

DECISION  
in the name of the Russian Federation

On June 10, 2004 the Zamoskvoretski District Court of Moscow with Presiding Federal Judge M.V. Musimovich, Secretary S.V. Belyakova and Interpreter Akram Zalandin, after examining in an open session Civil Case #2-986/2 containing a complaint from Abdulla Rafiula against the refusal of the Migration Office of Moscow Oblast GUV D to grant him temporary asylum in Russia,

FOUND AS FOLLOWS:

The plaintiff stated that he was a national of Afghanistan. He had left Afghanistan for Russia for fear of being persecuted for reasons listed in Article 1.1.1 of the Federal Law on Refugees on account of his membership of a particular social group of persons who had studied in the former Soviet Union.

He had applied to the Moscow Oblast Territorial Agency of the Ministry for Federation Affairs asking it to recognize him as a refugee in Russia. On December 3, 1997 such status was denied him for want of well founded fear of being persecuted in the country of his nationality in accordance with Article 1.1.1 of the Federal Law on Refugees.

Subsequently, he asked the Moscow Oblast GUV D Migration Office to grant him temporary asylum in Russia.

On August 15, 2002 the Office refused to grant him temporary asylum in Russia by referring to Article 12.2.2 of the Federal Law on Refugees and arguing that there were no obstacles to his voluntary return or deportation from Russia.

Article 12.2.2 stipulates that 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.

The plaintiff stated that there were humanitarian reasons preventing his deportation and that he must be granted temporary asylum in Russia.

He indicated that he had arrived in the former Soviet Union to study at a boarding school. He was then under age and legally incapable.

He said that he had lived all his conscious life in Russia, with his relationship to Afghanistan being of a purely formal nature, and that his link with the homeland had effectively been lost. He does not know the customs of his country, speaks excellent Russian and has received a secular education.

In the courtroom, the plaintiff and his representative T.V. Zababurina, who had been admitted to the hearings at his request, fully supported his demands and arguments and asked the court to meet them.

He explained to the court that he had lost all ties with his family, that he had not corresponded with them and that he knew nothing about their whereabouts. He had no place to go back to.

He asked the court to satisfy his demands.

The defendant's representative S.S. Lamzin, acting on a standing power of attorney with a full range of procedural rights, dismissed the demands explaining that the grounds on which temporary asylum may be granted for humanitarian reasons include: the poor health of the person slated for deportation, provided the country of his nationality is unable to give him proper medical care thus jeopardizing his life; a real threat to his life or freedom owing to famine, epidemic, natural or man-made disaster, or internal or international conflict spreading throughout the country of his nationality; a real threat that the person, should he return to the country of his nationality, will be tortured or subjected to other cruel, inhuman or degrading treatment and punishment.

Furthermore, said the Office representative, the plaintiff had failed to provide compelling reasons that in the event of his return home he would face a real threat to his safety.

On June 3, 2002 the Afghan President signed into effect Decree #297 enabling Afghans to freely return home. The decree envisages criminal proceedings only toward persons who had committed crimes against “peace and humanity, and crimes of war.” All refugees are guaranteed “the same rights and fundamental freedoms that are exercised by other citizens of Afghanistan.” The Migration Office representative asked the court to dismiss the complaint by Afghanistan national Abdulla Rafiula against the Moscow Oblast GUV D.

After hearing out the plaintiff and studying the written evidence provided, the court found that the complaint by Afghanistan national Abdulla Rafiula against the Moscow Oblast GUV D was well founded and must be granted 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.

The court established that the plaintiff was a national of Afghanistan.

On October 18, 1984 the Governments of the USSR and the Democratic Republic of Afghanistan signed an agreement in Kabul to send Afghan orphans to boarding schools in the USSR. The parents of most such children had been active supporters of the communist ideology and had died in the fight against the mojaheddin. Following the withdrawal of the Soviet troops and the fall of the Najibulla government in 1992, the return of these children became impossible for security reasons.

As an eight-year-old boy, the plaintiff had been taken to Tashkent in 1985. After leaving school in 1993 he did not return home and in August 1993 arrived in Russia.

He explained that he had no relatives in Afghanistan. He had lost all contact with the homeland; he had grown up and received his secondary education in a secular state; and he feared a different way of life in a Muslim state.

On December 3, 1997 the Territorial Agency of the Federation Ministry for Moscow Oblast refused to recognize him as a refugee in Russia, which is confirmed by the explanations of both parties and the materials of the case.

On October 31, 2003 the Moscow Oblast GUV D also refused to grant him temporary asylum in Russia.

Having studied the legally material evidence, the court arrived at the following conclusions.

Under 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.

Article 12.2 of the law provides that 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.

After analyzing the plaintiff’s arguments to the effect that there were humanitarian reasons for him to be granted temporary asylum in Russia, the court found them substantive.

The court based its judgment on the circumstances of the plaintiff’s presence in Russia, i.e. that he had lost all contact with the country of his origin and was unable to adapt himself to a life in a Muslim country because his personality had shaped up in a secular state and a totally different type of society; he had no relatives in the country of his nationality and had been brought up from green years at a Soviet boarding school.

The court concluded that the above facts could well constitute a humanitarian reason to grant him temporary asylum and determine his future legal status.

Having studied the entire body of the evidence provided and having assessed the legally material circumstances, the court concluded that Abdulla Rafiula's complaint against the refusal of the Moscow Oblast GUV D Migration Office to grant him temporary asylum in Russia must be satisfied.

Pursuant to Articles 194-198 of the Civil Procedure Code, the court

#### DECIDED

To satisfy Abdulla Rafiula's complaint against the refusal of the Moscow Oblast GUV D Migration Office to grant him temporary asylum in Russia.

To oblige the Moscow Oblast GUV D Migration Office to grant Abdulla Rafiula temporary asylum.

The decision may be appealed at the Moscow City Court through the Zamoskvoretski District Court within ten days from the day the court decides definitively.

Judge (signed)