case as a defendant, since the plaintiffs appealed against the decisions taken by this state body.

In support of their claims, they appeal to the fact that they have well-founded fears to become victims of persecution in Iran, and in the case of return to this country, their freedom, life, and health might be under threat, they may become victims of torture, inhuman or degrading treatment or punishment.

Moreover, PERSON_1 indicated that he abandoned Islam, and was baptized in Farsiyskiy church "Kores" in the city of Apeldoorn. He noted that criminal punishment in the form of imprisonment or death penalty is stipulated in the Islamic Republic of Iran for abandonment of Islam and conversion into another religion and that he and his wife, PERSON_2, cannot feel safe in this country. PERSON_1 also mentioned that his brother, who had also converted into Christianity, was found hung in his own house, since it is a traditional punishment for renegades in Iran.

Lviv District Administrative Court sustained the claim by its resolution of April 6, 2012. It proceeded on the basis that the fears of PERSON_1 and PERSON_2 to become victims of persecution are well-founded, since they are based on the provided facts from their life, in particular, the murder of the brother of the plaintiff, PERSON_3, and information about the situation of persons who were born Muslim and changed their religion in Iran. It was

established that the decisions № 625-11 and 533-11 of 31.10.2011, with which the plaintiffs were denied a refugee status, were adopted without consideration of all the circumstances relevant to the decision and observance of the right balance between any adverse consequences for the rights, freedoms, and interests of the individual and objectives which these decisions are directed at (not proportional).

Disagreeing with the above-mentioned decision, the State Migration Service of Ukraine appealed against it, requesting to revoke it and take a new decision rejecting the claims due to violations of substantive and procedural law, non-conformity of court decisions to the circumstances of the case.

In general, references point to the fact that the plaintiffs left their country of residence in search of a better life in Western Europe in order to receive social assistance, rather than having a well-founded fear of being persecuted for reasons of race, religion, nationality, citizenship (nationality), membership of a particular social group, or political opinion. It has also been indicated that the plaintiffs did not provide specific facts of persecution in their country, they had no conflicts with law enforcement or other government bodies, with individual citizens or groups of citizens; they left the country freely with permits. Representative of the defendants insists that fears of PERSON_1 and PERSON_2 to become victims of persecution are non-objective, false, and artificial.

Having heard the report of the judge-speaker, having checked the case materials, and discussed the grounds of the appeal, the Judicial Panel deems necessary to reject it.

According to **Art.200 of the Code of Administrative Court Procedure of Ukraine**, the appellate court rejects the appeal and leaves the resolution unchanged in case it considers that the first-instance court has correctly identified the circumstances of the case and approved a decision in compliance with the rules of substantive and procedural law.

Having examined the dispute, the Judicial Panel believes that the local court has fully and comprehensively investigated and assessed circumstances of the case, evidence provided by the parties, correctly identified legal nature of the controversial legal relations, and the law that regulates them.

The Court has established and the case materials have verified the fact that PERSON_1 and his wife - PERSON_2, the citizens of the Islamic Republic of Iran, resided in the city of Shiraz, Fars province, and have two children, 1996 and 1998 years of birth. PERSON_1 changed the religion on 13.04.2008 and was baptized in Farsiyskiy church "Kores" in the city of Apeldoorn (the Netherlands). PERSON_1 stayed in the Netherlands from 06.12.2007, and then returned to Iran to the family. On 16.11.2009, the plaintiffs and their children left Iran, they entered Ukraine legally.

At the same time, on 10.02.2010, the plaintiffs applied for a refugee status to the Department of the Migration Service in Lviv region and indicated that they had a well-founded fear of persecution on religious grounds. PERSON_1 noted that his brother, PERSON_3, born in 1967, who had abandoned Islam and converted to Christianity in 2006, had been killed, he had been hung in the house where he lived with his family. PERSON_2 in her statement referred to the fact that law enforcement authorities had not been able to ensure her family's safety, she had experienced pressure from her relatives and other Muslims who had threatened and intimidated her.

