

DECISION
in the name of the Russian Federation

On June 29, 2004 the Zamoskvoretski District Court of Moscow with Presiding Federal Judge A.M. Pashkevich, Secretary Yu.I. Kudryavtseva and Lawyer for the Defense T.V. Zababurina, after examining in an open session Civil Case #2-1521/2004/4 containing a complaint from Mirza Mohammad Abir Mohammad Rafi against the inactivity of the Migration Office of Moscow Oblast GUV D,

FOUND AS FOLLOWS:

Mirza Mohammad Abir Mohammad Rafi had complaint to the court about the inactivity of the Migration Office of Moscow Oblast GUV D explaining that on December 18, 2002 he had applied to the Office for temporary asylum but the latter failed to examine his request in time and did not issue a certificate that his application was being examined on its merits. For this reason, he asked the court to qualify the Moscow Oblast GUV D's failure to take action to examine his request and issue him a certificate as unlawful, and to oblige it to examine his temporary asylum request and issue a certificate to indicate its intent to do so.

The plaintiff did not show up in court although he had been duly notified of the day and time of the hearings.

Lawyer T.V. Zababurina acting for the plaintiff supported his demands.

The representative of the Migration Office of Moscow Oblast GUV D S.S. Lamzin, acting on a power of attorney, objected to granting the complaint and submitted a written request for it to be withdrawn (page 14).

After hearing the arguments of lawyer T.V. Zababurina and the representative of the Moscow Oblast GUV D, and after studying the written evidence, the court found that the plaintiff's demands were well founded and must be met for the following reasons.

Under Article 254 of the Civil Procedure Code, a Russian citizen or organization may sue a government agency, local self-government, official, civil servant or municipal officer for an action or failure to take action, if he or she believes that his or her rights and freedoms have been violated.

According to Article 12 of the Federal Law on Refugees, temporary asylum is granted to a foreign national or stateless person in keeping with a procedure that is defined by the Russian Government.

The decision to grant temporary asylum is taken by the territorial agency of the migration service with which a foreign national or stateless person files a request to be allowed to stay in Russia for some time.

On April 9, 2001 the Russian Government, with its Decision #274, approved a procedure to govern the granting of temporary asylum in Russia.

The court established that the plaintiff was a national of Afghanistan. On March 13, 2001 the Moscow Oblast Territorial Agency of the Ministry for Federation Affairs refused to grant him refugee status in Russia. The refusal was appealed in a court of law but the complaint was declined (pages 6 and 7). On December 18, 2002 he asked the Moscow Oblast GUV D Migration Office to grant him temporary asylum (page 8).

Lawyer T.V. Zababurina explained to the court that the plaintiff's request for temporary asylum had not yet been examined and no request examination certificate issued, which violated his rights. As a result, he was unable to register with the interior authority at his residence.

In accordance with Paragraph 2 of the Procedure of Granting Temporary Asylum in the Russian Federation approved by the Government's Decision of April 9, 2001 (#274), a decision to grant temporary asylum is taken by the territorial agency of the Ministry for Federation Affairs to which the status seeker and his family arriving with him submits an application in writing within three months from the date of submission.

According to Paragraph 4 of the Procedure, the territorial agency issues the applicant and his family arriving with him a certificate testifying that his request for temporary asylum is being examined. The certificate is valid for the duration of the examination.

Under Paragraph 5 of the Procedure, the issuance of the certificate constitutes the reason for the territorial agency to apply for the temporary registration of the certificate holder and his family arriving with him at the local interior authority.

Under Article 249 of the Civil Procedure Code, the bodies of government, local self-government, officials, civil servants and municipal officers charged with having taken a contested action or failing to take any action bear the burden of proof concerning the legality of the contested actions (inactivity).

The defendant's representative failed to present the court with any arguments to disprove the plaintiff's complaint and did not deny the fact that his request of December 18, 2002 had not be reviewed.

In evaluating the total body of the evidence presented, the court concluded that the Moscow Oblast GUV D's failure to take action to examine the temporary asylum request of Mirza Mohammad Abir Mohammad Rafi and issue him a certificate proving that his request of December 18, 2002 was being examined must be recognized as unlawful, and that the Migration Office must be obliged to examine his request for temporary asylum in Russia in accordance with the law and issue him a certificate that his request for temporary asylum is being examined. Based on the above and pursuant to Articles 194-198 and 258 of the Civil Procedure Code, the court

DECIDED

To oblige the Migration Office of Moscow Oblast GUV D to examine the December 18, 2002 request of Mirza Mohammad Abir Mohammad Rafi to grant him temporary asylum in Russia in accordance with the law and issue him a certificate that his request for temporary asylum is being examined.

The decision may be appealed at the Moscow City Court within ten days.

Federal Judge (signed)