

**Decision**  
**IN THE NAME OF THE RUSSIAN FEDERATION**

Case No. 2-886/04

May 17, 2004

Frunzensky District Court of Ivanovo composed of:

Presiding Judge S.V. Belov

with the participation of the applicant, S.A.Sh. Abedzada, and his representative, S.V. Martynova, representative of the Migration Department of the Internal Affairs Division for Ivanovo region, D.M. Poponin,

in the presence of secretary I.V. Belousova,

having examined in the open court on May 17, 2004, in Ivanovo the civil case based on the application of Said Askar Shakh Abedzada for contesting the decision of the Migration Department of the Internal Affairs Division for Ivanovo region to deny temporary asylum in the territory of the Russian Federation

**ESTABLISHED:**

S.A.Sh. Abedzada submitted to the court the application for contesting the decision taken by the Migration Department of the Internal Affairs Division for Ivanovo region to deny him temporary asylum in the territory of the Russian Federation and motivated his application as follows: he was born on 14.04.1960 in Kabul and, being a citizen of Afghanistan, in December 2003 he applied to the Migration Department of the Internal Affairs Division for Ivanovo region (hereinafter – the Department) for temporary asylum. By the Department's decision of April 8, 2004, he was denied temporary asylum on the grounds that he did not meet the criteria for being entitled to temporary asylum according to paragraph 2 of Article 12 of the Federal Law of the Russian Federation "On Refugees" and he was instructed to leave the territory of the Russian Federation in the notice which he received in late March 2004. When he studied in the "Khabibia" lyceum (Kabul) he was a member of the PDPA youth organization. In 1977 he finished the 12<sup>th</sup> form and entered the Kabul Agricultural Institute. In the same year he participated in the April revolution, was wounded in the leg and could not continue education. After convalescing he had been working for one year in an agricultural cooperative in Dzhelalabad. In 1978 he was sent to Bulgaria for advanced training in poultry breeding. He completed his studies in 1980 and immediately after that he was enrolled in the army where he had served for 4 years. After the service he was appointed director of the "Deks-sabz" agricultural cooperative in the Kabul district. In 1978 he entered Kabul University, Archeology Department, studied there for one term, got excellent marks and was sent to study in the USSR. In August 1987 he entered the preparatory department of the Belgorod Pedagogical Institute (RSFSR), in 1988, upon graduation, he was assigned to Ivanovo State University. In 1997, by a special decision of the State Examination Commission, he was conferred a degree of the Master of History. On December 11, 1997, he married a citizen of the Russian Federation, Tatiana Gennadievna Shesterikova. Until 20.11.2003 he was registered with the Visa and Registration Department of the Passport and Visa Service of the Internal Affairs Division for Ivanovo region. As his wife is a citizen of the Russian Federation, he applied for a permission for temporary residence in the territory of the Russian Federation to the Visa and Registration Department, submitted all necessary documents in compliance with paragraph 8 of the Regulations on the Issuance to Foreign Nationals and Stateless Persons of a Permission for Temporary Residence in the Territory of the Russian Federation dated 1.11.2002, however his documents were not accepted on the ground that the clean record certificate issued by the Consular Department of the Embassy of

Afghanistan in the Russian Federation was invalid (not duly legalized). To have the certificate legalized, he was offered to go to Afghanistan, as the Russian Ministry of Foreign Affairs does not deal with the legalization of such certificates. As a result, at present the applicant is not registered at the place of residence and is not in a position to obtain permission for temporary residence in the territory of the Russian Federation in accordance with subparagraph 9, paragraph 1, Article 5 of the Refugee Law. After the deposition of Nadjibulla in Afghanistan his close relatives left the country due to persecution, and he found himself in a position of a "refugee in-situ". He believes that the Afghan government is unable to provide him with efficient protection and therefore he does not wish to return to his country of origin due to such fears. He believes that if he returns to Afghanistan he may be persecuted by local population due to his political views as he had studied in the USSR and, in the opinion of multiple Afghan groups, is a communist. His return is also impossible because he is married to a citizen of the Russian Federation, which could entail the violation of the family reunification principle (Article 8 of the European Convention for the Protection of Human Rights). When taking the decision to deny temporary asylum, the Department did not completely check the circumstances of the applicant's arrival in the territory of the Russian Federation, did not take into account the reason for and the object of the application and did not bear in mind humane considerations in view of the individual specific features of the case. The applicant considers the above decision unlawful and unfounded and requests that the Department's decision to deny him temporary asylum in the territory of the Russian Federation be declared unfounded and the Department be ordered to reconsider his application for temporary asylum in the Russian Federation.

