

DECISION
in the name of the Russian Federation

On November 21, 2001 at an open court session, the Zamoskvoretsky municipal court of the Moscow Central Administrative District

Composed of:

Chairperson Ms. M.L.Lipovenko, a federal judge

Attending: Ms O.V. Vashanova, a lawyer

Assisting: Ms A. Kozlova, a secretary

considered civil case No. 2-2409/10 - an appeal filed by Ms Uvera Jeanne d'Arke and Mr Banierretse Francois against actions of the territorial body of the RF Ministry of Federal Affairs in the Moscow region and

ESTABLISHED THE FOLLOWING:

Ms Uvera Jeanne d'Arke and Mr Banierretse Francois filed an appeal in court against actions of the territorial body of the RF Ministry of Federal Affairs in the Moscow region, indicating that they were unlawfully denied substantive consideration of their refugee claims.

During the court session, the petitioner Banierretse Francois explained that in 1994, when the Patriotic Front of Rwanda came to power and political persecutions started in the country, he and his wife, who were both citizens of Rwanda, were forced to flee Rwanda and headed for Zair. In Zair, his family was not given any assistance, therefore, the petitioners left for Tanzania and later proceeded to Kenya. As the petitioners' family was persecuted in Kenya, they were forced to leave for Jibuti, where he was offered a job. Six months later, his wife and children joined him in Jibuti. In 1997, the petitioner came to Russia, where he had earlier studied in the Friendship University, and his wife followed him to Russia later on.

The petitioner also indicated that he was denied consideration of his refugee claim on the grounds that they had failed to submit any valid proof of well-founded fear of political repression in the territory of the third state; the petitioners were staying in the territory of the third state where they could have been granted refugee status. Thus, their stay in the RF territory was illegal.

The petitioner requested that the decision of the territorial body of the RF Ministry of Federal Affairs of March 13, 2001 should be invalidated.

The representative of the interested party – the territorial body of the RF Ministry of Federal Affairs in the Moscow region – refused to acknowledge the petitioners' arguments and explained that the petitioners had every right to stay legally in Jibuti where they were able to avail themselves of the authorities' protection and had no fear of persecution. Before coming to Russia, the petitioners had been staying on the territory of the states – parties to the 1951 Convention where they could have been granted refugee status. By the time when the issue was under consideration at the territorial body, the authorised duration of the petitioners' legal stay in Russia had already expired.

Having heard the statements presented by the lawyer and the parties concerned and having examined the materials of the case, the court has reached the following conclusions:

In accordance with Clause 1, Article 1 of the Federal Law “On Refugees”, a refugee is a person who is not a citizen of the Russian Federation and owing to well-founded fear of being persecuted for reason of race, religion, citizenship, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

As it was established during the court session, citizens of Rwanda Ms Uvera Jeanne d’Arke and Mr Banierretse Francois were denied substantive consideration of their refugee claims in accordance with sub-Clause 4, Clause 1, Article 5, sub-Clause 5, Clause 1, Article 5, sub-Clause 2, Clause 1, Article 1 of the Federal Law “On Refugees” as per the decision of the territorial body of the RF Ministry of Federal Affairs in the Moscow region of March 13, 2001.

It follows from the a/m decision that the petitioners came to Russia, though they had the right to stay legally in Jibuti, where they had availed themselves of the protection of the Jibuti authorities and did not fear any persecution.

The a/m consideration is refuted by the evidence presented in court, namely, the evidence set forth in the weekly journal (Vozobnovleniye) and a UNHCR letter from which it follows that refugee status in Jibuti, with some rare exceptions, can be granted only to refugees originating from the countries that are adjacent to Jibuti, as well as by the petitioners’ statements selected by the territorial organ.

Under Sub-Clauses 4 and 5, Article 5 of the Law, a person can be denied substantive consideration of his/her refugee claim on the following grounds:

- the fact that the person is a citizen of the third country, protection of which he/she may avail himself/herself and that he/she is entitled to stay legally in the territory of the third country in the absence of well-founded fear of persecution in the third country for reasons envisaged in Sub-Clauses 1, Clause 1, Article 1 of this Federal Law;
- the fact that the person has arrived from a foreign country where he could have been granted refugee status.

The court believes that the territorial body has failed to take into account the considerations presented by the petitioners. Neither have the documents been examined related to checking the evidence of the petitioners’ possibility to avail themselves of the protection of Jibuti’s authorities and lack of any persecution. The availability of the right to stay legally in Jibuti, as well as the prolonged sojourn in this country as such can not be the reason for denying substantive consideration of a refugee claim, since it follows from the petitioners’ statements and submitted evidence that the petitioners had well-founded fear of persecution in the third country. The reliability of such evidence could have been established in the course of substantive consideration of the refugee claims by the territorial body.

Neither does the court see any grounds for denying substantive consideration of the petitioners’ refugee claims under Sub-Clauses 5, Clause 3, Article 5 of the RF Law “On Refugees”, that is in view of their stay in the territory of the Democratic Republic of the Congo (Zair), Tanzania, Kenya, Ethiopia, Jibuti that are Parties to the 1951 Convention where the petitioners could have been recognised as refugees.

According to the information provided by UNHCR, Zair, Tanzania and Kenya have indeed acceded to international instruments on refugees; however, international norms established in the 1951 Convention and 1967 Protocol are not observed in the a/m countries, and asylum seekers arriving in these countries are not accorded any protection. The territorial body failed to take into account the a/m considerations when considering the issue of whether the petitioners could have been recognised as refugees in the a/m countries. The reliability of the submitted evidence can be also established in the course of substantive consideration of the refugee claims by the territorial body.

The territorial body can not deny the petitioners substantive consideration of their refugee claims proceeding from its arguments that they were staying illegally in the RF territory, as they initially applied with the territorial body on December 3, 1998 and at the time of their application, they were entitled to stay legally in the RF territory. Therefore, the refusal to consider refugee claims on the basis of Sub-Clause 2, Clause 1, Article 1 of the RF Law is groundless.

Taking into account the above-mentioned considerations, the court finds the appeal well-founded and rules in favor of the petitioners.

In view of the above and being guided by Articles 191-197, 239 – 6 of the RSFSR Civil Procedural Code, the court

HAS RULED AS FOLLOWS:

The appeal filed by Ms Uvera Jeanne d'Arke and Mr Banierretse Francois against actions of the territorial body of the RF Ministry of Federal Affairs in the Moscow region shall be upheld.

The territorial body of the RF Ministry of Federal Affairs in the Moscow region shall be obligated to consider on the merits the refugee claims filed by Ms Uvera Jeanne d'Arke and Mr Banierretse Francois.

An appeal against the decision can be filed with the Moscow City Court through the inter-municipal court within the next 10 days.

Judge
(signature)