By the order № 5 of the Head of the Department of the Migration Service in Lviv region dated 03.03.2010, it was allowed to process the documents for solving the issue of granting refugee status in Ukraine to the Iranian citizens: PERSON_1, born in 1970, and PERSON_2, born in 1971.

As seen from the letters from the Department of Citizenship, Immigration and Registration of Individuals (DCIRI) № 19/1946 dated 14.05.2010 and № 19/1945 dated 14.04.2010, in the Main Department of DCIRI, MIA of Ukraine in Lviv region regarding the plaintiffs, circumstances relevant to the DCIRI jurisdiction under which a refugee status could not be granted, are absent.

It should be noted that, according to the letter of the Directorate of the Security Service of Ukraine in Lviv region dated 07.05.2010, № 62/2/3-1750, there is no information at the Directorate of the Security Service of Ukraine in Lviv region which could prevent the citizens of Iran, PERSON_1 and PERSON_2, from acquiring a refugee status.

In addition, on 10.05.2011, the Chief Expert of the Department of the Migration Service in Lviv region, Goncharuk S.M., provided the following conclusions: PERSON_1 and PERSON_2 have no well-founded fears of being persecuted for the reasons of race, religion, nationality, citizenship (nationality), membership of a particular social group, or political opinion. It is indicated in the conclusions that the cases of those persons should be rejected.

Therefore, on 31.10.2011, the State Committee on Nationalities and Religions of Ukraine issued a decision № 533-11 and № 625-11, by which it refused to grant a refugee status to PERSON_1, a citizen of Iran, and PERSON_2, a citizen of Iran, according to which there were the conditions found under paragraphs 1, 13, Part 1 of Art. 1 of the Law of Ukraine "On refugees and persons in need of complementary or temporary protection" regarding the plaintiffs.

According to Art. 1 of the Convention relating to the Status of Refugees (to which Ukraine acceded on 10.01.2002), a person is a refugee because of well-founded fears 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 fears, is unwilling to avail himself of the protection of this country.

Provisions of Art. 33 of the Convention relating to the Status of Refugees establish that State Parties shall not in any way expel or return refugees to the borders of those countries where their life or freedom will be threatened because of their race, religion, nationality, membership of a particular social group or political opinion.

The Judicial Panel agrees with the conclusions of the first-instance court that the fears of PERSON_1 and PERSON_2 to become victims of persecution are well-founded, based on the provided facts from their life, specifically, the murder of the plaintiff's brother, PERSON_3, and information about the situation of those persons in Iran who were born Muslims and changed their religion.

The fact that the Department of the Migration Service in Lviv region allowed to issue the documents to resolve the problems of granting a refugee status in Ukraine, which means that it had not been established that the plaintiffs' applications are evidently unfounded, should also be considered. In addition, from the case materials could be concluded that during the

applications review the employees of the Department did not establish any additional details that would make it impossible to grant PERSON_1 and PERSON_2 a refugee status.

The Judicial Panel concludes that case materials do not contain adequate evidence regarding the change of political situation in Iran that would testify absence of a threat to the life of plaintiff in the country of origin. Provided circumstances have been properly considered by the circuit court that reasonably decided to sustain the claim.

Considering the above-stated, arguments of the appeal are not substantial and do not provide grounds to conclude about the improper use by the first-instance court of the norms of substantive or procedural law that led to the wrong resolution of the case, and there is no inconsistency between the court decisions and the circumstances of the case.

Following Articles 160, Part 3, 195, 196, 198, 200, 205, 206, 254 of the Code of Administrative Court Procedure of Ukraine, Lviv Administrative Court of Appeal -

RESOLVED:

To reject the appeal of the State Migration Service of Ukraine, to leave resolution of the Lviv Administrative Court on April 6, 2012 regarding the case № 2a-833/12/1370 without changes.

The decree comes into force from the moment of its promulgation and can be appealed within twenty days after stating of the decision in full by submitting an appeal directly to the court of cassation.

Chief Judge

I.M. Obrizko

Judges

I.V. Glushko

V.V. Svyatetskyi