

RULING

On December 26, 2003, the Judge of the Simonovsky District Court, the City of Moscow, Ms N.V. Kabanova considered a case on administrative action under Article 18.8 of the RF Code on Administrative Offences with regard to Mr. Aka Khassani Said Shir Said Baker, an Afghan national, born on 01.01.1972, who is temporarily staying at 18, Klenovy Blvd. Apt. 169, Moscow. The applicant is unemployed and has no earlier record of administrative responsibility and no permanent place of residence. He is a refugee and carries UNHCR Beneficiary Card No.1486. Ms. T. Zababurina, a lawyer, and Mr. Zalandin Akhram, an interpreter (UNHCR Refugee Reception Centre) also participated in the court session.

The duties and responsibilities have been clarified to the applicant under Article 51 of the RF Constitution and Article 25.1 of the RF Code on Administrative Offences.

AND ESTABLISHED THE FOLLOWING:

According to a written report on the said administrative offence, Mr. Aka Khassani Said Shir Said Bakera is a foreign national and is staying in Moscow having no residence registration. On 17.11.03, at 7p.m. he was detained by police officers at 10, Sudostroitel'naya str. for violating the regime of stay of foreign nationals in the RF.

During the court session, the applicant did not acknowledge his guilt and pointed out that he had been registered with the Moscow City GUV D Migration Department since 14.05.2003, registration number 2777. However, due to the heavy caseload, the Department has yet to issue him an asylum-seeker certificate. That's why he can not be registered at the place of his stay in Moscow.

In accordance with Article 8 of the RF Law "On Refugees" dated 19.02.1993, no.4528-1 (edited on 30.06.2003), the asylum seeker certificate issued by a territorial body of the federal executive migration authorities serves as the ground for registration of an asylum-seeker and his family members with a territorial body of the federal interior authorities at his new place of stay.

Moreover, under Article 4-7 of the RF Law "On Refugees", upon the adoption of the decision on the issuance of a certificate, an immigration control post or a territorial body of the federal executive migration authorities shall prepare a personal file on the applicant and his family members and shall hand over or send to this person the certificate of the duly established form within 24 hours following the adoption of the decision.

The certificate is a document that establishes the identity of a person applying for refugee status.

The certificate serves as the ground for registration of an asylum-seeker and his family members with a territorial body of the federal interior authorities for the period of substantive consideration of a submitted refugee claim.

Under Article 13 of the RF Law "On Refugees", an asylum-seeker can be expelled (deported) beyond the territory of the Russian Federation if he received a notification denying him substantive consideration of his refugee claim or refugee recognition or a notification about the termination or withdrawal of refugee status, did not use the right to appeal and refused to leave the country of his own free will.

Under Article 1.5 of the RF Code on Administrative Offences, a person shall be held administratively liable only for those administrative offences in respect of which his guilt has been established.

Under Article 1.5.3., a person held administratively responsible is not obliged to prove his innocence, while under Article 1.5.4, irremovable doubts in respect of the guilt of a person held administratively responsible shall be interpreted in favour of this person.

Considering the fact that Aka Khassan was not registered on the Russian territory due to the circumstances which did not depend on him, the court maintains that his guilt for committing the administrative offence (violating the regime of stay of foreign nationals in the RF) has not been proved, the element of corpus delicti is absent and the case should be closed.

Proceeding from the above and being guided by Articles 24.5, 26.2, 29.10, 29.11 of the RF Code "On Administrative Offences", the Court

HAS RULED AS FOLLOWS:

The legal proceedings initiated as regards the case on administrative action under Article 18.8 of the RF Code on Administrative Offences with regard to Mr. Aka Khassani Said Shir Said Bakera, an Afghan national, shall be dismissed.

An appeal against the decision can be filed with the Moscow City Court within 10 days following its receipt by the applicant..

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Federal Judge

I received a copy of the Ruling on _____(date)

Signature