

Case No. 33-429

Reporter- Volkov V.N.

Judge- Tchernishov E.A.

DEFINITION

On April 18, 2001 at an open court session, the civil chamber of the Oryol Regional Court

Composed of:

Chairperson Volkov V.N.

Members of the court chamber: Shevchenko E.N., Semionkina L.V.

heard a civil case-a cassation filed by the Oryol regional Migration Service against the decision of the Zheleznodorozhny district court of January 18, 2001, which ruled as follows:

“The appeal filed by Khumayun shall be satisfied. The Territorial body of the RF Ministry of Federal Affairs in Oryol region shall be obligated to grant Khumayun refugee status”.

Having heard the report of Volkov V.N.- a Judge of the district court, the court chamber

ESTABLISHED THE FOLLOWING:

By the decision of the Oryol regional MS of February 23, 2000 Khumayun was denied refugee status on the territory of the Russian Federation on the grounds that he did not come within the definition of the term “refugee” as it set forth in Article 1.1 of the Federal Law “On Refugees”.

Khumayun filed an appeal in court against the decision of the Oryol regional MS, denying him refugee status, indicating that in 1985 at the age of 9 he was brought to Tashkent to study. In 1986 he went to the first class of a boarding school in Tashkent, where he finished 11 classes, from 1993 till 1996 he studied at a cinema technical college of Tashkent. Now he can not return to Afghanistan owing to the threat of repressions by Talibans, who are at present in power, for reason that he studied in the USSR.

The court has taken the above mentioned decision.

In the cassation the TMS in Oryol region requests the abolition of the court decision, pleading that studying in the USSR can not be regarded as a ground for persecution in Afghanistan. In 1996 Khumayun extended the validity of his national passport, what shows that he avails himself of the protection of the country of his citizenship. The civil war and economic hardship in Afghanistan account for the applicant’s striving for avoiding the return to the country.

Having examined the case materials, discussed the arguments of the cassation and having heard the representative of the Oryol regional MS, who sustained the complaint, objections to the cassation filed by Khumayun, his representative by proxy Zaytsev A.A., the court chamber has come to the conclusion that the court decision shall remain with no changes.

In accordance with Article 1 of the RF Federal Law “On Refugees” No.95-?? of June 28, 1997, a refugee is a person who is not a citizen of the RF and owing to well-founded fear of being persecuted for reason of race, religion, citizenship, nationality, membership of a particular social group or political opinion is unable or, owing to such fear, unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, unwilling to return to it.

The court has established that on the authority of resolution of the USSR Council of Ministers No.939-216 of September 04, 1984 “On Education of Afghan orphan- children at

soviet boarding schools of general education”, by the order of the USSR Ministry of Education No.4-? of September 10, 1984, on July 10, 1985 with a group of Afghan orphan- children Khumayun arrived in Tashkent and was put to Sirozhiddinov S.H. boarding school. Khumatun studied in Tashkent till 1996, later in January of 1996 he arrived in Oryol, where lived his elder brother. His mother had died and he did not have information about his father.

According to the information contained in letters of the RF Ministry of Foreign Affairs of April 24, 2000 No.478/3? ? and of the UNHCR Office of May 08, 2000, at present most of the Afghan territory is under control of Talibans, whose presence is characterized by cruelty and intolerance towards their enemies. The leader of the Talibans- mullah M. Omar has issued a decree, presently effective in Afghanistan, which, in point of fact, has legalized the practice of political persecutions concerning people, who used to work in the government and served in the Army of Afghanistan under the rule of former regimes. Afghan citizens: members of NDPA, ex-officials of the Najibullah government, including officers of Afghan Ministry of Interior, State Security Ministry and those Afghan citizens, who used to study in ex- USSR in the event of their return to Afghanistan, will be subjected to persecution or even to physical extermination by Talibans. According to the information received from Afghanistan, such execution has really had place (ph. 32-33).

Taking into account the a/m facts, the court has come to the conclusion that Khamayun has reasons to fear persecution or even physical extermination by Talibans in the event of his return to Afghanistan, in this connection the decision of the Oryol regional MS denying him refugee status is groundless.

The argument advanced in the cassation, that the applicant had not provided any facts or evidence of possible persecution in his country origin for reason of his studying in the USSR from 1985 till 1986 can not be taken into account and is rebutted by the a/m evidences.

The extension by the applicant of the validity of his national passport does not prove that he avails himself of the protection of Afghanistan or that this country guaranties it to him.

Neither the reference to the fact that the applicant has failed to submit the documents confirming his sojourn in Russia from 1996 till 2000 can be the ground for denying him refugee status. During the Session of the court chamber Khumayun explained that at that period he was in Oryol, rented a flat with his brother and worked at a market. Khumayun addressed repeatedly to the passport-and-visa service of the Oryol Department of Interior, informing them about his sojourn in Oryol and of the place of his residence. In the event of disagreement with the information presented by the applicant, under p.1 of the methodical instruction for work with foreign citizens and persons without citizenship, applying for refugee status on the territory of the Russian Federation (adopted by order of the Federal Migration Service of Russia of July 15, 1993 No.110), the Oryol regional MS should verify the credibility of the applicant’s information. During the court session, the Oryol regional MS did not produce any arguments refuting the applicant’s information.

In the cassation the Oryol regional MS has not submitted evidence, rebutting the court conclusion or pointing to the wrong determination of the circumstances relevant in law. As to the arguments adduced in the cassation, they can not be regarded as grounds for abolition of the court decision. The latter had been taken on the basis of evidence which let the court draw a reasonable conclusion.

In view of the above and being guided by Article 305 of the RSFSR Civil Procedural Code, the court chamber

HAS RULED AS FOLLOWS:

The decision of the Zheleznodorozhny district court of January 18, 2001 shall remain with no changes, the cassation of the Oryol regional Migration Service shall be dismissed.

Chairperson
Judges