

**UNOFFICIAL TRANSLATION**

[made by UNHCR Representation in Belarus]

**JUDGMENT**

**in the Name of the Republic of Belarus**

On 27 April 2012, the Court of Centralny District of the City of Minsk consisting of presiding judge Mr. I.G. Moiseichik, with secretary Ms. O.V. Savitskaya; with participation of Ms. V.L.B, the Claimant, Mr. A.A.I.M., minor citizen of the Islamic Republic of Afghanistan, his representative – advocate Ms. N.I. Makarchik , Mr. S.M.K. and Ms. N.L.B. representing the party concerned (Defendant), has examined during an open court session a civil case on Ms. V.L.B appeal, on behalf of minor Mr. A.A.I.M., against illegitimate acts of Department on Citizenship and Migration of the Ministry o Internal Affairs of the Republic of Belarus, and

**ESTABLISHED:**

In her appeal the Claimant stated that on 29 February 2012, in accordance with the Order No. 15 of Department on Citizenship and Migration of the MIA of the Republic of Belarus No. 15, Mr. A.A.I.M. was denied refugee status and complementary protection in the Republic of Belarus based on Para Two of Part Three of Art. 43 of the Law of the Republic of Belarus dated 23 June 23 2008 “On Provision of Refugee Status, Complementary and Temporary Protection in the Republic of Belarus to Foreign Nationals and Stateless Persons” (hereinafter referred to as the Law) due to lack of grounds for granting of refugee status. The Claimant was familiarized with mentioned decision on 12 March 2012. The appeal was lodged on her behalf, as, according to Resolution No. 05/37 of Administration of Zheleznodorozhny District of the City of Gomel dated 10 January 2011, she is the guardian of the minor citizen of Afghanistan Mr. A.A.I.M. [She] considers this decision unlawful as circumstances which forced the minor Mr. A.A.I.M. to leave mentioned country show that there are well-founded fear to face persecution in case of his return to Afghanistan. [She] considers Order No. 15 of Department on Citizenship and Migration of the MIA of the Republic of Belarus dated 29 February 2012 incomplete and unfounded, especially in the part related to denial of complementary protection; [she] considers that in the process of decision-making provision of the Law of the Republic of Belarus on the Rights of the Child were not taken into consideration.

The Claimant supported her arguments related to the appeal.

During the court hearing the minor Mr. A.A.I.M. explained that he was forced to leave Afghanistan after his father and brother were kidnapped, and his mother had to change place of residence due to inability to cover renting costs. Mr. A.A.I.M.’s mother now resides in the suburbs of Kabul. Mr. A.A.I.M. is afraid of return to Afghanistan as he believes that the eldest male in the family may be kidnapped, same as happened with his father and elder brother. He wants to attend school, but in case of his return to Afghanistan he will be forced to work because of his family destitute condition.

During the court hearing representatives of Department on Citizenship and Migration of the MIA of the Republic of Belarus did not accept the appeal and considered it unfounded.

They also explained that the decision was made in accordance with the Law of the Republic of Belarus dated 23 June 2008 “On Provision of Refugee Status, Complementary and Temporary Protection in the Republic of Belarus to Foreign Nationals and Stateless Persons” within the scope of competence stipulated in the Law and based on materials of the interview with the Claimant and Mr. A.A.I.M.’s country of origin information – Afghanistan. They pointed out that the Mr. A.A.I.M.’s fears to face persecution in case of return to Afghanistan are unfounded due to the fact that the family resides in the safest area of Afghanistan – Kabul. Moreover, Mr. A.A.I.M. failed to provide convincing reasons which justify well-founded fear to face persecution in case of return to Afghanistan for reasons of race, religion, nationality, ethnicity, membership of a particular social group or political opinion.

The Court, having heard parties of the process, invited expert, having verified and examined case materials, considers that the claim is justified and shall be satisfied due to the following reasons.

As a result of case assessment performed during the court hearing it was established that by the Order No. 15 of Department on Citizenship and Migration of the MIA of the Republic of Belarus dated 29 February 2012 Mr. A.A.I.M. was denied refugee status in the Republic of Belarus. The rejection was based on provisions of Para Two of Part Three of Art. 43 of the Law of the Republic of Belarus dated 23 June 23 2008 “On Provision of Refugee Status, Complementary and Temporary Protection in the Republic of Belarus to Foreign Nationals and Stateless Persons”; motivation – lack of grounds for granting of refugee status.

