

Decision
IN THE NAME OF THE RUSSIAN FEDERATION

Case No. 2-873/04

May 14, 2004

Frunzensky District Court of Ivanovo composed of:

Presiding Judge S.V. Belov

with the participation of the applicant, G.D. Faruk, and his representative pp., S.V. Martynova, representative of the Migration Department of Internal Affairs Division for Ivanovo region pp., A.V. Razuvaeva, and interpreter A.F.R. Koestoni, in the presence of secretary I.V. Belousova, having examined in the open court on May 14, 2004, in Ivanovo the civil case based on the application of Gulam Dzhafar Faruk 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:

G.D. Faruk 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 21.03.1967 in Lagman and, being a citizen of Afghanistan, in November 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 February 24, 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 by mail in late March 2004. In 1985, the applicant's father, Gulam Faruk, was a state security service (Amneti Davlati) officer in the rank of a general, held a position of deputy chief of the Afghan security service. In subsequent years he was the chief of the personnel department of the country's security committee, a member of the Democratic Party of Afghanistan. In 1989, G.D. Faruk was also a member of the security service of Afghanistan in Lagman. After the coup in Afghanistan, when Mujaheddin took the power, the house where the family lived was burned down and the land and property was confiscated. In 1990, his brother, Gulam Khasan Faruk, was killed. After that, the family had to flee, first to Tashkent (1991) and then to Russia (1995). G.D. Faruk fled to Iran where he had lived for 3 years and then came to Russia. His father is presently living in Germany where he was granted refugee status and is now supported under the welfare program. The applicant has no relatives left in Afghanistan. On August 28, 2002, he married T.A. Fedulova, a citizen of the Russian Federation. 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 of the Passport and Visa Service of the Internal Affairs Division for Ivanovo region, submitted all necessary documents required in compliance with paragraph 8 of the Regulations on the Issuance to Foreign Nationals and Stateless Persons of a Permission for Temporary

Residence, 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 5, paragraph 1, Article 5 of the Refugee Law. He believes that if he returns to Afghanistan he may be persecuted by local population due to his political views as under Nadjibulla's regime his father was a high-ranking officer and had to flee the country, and the applicant, in the opinion of multiple Afghan groups, is a communist. His former work in the security service may also cause negative consequences. 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. His return is also impossible because he is married to a citizen of the Russian Federation, which may entail the violation of the family reunification principle. When taking the decision to deny temporary asylum, the Department incorrectly assessed the facts of the case, 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. All the facts against his return to the country of citizenship had in good faith been confirmed when he had been interviewed in the Department, however, they were not taken into consideration when the decision was made. 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 and his representative S.V. Martynova supported and specified the stated claims: should the court declare the decision unlawful, they request that the court order that the Department grant G.D. Faruk temporary asylum in the Russian Federation. S.V. Martynova also explained that she asked that the court recognize as valid the reason for non-compliance with the period for the appeal against the decision (within one month after the day of the receipt by a person of the written notice on the decision taken – Part 3, Article 10 of the Federal Law of the Russian Federation No. 4528-1 of 19.01.1993), as G.D. Faruk received the notice of the decision only on 12.03.2004, and on 6.04.2004 he was arrested and put into the special Internal Affairs Division detention center pursuant to the Ruling of the Frunzensky District Court of Ivanovo dated 6.04.2004, with a view of administrative expulsion outside the Russian Federation; therefore he was unable, within the remaining 6 days prescribed by law, to apply to the court, and it was only 13.04.2004 that he could issue a power of attorney for representing his interests in court. The Ruling of 6.04.2004 on administrative expulsion outside the Russian Federation was appealed in the Ivanovo Regional Court but it was left unaltered and the respective application for contesting the Department's decision could be submitted only on 26.04.2004. G.D. Faruk explained that he was married to a citizen of the Russian Federation, the Visa and Registration Department officers in oral form refused to accept the documents he submitted in this connection to obtain a

permission for temporary residence in the Russian Federation, now he intends again to apply to the Visa and Registration Department for a temporary residence permit. He does 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 A.V. Razuvaeva 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 but failed to do so, whereas the Department considers issues of temporary asylum for humane considerations and there were no such reasons in respect of the applicant. The fact that the applicant's father was a general and the applicant served as President Nadjibulla's security guard officer is beyond doubt. However, according to the statement of the FMS of the Internal Affairs Ministry of the Russian Federation dated 27.04.2004, at present the situation in Afghanistan is stable and the applicant has no grounds to fear that upon his return to Afghanistan he will be persecuted. Under President Karzai's Decree No. 297 of 3.06.2002, refugees are guaranteed the rights and freedoms like all other citizens of Afghanistan.

The witness M.M.A. Amani said that he was born in 1969 in Afghanistan, all members of his family were communists, therefore, they had to leave the country in 1991. He knew G.D. Faruk back in Afghanistan, they lived in Kabul together, the second wife of his father was his sister, Faruk's father was a general and security service officer, their house was burned down and the youngest son was killed due to ideological revenge, Faruk's father was a communist, Gulam himself for about 4 years had been serving as President Nadjibulla's security guard. At present his (the witness's) father lives in Afghanistan and writes that the situation there is very bad as their former enemies had come to power. Faruk has the wife, a citizen of the Russian Federation, in Ivanovo.

Having heard the parties and having examined the case materials, the materials of the Department's case No. 112400000064 in respect of G.D. Faruk reviewed during the court session, having interrogated the witness, the court considers the reason for the applicant's non-compliance with the period for appeal against the Department's decision as valid and the application proper as well-founded and subject to satisfaction.