At the hearing, the applicant S.A.Sh. Abedzada supported the stated claims. He also explained that his wife was a citizen of the Russian Federation, he lived together with her at the hostel at ul. Timiryazeva, 53, Ivanovo, his wife is officially registered there and he intends to repeatedly apply to the Visa and Registration Department for permit for temporary residence in the Russian Federation because his wife is a citizen of the Russian Federation, he is a private entrepreneur and has a respective certificate. He received the Department's refusal personally on April 8, 2004, in the Department. The applicant's representative S.V. Martynova also supported the application at the court session and requested that it be granted, she considers that the decision of the Migration Department of the Internal Affairs Division for Ivanovo region should be reviewed in view of the incomplete examination of the materials in respect of the applicant, the Department did not take into account the information provided by the FMS as of April 2004 on the political situation in Afghanistan, position of the UNHCR, paragraph 7 of the Procedure approved by the Resolution of the Government of the Russian Federation No. 274 of April 9, 2001, there are humane grounds for granting asylum on the basis of Article 12 of the Russian Refugee Law. They do not insist on making the Department pay state duty in the amount of 15 rubles.

Representative of the Migration Department of the Internal Affairs Division for Ivanovo region D.M. Poponin considers that the Department's decision is well-founded and the application should be dismissed. The applicant has long been living in the Russian Federation and had the right and opportunity to obtain a temporary residence status through the Visa and Registration Department, whereas the Department considers issues of temporary asylum for humane considerations and there were no such reasons in respect of the applicant. When passing the decision, the Department took into consideration the information provided by the FMS in January 2004 on the political and economic situation in Afghanistan. The applicant did not indicate in the inquiry form that there was a possibility of his persecution upon his return to his home country, President Karzai's Decree guarantees refugees equal rights with all other citizens of Afghanistan. The UNHCR is a public organization, its statements are recommendatory. The Departments acts in compliance with the Law and

Resolution of the Government of the Russian Federation. The Department does not want to separate the applicant and his wife but the applicant must comply with the requirements of the laws in the host country.

Having heard the parties and having examined the case materials, the materials of the Department's case No. 112400000069 in respect of S.A.Sh. Abedzada reviewed during the court session, the court considers the application as well founded and subject to satisfaction.

The court has established that by decision of the Chief of the Migration Department of Internal Affairs Division for Ivanovo region, internal service lieutenant colonel D.M. Poponin, dated 8.04.2004, the applicant, S.A.Sh. Abedzada, was denied temporary asylum in the Russian Federation due to the absence of grounds specified in paragraph 2, Article 12 of the Refugee Law.

Under Article 12 of the Russian Refugee Law, temporary asylum shall be granted to a foreign national or stateless person in accordance with the procedure determined by the Government of the Russian Federation. Temporary asylum may be granted to a foreign national or stateless person if they: 1) are entitled to a refugee status but limit themselves to filing a written request for a possibility of temporary stay in the territory of the Russian Federation; 2) are not entitled to refugee status for reasons specified in this Federal Law, however, for humane motives, cannot be expelled (deported) outside the territory of the Russian Federation.

In accordance with paragraph 7 of the Procedure for Granting Temporary Asylum in the Territory of the Russian Federation approved by the Resolution of the Government of the Russian Federation No. 274 dated 9.04.2001, a decision on temporary asylum shall be taken if there are grounds for recognizing a person as a refugee based on the results of checking the information on such person and accompanying him members of his family, including the circumstances of their arrival in the territory of the Russian Federation or existence of humane reasons requiring his temporary stay in the Russian Federation (e.g. state of health), until such reasons are removed or the person's legal status is changed.

On May 6, 2003, the applicant applied for refugee status in the territory of the Russian Federation to the Migration Department of the Internal Affairs Division for Ivanovo region.

On May 7, 2003, his application for refugee status in the territory of the Russian Federation was refused to be examined on the merits under subparagraph 9, paragraph 1, Article 5 of the Refugee Law, as he could obtain a permanent residence permit being married (from September 11, 2002) to a citizen of the Russian Federation, T.G. Shesterikova, and in accordance with the Russian legislation could obtain a permit for permanent residence in the Russian Federation under the Federal Law "On Legal Status of Foreign Nationals".

In December 2003 S.A.Sh. Abedzada applied for temporary asylum in the Russian Federation due to his being married to a citizen of Russia and also because his wife did not want to leave her home country, while he himself had been living in Russia for about 17 years and did not want to return home.

In accordance with the decision to deny him temporary asylum in the Russian Federation dated 8.04.2004, the conclusion was made during the examination of the applicant's application that the applicant did not want to return to his country of citizenship, Afghanistan, because he wanted to stay and live here together with his family, there were no humane reasons (e.g. state of health), whereas the matters of obtaining permit for residence in the Russian Federation for family reasons are within the competence of the passport and visa department. In addition it was stated that the examination of the application for temporary asylum in the Russian Federation revealed that currently there were no material circumstances that would prevent the applicant's return to his home country.