From the case materials of Department on Citizenship and Migration of the MIA of the Republic of Belarus, including from provided materials of interviews conducted with the Claimant, conclusion of Department on Citizenship and Migration of the Department of Internal Affairs of Gomel Oblast Executive Committee and clarifications of Mr. A.A.I.M., follows that Mr. A.A.I.M. was born on 1 May 1997 in XXX province in Afghanistan. He is ethnic Tajik and Sunni Moslem. Unmarried. Education: 5 grades. Mr. A.A.I.M. provided the following information about his relatives:

Father – FATHER., XXX years old, worked as a driver for a foreign company, was kidnapped by unknown persons in Kabul (Afghanistan);

Mother – MOTHER., approximately XXX years old, XXX, resides in CITY;

Brother – BROTHER, XXX years old, was kidnapped with his father by unknown persons in Kabul (Afghanistan);

Sister – SISTER XXX years old;

Brother – BROTHER, XXX years old;

Sister – SISTER, XXX years old;

Sister – SISTER, XXX years old;

Sister – SISTER, XXX years old, resides with mother in CITY (Afghanistan);

Sister – SISTER, XXX years old.

Mr. A.A.I.M. attended school in CITY for five years (since 2004). In November 2010 father and elder brother of Mr. A.A.I.M. went to work and did not return back home. Mr. A.A.I.M.'s mother assumed that her husband and son might have been kidnapped by unknown people. After that incident and due to destitute situation of the family Mr. A.A.I.M. had to leave his studies and work at the market. Mr. A.A.I.M.'s mother, fearing that he may be also kidnapped, arranged, through a smuggler, Mr. A.A.I.M.’s departure to Poland.

Mr. A.A.I.M. also stated that the reason for his departure from Afghanistan was the fact that his mother was afraid of his possible kidnapping as it had happened with his father and elder brother. Mr. A.A.I.M. noted that his father had worked as a driver of a foreign company in CITY. In November 2010 the Mr. A.A.I.M.'s father and elder brother did not come back from work. As Mr. A.A.I.M.'s mother assumed, they were kidnapped by unknown persons.

In accordance with Part One of Article 18 of the Law, the refugee status in the Republic of Belarus shall be granted to a foreign national staying on the territory of the Republic of Belarus for well-founded fears of being persecuted in the country of his nationality for reasons of race, religion, citizenship, nationality, membership of a particular social group or political opinion, and who is unable or, owing to such fears, is unwilling to avail himself of the protection of that country; or to a stateless person who, while staying on the territory of the Republic of Belarus for the above fears, is unable or unwilling to return to the country of his former habitual residence, owing to such fears.

In accordance with Article 21 of the Law of the Republic of Belarus "On Provision of Refugee Status, Complementary and Temporary Protection in the Republic of Belarus to Foreign Nationals and Stateless Persons" dated 23 June 2008, complementary protection shall be granted to a foreign national staying on the territory of the Republic of Belarus, who lacks grounds for granting refugee status and who has well-grounded fears to face upon return to the country of his nationality the threat of death penalty, torture and other cruel, inhumane or degrading treatment and punishment, or threat to life caused by violence in the context of an international or non-international armed conflict, and who is unable or, owing to such fears, is unwilling to avail himself of the protection of that country, or to a stateless person staying on the territory of the Republic of Belarus, who lacks grounds for granting refugee status and who has stated fears and who is unable or unwilling, owing to such fears, to return to the country of his former habitual residence.

According to Article 39 of the Law, the following decisions shall be made on an application for protection: on suspension of review of the application for protection; on discontinuation of review of the application for protection; on granting refugee status; on denial in granting refugee status and on granting complementary protection.

According to Article 43 of the Law, decision on granting or on denial in granting of refugee status and (or) complementary protection shall be made by Department on the grounds of the materials of the case taking into consideration the conclusion by the citizenship and migration unit and information of the State Security agencies of the Republic of Belarus on the eligibility of the alien applying for protection as stipulated in Article 3 of this Law.