The court has established that by decision of the Chief of the Migration Department of the Internal Affairs Division for Ivanovo region, internal service lieutenant colonel D.M. Poponin, dated 24.02.2004, the applicant, citizen of Afghanistan G.D. Faruk was denied temporary asylum in the Russian Federation (case No. 112400000064) due to the absence of grounds specified in paragraph 2, Article 12 of the Refugee Law.

On April 18, 2003, the applicant for the first time applied for refugee status in the territory of the Russian Federation to the Migration Department of the Internal Affairs Division for Ivanovo region.

On April 25, 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 to a citizen of the Russian Federation, T.A. Fedulova. On November 26, 2003, the applicant submitted to the Department an application for temporary asylum in the Russian Federation due to being married to a citizen of the Russian Federation and also because he wished to live and work in Russia and had been living in Russia for 6 years.

In accordance with the Department's decision to deny him temporary asylum in the Russian Federation dated 24.02.2004, 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), the applicant could obtain a permanent residence permit in the Russian Federation because he was married to a citizen of the Russian Federation, and currently there were no material circumstances that would prevent the applicant's return to his country and require asylum in the Russian Federation.

The court does not agree with that decision of the Migration Department of the Internal Affairs Division for Ivanovo region.

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.A. Fedulova, is a Pushtun, from 1986 to 1990 served in the security guard service of President Nadjibulla. The applicant's father, Gulam Faruk, was a lieutenant general, a graduate from the Kabul Military School and Frunze Academy in Moscow, in 1990 he was the commander of the 25th Division, station commander in Khosta, which is confirmed by witness testimony, extract from the Brief Biographical Directory "Afghanistan" (Lomonosov Moscow State University, M., 2002). The reasons for leaving Afghanistan: menace of physical violence by Mujaheddin because his father was a KGB general, murder of his brother, destruction of the house and property belonging to his family. 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.

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.

The principle of humanism is one of the principles of law in a democratic state which means the changing system of views on society and man inspired by respect for individual. The principle of humanism is inscribed in Article 2 of the Constitution of the Russian Federation, under which man, his rights and freedoms are the supreme value.

According to Article 3 of the Russian law "On Legal Status of Foreign Nationals in the Russian Federation", the applicable legislation is based on the Constitution of the Russian Federation and consists of the above federal law and other federal laws. In addition, legal status of foreign nationals in the Russian Federation is determined by international treaties of the Russian Federation.

Pursuant to Part 1, Article 17 and Part 4, Article 15 of the Russian Constitution, the human and civil rights and liberties in conformity with the commonly recognized principles and norms of the international law are recognized and guaranteed in the Russian Federation and under this Constitution. The commonly recognized principles and norms of the international law and the international treaties of the Russian Federation are a component part of its legal system.

The principle of unity of the family and inadmissibility of interference by the state with the exercise of the right to private and family life is established in a number of international legal documents ratified by the Russian Federation: Article 16(1) of the Universal Declaration of Human Rights, Articles 17, 23(1) of the International Covenant on Civil and Political Rights, Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

As was stated above, G.D. Faruk is married to a citizen of Russia who resides in Ivanovo. The denial of temporary asylum would lead to forced expulsion of the applicant outside the Russian Federation and separate him from his wife against his will. The court takes into consideration that under Article 6 of the Russian law "On Legal Status of Foreign Nationals in the Russian Federation" the applicant, as a person married to a citizen of the Russian Federation with the place of residence in the Russian Federation, irrespective of the quota for temporary residence permits issued to foreign nationals, is

entitled to temporary residence permit and subsequently to a residence permit in compliance with Article 8 of the said law, which would lead to the change in the applicant's legal status.

A possibility of the change of the legal status of a person by implication of 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 of 9.04.2001, constitutes the ground for granting temporary asylum.

Furthermore, the personalities of the applicant and his father, in the opinion of the court, give the applicant grounds to believe that upon his return to Afghanistan he may be persecuted due to political convictions.

Therefore, having assessed the established facts taken as a whole, the court considers that when the applicant's application for temporary asylum was examined and the decision was taken to deny him temporary asylum there existed circumstances which constituted the grounds for granting the applicant temporary asylum, and for humane motives and reasons the applicant could have been granted temporary asylum in the territory of the Russian Federation. The Department did not fully take into consideration the information from the Federal Migration Service of the Ministry of Internal Affairs of the Russian Federation concerning the political and economic situation in Afghanistan and the circumstances of the applicant's arrival in the Russian Federation and his personality, it was not cleared up in detail why the applicant did not want to and could not return to his country of citizenship, and therefore the decision issued by the Department is unfounded.

Since the court has established the violation of the applicant's right to temporary asylum in the Russian Federation, in compliance with Article 258 of the Civil Procedure Code of the Russian Federation, the court declares the application by G.D. Faruk as well-founded and considers necessary to overrule the decision of the Migration Department of the Internal Affairs Division for Ivanovo region dated February 24, 2004, to deny Gulam Dzhafar Faruk, a citizen of Afghanistan, temporary asylum in the Russian Federation (case No. 112400000064), and orders that the said body fully rectify the committed violation of the applicant's rights and freedoms, namely, grant Gulam Dzhafar Faruk, a citizen of Afghanistan, temporary asylum in the Russian Federation in accordance with the procedure and for the time period stipulated by the Russian Refugee Law.

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 Gulam Dzhafar Faruk be granted;

that the decision of the Migration Department of the Internal Affairs Division for Ivanovo region dated February 24, 2004, to deny Gulam Dzhafar Faruk, a citizen of Afghanistan, temporary asylum in the Russian Federation (case No. 112400000064) be declared unlawful;

order that the Migration Department of the Internal Affairs Division for Ivanovo region grant Gulam Dzhafar Faruk, a citizen of Afghanistan, temporary asylum in the Russian Federation in accordance with the procedure and for the time period stipulated by the Russian Refugee Law.

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	