The court does not agree with that decision of the Migration Department of the Internal Affairs Division for Ivanovo region based on the following:

It follows from the Certificate by the FMS of the Internal Affairs Ministry of the Russian Federation dated 27.04.2004, that political life in Afghanistan is gradually reviving, no restrictions of political nature as well as no discrimination or persecution in respect of Nadjibulla's officials have been noted. However, the situation in the country is aggravated by persisting contradictions between the central government and regional leaders, frictions between the main ethnic groups (Pushtuns, Tajiks, Uzbeks and Khazareans), more active subversive and terrorist activity of regrouped Talibs, the situation in some provinces remains unstable and tense, national stability is undermined by armed clashes between feuding warlords, social and economic situation in Afghanistan remains difficult, the problem of receipt and settlement of returnees is very acute, the funds allocated for those purposes are insufficient, returnees' unsettled state adds to social strain, jobs and legal sources of income for most of the population are lacking, as of the early 2004 the general situation in Afghanistan remains unstable, and any forms of private or domestically-based vengeance in respect of individual persons cannot be excluded, matters related to Afghan citizens shall be decided strictly individually on a case-by-case basis.

As the applicant indicated in his application (which was confirmed by relevant documents and reflected in the Department's decision to deny temporary asylum), he is married to a citizen of the Russian Federation, T.G. Shesterikova, is a Tajik, from 1980 to 1984 served in the internal security troops of the Ministry of Internal Affairs of Afghanistan. In August 1987, S.A.Sh. Abedzada came to the USSR and entered the preparatory department of the Belgorod Pedagogical Institute, in 1988 he was assigned to Ivanovo State University. In April 1992 Nadjibulla announced his resignation from the post of President of Afghanistan, Afghan Mujaheddin took Kabul, the country was renamed the Islamic State of Afghanistan. In view of the above events, S.A.Sh. Abedzada decided not to return to Afghanistan due to fears of persecution by Mujaheddin that had come to power. In 1997, S.A.Sh. Abedzada completed studies in the said University and by a special decision of the State Examination Commission he was conferred a degree of the Master of History. On December 11, 1997, he officially married a citizen of the Russian Federation, Tatiana Gennadievna Shesterikova. Until 20.11.2003 he was registered with the Visa and Registration Department of the Passport and Visa Service of the Internal Affairs Division for Ivanovo region. He is a private entrepreneur which is confirmed by the Certificate of State Registration of 6.0(?).2004. It can be seen from the applicant's explanations that he has applied and is going to apply now to the Visa and Registration Department of the Passport and Visa Service of the Internal Affairs Division for Ivanovo region for permit for temporary residence in the Russian Federation, that his documents were initially rejected in oral form (unofficially), however, as he is not presently registered at the place of residence in the Russian Federation, due to the Department's refusal, he is unable to obtain a permit for temporary residence in the Russian Federation in accordance with the Regulations on the Issuance to Foreign Nationals and Stateless Persons of a Temporary Residence Permit approved by the Resolution of the Government of the Russian Federation dated 1.11.2002 and the Federal Law of the Russian Federation No. 115 "On Legal Status of Foreign Nationals in the Russian Federation" of 25.7.2002..

The court considers that when the applicant's application for temporary asylum was examined and the decision was issued in April 2004, the Department did not take into account the latest information provided by the Federal Migration Service of the Ministry of Internal Affairs of the Russian Federation, but it relied only on information No. 20/219 of 14.0(?).2002 on political and economic situation in Afghanistan, similar information was not requested as at the date of the decision to deny temporary asylum, that the circumstances of the applicant's arrival in the territory of the Russian Federation were not taken into account with due regard for the position of the UNHCR on the necessity to grant protection and

temporary asylum to Afghan nationals, it was not cleared up in detail why he did not want to and could not return to his country of citizenship, and therefore the decision passed by the Department is unfounded. Under such circumstances and in view of the claims made by S.A.Sh. Abedzada, the court considers necessary to order that the Department reexamine the applicant's application for temporary asylum in the territory of the Russian Federation.

Based on the above and in compliance with Articles 194-198, 199, 258 of the Civil Procedure Code of the Russian Federation, the court

**DECIDED:**

that the request by Said Askar Shakh Abedzada be granted;  
that the decision of the Migration Department of the Internal Affairs Division for Ivanovo region regarding case No. 112400000069 dated April 8, 2004, to deny Said Askar Shakh Abedzada, a citizen of Afghanistan, temporary asylum in the Russian Federation be declared unfounded and order that the Migration Department of the Internal Affairs Division for Ivanovo region reexamine the application for temporary asylum in the territory of the Russian Federation submitted by Said Askar Shakh Abedzada.

This decision may be appealed in the Ivanovo Regional Court through the Frunzensky District Court of Ivanovo within 10 days.

Judge /Signature/	S.V. Belov
True copy:	
Judge /Signed/	S.V. Belov
Secretary /Signed/	I.V. Belousova
Seal of the court	