An alien applying for protection may be denied in granting refugee status and (or) complementary protection, in case:

the application for protection is manifestly unfounded; the application for protection is abusive; grounds stipulated in Article 3 of this Law were established; the alien possesses citizenship of a third country, which protection he can avail himself of;

the alien arrived in the Republic of Belarus from the territory of a third safe country;

during the review of his application for protection the alien was sentenced for committing

a crime, which is classified by the Criminal Code of the Republic of Belarus as serious or particularly serious.

An alien applying for protection, aside from the cases mentioned in Part Two of this Article, may be denied in refugee status, if: the grounds for granting refugee status are missing.

In accordance with Article 8 of the Constitution of the Republic of Belarus, the Republic of Belarus shall recognize the supremacy of the universally acknowledged principles of international law and ensure that its laws comply with such principles.

According to Article 19 of the United Nations Convention “On the Rights of the Child”, States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.

According to Art. 22, States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. According to Art. 38 of the Convention, States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.

According to Article 13 of the Law of the Republic of Belarus No. 2570-HP dated 19 November 1993 “On the Rights of the Child”, a child in the age of fourteen years and older is eligible for legal assistance in order to exercise and protect his rights and freedoms, including the right to avail himself at any time of the assistance of attorneys and other representatives in the court, other governmental bodies, other organizations, in dealings with state officials and citizens without the consent of his parents (guardians).

According to Art. 23 of that Law, each child has a right to education.

According to Article 360-2 of the Code of Civil Procedure of the Republic of Belarus, after examination of the case the court makes one of the following motivated decisions:

to leave the decision unchanged and dismiss the appeal;

on validity of the appeal and the necessity to rectify the violation made.

The disputed order of Department on Citizenship and Migration of the MIA of the Republic of Belarus was specifically issued for reasons of lack of grounds for granting refugee status and complementary protection.

The Court can not agree with the conclusion in part related to lack of grounds for granting complementary protection.

During the court hearing it was established that there are not contradictions in evidence presented by the Claimant regarding circumstances which forced Mr. A.A.I.M.’s departure from Afghanistan. They are consistent with available country of information. Lack of

contradictions in this regard was also recognized by representatives of Department on Citizenship and Migration of the MIA of the Republic of Belarus. The Court recognizes these evidence as valid and authentic.

Department on Citizenship and Migration of the MIA of the Republic of Belarus came to a correct conclusion that the applicant lacks well-founded fears of persecution for the reasons of religion, political opinion and nationality.

In its rejection Department on Citizenship and Migration of the MIA of the Republic of Belarus did not fully assessed personal circumstances related to disappearance of Mr. A.A.I.M.'s father and brother and subsequent aggravation of his family situation, as well as the fact that Mr. A.A.I.M. is a child.

In its rejection Department on Citizenship and Migration of the MIA of the Republic of Belarus does not consider A.A.I.M as a member of particular social group – children with specific profiles. However, in accordance with UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Afghanistan dated 17 December 2010 school-age children constitute a group of children with specific profiles. UNHCR considers that children of school-age may be at risk on the ground of membership of a particular social group, religion and/or (imputed) political opinion depending on the individual circumstances of the case.

Convention on the Rights of the Child provide children with specific rights, considering their young age and dependence; these rights are fundamental for their protection, development and survival, inter alia, including protection against all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, and protection of minors from recruitment to armed forces.

The Court can not agree with the conclusion made by Department concerning lack of grounds for granting complementary protection, namely, lack of well-founded fear to face, upon return to Afghanistan, the threat of death penalty, tortures and other cruel, inhumane or degrading treatment and punishment, or threat to life caused by violence in the context of an international or non-international armed conflict.

Department, justifying its conclusion, pointed out that A.A.I.M's family resided in Kabul which is considered to be comparatively safe region of Afghanistan.

However, Department did not analyzed and assessed the fact that Mr. A.A.I.M.'s family, after kidnapping of Mr. A.A.I.M.'s father and brother, had to change their place of residence due inability to cover renting expenses, and moved to the outskirts of Kabul.

