

DECISION
in the name of the Russian Federation

On May 27, 2004 the Presnya District Court of Moscow with Presiding Judge T.A. Pechenina and Secretary T.A. Pavlishina, after examining in an open session Civil Case #2-3850/04 containing a complaint from Afghanistan national Farima Mohammad Haidar against the August 28, 2003 refusal of the Migration Office of Moscow's Head Office for Internal Affairs (GUV D) to grant her temporary asylum in Russia,

FOUND AS FOLLOWS:

The plaintiff had filed her complaint with the court arguing that on August 28, 2003 the Moscow GUV D Migration Office had refused to grant her temporary asylum in Russia.

She felt that the refusal had violated her rights and asked the court to dismiss it as unlawful, repeal it and oblige the defendant to grant her temporary asylum in the Russian Federation.

In support of her complaint, she stated that she was an Afghanistan national and had to leave the country of her nationality for fear of being persecuted, eventually arriving in Russia. She applied to the migration service for refugee status in Russia but such status was denied. She then applied to the Moscow GUV D Migration Service for temporary asylum. On August 28, 2003 her request for temporary asylum was rejected. She felt that there were humanitarian reasons that entitled her to temporary asylum, namely: fear of persecution in the country of her nationality, her health problems for which she is taking inpatient treatments, her marriage to a citizen of the Russian Federation, and her children who are Russian citizens.

In the courtroom, she refined her complaint and asked the contested decision to be rescinded as unlawful, and oblige the Moscow GUV D Migration Office to reexamine her request for temporary asylum.

The defendant's representative in the person of O.N. Lomova, 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 representatives T.V. Zababurina and Mansur Mohammad Ayubhan who had been admitted to participate in 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 the complaint qualifiable for the following reasons.

The oral explanations provided to the court and the written documents indicate that the plaintiff, who is a national of Afghanistan, left the country of her nationality for Pakistan in July 1998. In December 1998 she left Pakistan for Russia.

On February 16, 1999 she applied to the Immigration Control Office for Moscow and Moscow Region for refugee status in Russia.

On May 12, 1999 the Office refused to recognize her as a refugee in Russia. The refusal was appealed in a court of law but the complaint was dismissed.

On June 2, 2003 she filed an application with the Moscow GUV D Migration Office asking for temporary asylum in Russia.

In accordance with Article 12.2.2 of the Federal Law on Refugees, temporary asylum may be granted to a foreign national or a stateless person, if there is no cause to recognize them as refugees for reasons envisaged in the said law but because of humanitarian reasons they may not be deported from Russia.

Under Paragraph 7 of the Procedure of Granting Temporary Asylum in the Russian Federation approved by the Russian Government's Decision of April 9, 2001 (#274), a decision to grant temporary asylum is taken if there are reasons to recognize a person as a refugee based on the evaluation of the information about such person and his family arriving with him, including the manner in which they arrived in Russia, or if there are humanitarian reasons that necessitate that temporary asylum be granted to such person in Russia (e.g. condition of his health) until such reasons or the person's legal status change.

On August 28, 2003 the Moscow GUV D Migration Office refused to grant the plaintiff temporary asylum in Russia.

The court found the refusal to be unlawful and unfounded for the following reasons.

The court had established that on December 3, 1998 the plaintiff had married Mohammad Yusuf, a national of Afghanistan, in Pakistan in accordance with Pakistani and Islamic law. The marriage was confirmed by a certificate issued by the Afghan Embassy in Russia on December 18, 1998 (#0012). Upon registration of the marriage, the husband had obtained refugee status in Russia.

On October 18, 2001 Moscow GUV D recognized that the plaintiff's husband had acquired Russian citizenship. Together with him, Russian citizenship had been conferred on their children: daughter Zohal Yusuf, born in 1999; and son Mohammad Nasir Yusuf, born in 2000.

Therefore, all the plaintiff's family are now citizens of Russia.

The court found this fact to constitute a humanitarian reason to grant her temporary asylum in Russia since without such status she would either have to leave Russia or be deported from Russia. In the opinion of the court, this would be contrary to the principle of family preservation, the plaintiff would be separated from her husband and children, and she would be unable to care for her children.

The court considered that temporary asylum must be granted also because of her poor health. According to the health certificates provided, she suffers from uterine erosion and duodenal ulcer and needs to take inpatient treatments. But what with the absence of a health insurance policy and funds to pay for charged inpatient care, she is unable to continue her hospital treatments and for this reason has been signed out for outpatient care.

In this situation, the court qualified the contested decision as unlawful and rescindable.

The court also obliged the Moscow GUV D Migration Office to reexamine her request for temporary asylum and take a new decision based on the humanitarian reasons for the granting of temporary asylum that the court had identified.

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

DECIDED

To recognize as unlawful the August 28, 2003 refusal of the Moscow GUV D Migration Office to grant Afghanistan national Farima Mohammad Haidar temporary asylum in Russia.

To oblige the Migration Office of Moscow GUV D to reexamine the request of Afghanistan national Farima Mohammad Haidar for temporary asylum in Russia.

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

Judge (signed)