

Case No. 33-736  
Reporter Onankova V.D.

Judge Sedikh S.M.

### DEFINITION

*On June 20, 2001 at an open court session, the civil chamber of the Oryol regional court*

*Composed of:*

*Chairperson Kanustanskaya M.M.*

*Members of the court chamber: Onankova V.D., Batalova L.A.*

considered a civil case- cassation filed by the territorial body of the RF Ministry of Federal Affaires in the Oryol region against the decision of the Zheleznodorozhny district court of April 27, 2001, which ruled as follows:

“The appeal filed by Mohammad Aga Djuma Gul shall be satisfied. The decision of February 21, 2000 shall be recognized null and void. The Oryol regional MS (the territorial body of the RF Ministry of Federal Affaires in the Oryol region) shall be obligated to grant Mohammad Aga Djuma Gul refugee status.”

Having heard the report of a federal judge of the Oryol regional court Onankova V.D. the court

### ESTABLISHED THE FOLLOWING:

Mohammad Aga Djuma Gul filed an appeal in court against the decision of the Oryol regional MS of February 21, 2000 denying him refugee status on the grounds that the applicant did not fall under the definition of the term “refugee” set forth in Article 1.1.1 of the RF Federal Law “On Refugees”.

The applicant grounds his claim on the fact that he used to study at school on the territory of the ex-USSR, in the event of his return to Afghanistan he can be subjected to repressions by Talibans who are at present in power in Afghanistan.

The applicant considers the denial of the MS illegal.

The court has arrived at the a/m decision.

In the cassation the territorial body of the RF Ministry of Federal Affaires in the Oryol region pleads for dismiss of the court decision on the following grounds: from 1984 till 1992 the applicant studied at the Shakhrinav republican boarding school in the Republic of Tajikistan, where he could have applied for refugee status.

In 1996 in the Embassy of the Islamic State of Afghanistan in Moscow the applicant was issued a national passport, what shows that he avails himself of the protection of his country of nationality. The applicant did not participate in the hostilities on the territory of Afghanistan therefore he has no grounds for fearing persecution by Talibans.

Having examined the materials related to the case, discussed the arguments adduced in the cassation and having heard the representative of the Oryol regional Migration Service, who sustained the complaint, objections to the complaint filed by the applicant’s representative by proxy Zaytsev A.A., the court chamber has found the cassation not subject to satisfaction.

In accordance with Article 1 of the RF Federal Law “On Refugees” (No.95-FL of June 28,1997), 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 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.

The court has established the following: Mohammad Aga Djuma Gull- born on December 28, 1978, on November 05, 1984, at the age of 6 he was enrolled in class "E" of the Shakhrinav boarding school, in the Gassarsky region of Tajikistan, which he left in 1993. The applicant studied at this school under the intergovernmental agreement on education of Afghan orphan-children. His father was a member of NDPA and died in Afghanistan, his mother also died.

Having left boarding school, the applicant was sent to Moscow to continue his education, but because of the absence of money he had to leave for Oryol to his brother Aticul in December of 1993 to continue his education in the Oryol Bank School. Owing to his minority he could not register himself at that time. He did not manage to enter Bank school, because according to information No.374 of March 30, 2001 in June of 1994 the administration of the school stopped the admission of foreign students. From December of 1993 till the present the applicant has been living in Oryol renting a flat.

The a/m circumstances are confirmed by the case materials and the testimony of Raskhiya Mohammad Ariyan, Navabi Shirushah, Mohammad Rafik Mohammad Isak, Aticul Djuma Gul.

In accordance with the information of the UNHCR Office, the coming of Talibans to power increased the threat to those Afghan citizens who support or have to do something with the regime of Najibullah. At present there is a danger of being subjected to persecution by Talibans for persons who used to study in the ex-USSR, including Afghan orphan-children who have been sent to the USSR under the intergovernmental agreement.

As it follows from the report of the RF Ministry of Foreign Affairs of April 24, 2000 (p.h. 71) the leader of Talibans- mullah Omar has issued a decree which, in point of fact, has legalized political persecution and repressions concerning people who worked in State structures and served in the Army of Afghanistan under former regimes and those people who used to study in the USSR.

Taking into account the a/m circumstances, the court has come to the conclusion that Mohammad Aga Djuma Gull has a good reason to fear persecution or even physical extermination by Talibans in the event of his return to Afghanistan.

The arguments of the Oryol regional MS produced in the cassation that the applicant was refused substantive consideration of his refugee claim on the territory of the Russian Federation in future, while the court has considered the claim on the merits can not serve as ground for abolition of the court decision. The court has established correctly the circumstances of the case therefore it had a good reason for satisfaction of the appeal filed by Mohammad Aga Djum Gul against the decision denying him refugee status.

The reference in the cassation filed by the Oryol regional MS to the fact that the applicant could have applied for refugee status in the republic of Tajikistan does not entail the abolition of the decision on the following ground. Tajikistan signed the documents concerning refugee status only in 1993, and the law of the Republic of Tajikistan "On Refugees" came into force on July 20, 1994, while Mohammad Aga Djuma Gul studied in Tajikistan from 1984 till 1992.

Being guided by Article 305 of the RSFSR Civil Procedural Code, the court chamber

#### HAS RULED AS FOLLOWS:

The cassation filed by the Oryol regional Migration Service against the decision of the Zheleznodorozhny district court of April 27, 2001 shall not be satisfied.

Chairperson  
Judge