

DECISION  
in the name of the Russian Federation

On April 12, 2004 the Presnya District Court of Moscow with Presiding Judge T.A. Pechenina and Secretary T.A. Pavlishina, having examined in an open session Civil Case #2-2226/04 containing a complaint from Afghanistan national Firiba Said Kamal against the November 20, 2003 refusal of the Moscow GUV D Migration Office to review the merits of her request to be recognized as a refugee in Russia,

FOUND AS FOLLOWS:

The plaintiff, who is a national of Afghanistan, had complained to the court that on November 20, 2003 the Moscow GUV D Migration Office had refused to examine the merits of her application to be recognized as a refugee in the Russian Federation by referring to Articles 2.1.4 and 2.2 of the Federal Law on Refugees.

She considered that the refusal had violated her rights and asked the court to qualify it as unlawful and make the defendant examine the merits of her request to be recognized as a refugee in Russia.

In support of her complaint, she said that she had left Afghanistan because of well founded fear of being persecuted as family of a person who had been active in politics. Her husband had been a member of the People's Democratic Party of Afghanistan and an officer at the Ministry of State Security. He had graduated from the Higher School of Politics in Czechoslovakia and in 1986 took an intelligence course in Moscow. They fled Afghanistan as soon as the mojaheddin came to power.

In the courtroom, she upheld her demands in full.

The defendant's representative, S.G. Nozdrina, acting on a power of attorney, asked the court to dismiss the complaint and provided written comments on it.

After hearing out the plaintiff, her representative T.V. Zababurina, who had been admitted to the hearings by a protocol decision of the court, and the defendant's representative, and after studying the materials of the case, the court found that the complaint must be satisfied for the following reasons.

The oral explanations provided to the court and the evidence in support of the complaint indicated that the plaintiff was a national of Afghanistan, born in 1968. She was married to Afghanistan national Mohammad Issa Mohammad Mussa, a member of the PDPA. He had graduated from the Higher School of Politics in Czechoslovakia. In 1986, he took an intelligence course in Moscow. He worked at the Afghanistan Ministry of State Security until the coup in 1992.

When the mojaheddin took power, she and her family left Afghanistan for Pakistan for fear of being persecuted. In 2003, she and her children arrived in Russia where her husband had been since 1998.

In November 2003, she asked the Moscow GUV D Migration Office to recognize her as a refugee in Russia.

On November 20, 2003 the Office refused to examine the merits of her request for refugee status by referring to Articles 2.1.4 and 2.2 of the Federal Law on Refugees.

The court found the decision unlawful and unfounded for the following reasons.

The Migration Office had referred to Article 2.1.4 of the Law on Refugees, which provides that the law does not apply to persons whose nationality-related rights and obligations are recognized by the competent authorities of the country in which these persons resided. This reference is untenable because, as the plaintiff explained to the court, Afghanistan was not giving her any support as its national.

Just as meaningless is the reference to Article 2.2 whereby the Federal Law on Refugees does not apply to foreign nationals and stateless persons who left the country of their nationality (or

former habitual residence) for economic reasons owing to a famine, epidemic or natural or man-made emergency, because, as the plaintiff explained, she had left her country and was in Russia for quite different reasons, namely her husband's political activities.

Furthermore, neither reference may be used to refuse an examination of a refugee status request on its merits, for an exhaustive list of such reasons is contained in Article 5 of the Federal Law on Refugees, and this article does not stipulate that Article 2.1.4 or Article 2.2 may be invoked to refuse an examination of such a request on its merits.

In this situation, the court concluded that the refusal of the Moscow GUV D Migration Office to examine the merits of her request to be recognized as a refugee in Russia was unlawful and rescindable and that her complaint must be met.

Based on the above and pursuant to Articles 194-198 and 258 of the Russian Code of Civil Procedure, the court

#### DECIDED

To recognize as unlawful the October 1, 2003 refusal of the Moscow GUV D Migration Office to examine the merits of a request from Afghanistan national Firiba Said Kamal to be recognized as a refugee in Russia.

To oblige the Moscow GUV D Migration Office to examine the merits of a request from Afghanistan national Firiba Said Kamal to be recognized as a refugee in Russia.

The decision may be appealed at the Moscow City Court within ten days.

Judge (signed)