

DECISION  
in the name of the Russian Federation

On January 27, 2004 the Presnya District Court of Moscow with Presiding Judge T.A. Pechenina and Secretary T.A. Pavlishina, after examining in an open session Civil Case #2-6798/03 containing a complaint from Afghanistan nationals Abdul Aziz Gulam Sahi and Friba Abdul Razak against decisions by the Migration Office of Moscow GUV D dated October 24 and 29, 2003 refusing to grant temporary asylum in the Russian Federation to the said persons and their children under age Shaira Abdul and Kiyamuddin

FOUND AS FOLLOWS:

The plaintiffs had filed the said complaint with the court stating that the Migration Office of Moscow GUV D, on October 24 and 29, 2003, had refused to grant them and their children under age temporary asylum in Russia.

They thought that the refusal had violated their rights and asked the court to dismiss it as unlawful, repeal the earlier decisions, and oblige the party concerned to grant them temporary asylum in Russia.

In support of their complaint, they said that they had been denied recognition as refugees in Russia. Consequently, they applied for temporary asylum on humanitarian grounds, namely in the light of the political, social and economic instability in Afghanistan. But the Migration Office of Moscow GUV D refused to grant their request, which they believed was against the law.

In the courtroom they upheld their demands in full.

The defendant in the person of V.V. Sipidin, acting on a power of attorney, asked the court to reject their complaint and provided written comments on it.

After hearing out the plaintiffs and the representative of the opposing party, and after studying the merits of the case, the court decided that the complaint must be granted for the following reasons.

Based on the oral explanations provided and the documents supporting their request, the court found that the plaintiffs, nationals of Afghanistan, had left the country of their nationality in 1997 for Russia.

On September 24 and October 29, 2001 the Territorial Agency of the Ministry for Federation Affairs refused to examine the merits of their request to be recognized as refugees in Russia.

With their request for refugee status dismissed, the plaintiffs lost all and every chance of being recognized as refugees in Russia.

In accordance with Article 12.2.2 of the Federal Law on Refugees, temporary asylum may be granted to a foreign national or a stateless person, if there is no cause to recognize them as refugees for reasons envisaged in the said law but because of humanitarian reasons they may not be deported from Russia.

Under Paragraph 7 of the Procedure of Granting Temporary Asylum in the Russian Federation approved by the Russian Government's Decision of April 9, 2001 (#274), a decision to grant temporary asylum is taken if there are reasons to recognize a person as a refugee based on the evaluation of the information about such person and his family arriving with him, including the manner in which they arrived in Russia, or if there are humanitarian reasons that necessitate that temporary asylum be granted to such person in Russia (e.g. condition of his health) until such reasons or the person's legal status change.

On July 24, 2003 the plaintiffs applied to the Migration Office of Moscow GUV D for temporary asylum in Russia. On October 24 and 29, 2003 the Migration Office refused to grant them and their children under age temporary asylum in Russia.

In deciding so, the Office ignored humanitarian reasons for these persons to be granted temporary asylum, whereas the court found that they had left Afghanistan for fear of being persecuted for their Khazarean ethnicity and for their Shiite religion. They had no home left in

Afghanistan where they could go back to, and in the meantime they had had two children, born in 1996 and 2000. At the moment, the political, social and economic situation in Afghanistan remained strained, and there had been repeated violations of human rights.

The court deemed these facts to constitute the humanitarian reason for the plaintiffs to be granted temporary asylum.

That being so, the court considered that the contested decision of the Moscow GUV D Migration Office to grant them temporary asylum must be rescinded and their complaint fulfilled.

Based on the above and pursuant to Articles 194-198 and 258 of the Russian Code of Civil Procedure, the court

#### DECIDED

To recognize as unlawful the decisions of October 24 and 29, 2003 whereby the Migration Office of Moscow GUV D refused to grant Afghanistan nationals Abdul Aziz Gulam Sahi and Friba Abdul Razak and their children under age Shaira Abdul and Kiyamuddin temporary asylum in the Russian Federation.

To oblige the Migration Office of Moscow GUV D to grant Afghanistan nationals Abdul Aziz Gulam Sahi and Friba Abdul Razak and their children under Shaira Abdul and Kiyamuddin temporary asylum in Russia in keeping with the procedure and other provisions of the Federal Law on Refugees.

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

Judge (signed)