According to the expert's conclusion, the fact of the family movement to the outskirts of Kabul considerably increases the level of threat. As stated in the 2011 Report of the UN Assistance Mission in Afghanistan (UNAMA) "Protection of Civilians in Armed Conflict" (February 2012), "there was a prominent rise in Kabul province, where civilian deaths increased from 23 in the last half of 2010 to 71 in 2011. 67 of the 71 civilian deaths in Kabul during this period occurred as a result of six suicide attacks".

The order states that Mr. A.A.I.M. failed to provide sufficiently detailed information, there are no required clarifying facts. Replying to main clarification questions related to father's place of work, disappearance of his father and brother, mother's actions in connection with their disappearance, arrangements of his departure to Europe, receipt of financial sources for his departure in light of lack of financial support from the relatives, Mr. A.A.I.M. stated that he was not aware about that.

However, in accordance with Para 218 of UNHCR Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees), "the circumstances of the parents and other family members, including their situation in the minor's country of origin, will have to be taken into account. If there is reason to believe that the parents wish their child to be outside the country of origin on grounds of well-founded fear of persecution, the child himself may be presumed to have such fear".

The Parties do not challenge country of origin information, according to which children have been recruited by the Afghan security forces, including the Afghan National Security Forces and the Afghan National Police. Internally displaced children and children part of isolated populations in conflict-affected areas are particularly at risk of recruitment into armed anti-Government groups. According to available reports, such anti-Government groups have reportedly abducted children for the purposes of military training in Pakistan. These children have also been used to carry out suicide attacks or to plant explosives, often resulting in their own deaths.

It is established that these children are still the victims of suicide bombers attacks, improvised explosive devices and missile strikes of armed groups, such as Taliban, among others. Children also became victims of air strikes and night raids executed by the pro-government forces. Moreover, 568 children were wounded or killed by mines and other explosive devices remaining after the war. Anti-government elements are considered guilty of most wounds and deaths among civilians including children. In many cases children were killed or wounded, when the main target of the armed opposition groups, including Taliban, was the civil infrastructure – regional administrative centers or checkpoints situated next to residential quarters.

In accordance with the definition and scope prescribed by Article 1(1) of the Protocol II to the Geneva Conventions, the International Committee of the Red Cross (ICRC) recognizes the overall situation in Afghanistan as an internal armed conflict, which may serve as a ground for granting complementary protection.

Mr. A.A.I.M.'s arguments about his fear to return to Afghanistan were also justified during the court hearing.

Taking into account the level of family well-being, in case of his return to Afghanistan Mr. A.A.I.M., as the eldest male member of the family, would have to provide for himself and his family members; that would prevent him from continuing education and enjoying his economic, social or cultural rights, which may be considered as equal to persecution, as, in present-day Afghanistan the minimum level of these rights would not be observed (due to current situation in the country).

Aggravating situation in the country of origin, fears of forced recruitment, inability to acquire education makes return of the child to Afghanistan dangerous, as a minimum, until he attains the age of majority.

While making a decision upon this case the Court also takes into account the fact that circumstances related to Mr. A.A.I.M.'s biography are not challenged by Department on Citizenship and Migration of the MIA of the Republic of Belarus; the evidence provided during interviews and court hearing are consistent and lack contradictions.

Bearing in mind all provided circumstances the Court deems that the order of Department on Citizenship and Migration of the MIA of the Republic of Belarus can not be considered lawful and founded.

Considering all above-mentioned facts and in concordance with Articles 302, 360-1, 360-2 of Code of Civil Procedure of the Republic of Belarus the court has

**DECIDED:**

To satisfy Ms. V.L.B.'s appeal in the interest of Mr. A.A.I.M., minor citizen of the Islamic Republic of Afghanistan, against illegitimate acts of Department on Citizenship and Migration of the MIA of the Republic of Belarus

To consider the order of Department on Citizenship and Migration of the MIA of the Republic of Belarus No.15 dated 29 February 2012 on denial of refugee status and complementary protection in the Republic of Belarus to Mr. A.A.I.M. illegitimate.

To compel Department on Citizenship and Migration of the MIA of the Republic of Belarus to examine Mr. A.A.I.M.'s application for refugee status or complementary protection, having rectified all breaches.

This decision can be appealed against and protested in the Minsk City Court through the Court of Centralny District of the City of Minsk within ten days from the moment of its proclamation.

Judge

[seal of the Court of Centralny District of the City of Minsk]

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