

**DECISION
IN THE NAME OF UKRAINE**

February 17, 2004

Panel of the Podilskyi District Court of the city of Kyiv
composed of O.A. Roman, Judge, and O.V. Bielostotska, Secretary
having considered in the course of public hearing in Kyiv the complaint of XXXXXX
on decision of the Department for Nationalities and Migration of the Kyiv City Public
Administration concerning refusal in **further** admittance into RSD procedure.

ESTABLISHED:

On January 19, 2004, XXXXXX filed the complaint on decision made by the
Department for Nationalities and Migration of the Kyiv City Public Administration
concerning refusal in **further** admittance into RSD procedure.

The claimant supported his complaint as follows: the Department issued order No.
818 dated December 23, 2003, in accordance with which the Department declined
further admittance into RSD procedure in accordance with article 12 (indent 6) of the
Law of Ukraine "On Refugees" and notified him accordingly by notice No. 619-03
delivered to him on December 25, 2003.

In the claimant's view, acts of the Department were illegitimate since the decision
was approved without due regard and examination of all circumstances being of legal
importance.

The parties did not appear before the court not explained the reasons for their non-
appearance.

Governed by article 248-6 of the Civil Procedure Code of Ukraine, the court deems
possible to hear the case in absence of the parties in accordance with available
because such non-appearance of the parties could not prevent the court from
consideration of the case on its merits.

After having examined the materials of the case, the court decided that the complaint
could be subject to satisfaction.

The court made such decision based on the following:

In accordance with the Law of Ukraine "On Refugees" as amended on June 21, 2001:
indent 6 of article 12: Decision on refusal in **further** admittance into RSD procedure
are made based on applications, which are manifestly unfounded, i.e. where the
applicant has no preconditions provided for in indent two of article 1 of the
aforementioned Law, as well as where the applications have abusive nature, i.e. where
the applicant – for the purpose of obtaining the refugee status - represents falsely
himself to be another person, as well as in accordance with applicants filed by the
persons who had been previously refused the refuge status due to absence of the
preconditions required for grant of the refugee status provided for in the indent two of
article 1 of the aforementioned Law if such preconditions have not changed.

indent 2 of article 1: Refugee is a person other than a citizen of Ukraine, who due to
reasonable fear to become a victim of persecution by reasons of his/her belonging to a
race, nationality, citizenship (allegiance), certain social group or political beliefs stays
beyond the borders of the country of his citizenship and cannot use protection of this

country or does not wish to use such protection due to such fears, or being a stateless person and staying beyond the borders of the country of his/her previous residence cannot or does not wish to return thereto in result of the above fears.

As follows from the notice No. 619-03 served by the Department for Nationalities and Migration of the Kyiv City Public Administration on October 25, 2003, the refusal was founded on provisions of indent 6 of article 12 of the Law of Ukraine "On Refugees" by reason of obvious lack of grounds for the application, i.e. unavailability of preconditions specified in indent 2 of article 1 of the Law of Ukraine "On Refugees" (case sheet number 5).

According to the Order No. 818 of the Department for Nationalities and Migration of the Kyiv City Public Administration dated December 23, 2003, the refusal in **further** admittance into RSD procedure was based on provisions of indent 6 of article 12 of the Law of Ukraine "On Refugees" (case sheet number 9).

The materials of the case do not give reasons to believe that of the Department for Nationalities and Migration of the Kyiv City Public Administration has undertaken to establish obvious lack of grounds for the application, it does not support facts of abuse by the applicant and there is no evidences of establishment or failure to establish availability of the preconditions required for grant of the refugee status.

In addition, the court has found it necessary to reinstate the deadline for the claimant's access to the court.

The court has arrived at the decision based on the following.

According to article 248-5 of the Civil Procedure Code of Ukraine, complaint can be filed to court:

within two months following the date when an individual learnt or should have learnt about violation of his/her rights or freedoms;

within one month following the date of receipt by an individual of written reply concerning denial of satisfying the complaint by an agency, an executive officer supervising such agency, an officer who approved such decision or undertook acts or omissions, or from the date of expiration of one-month term following the date of filing the complaint, unless a written reply thereto has been received by the individual. Missed deadline for filing the complaint could be reinstated by the court if the court established that the deadline has not been observed for reasonable excuse.

As follows from the materials of the case, the claimant did not know the fact of existence of the procedural deadline and, therefore, the court accepts this as a reasonable excuse.

Based on the above and governed by provisions of indent 2 of article 1, indent 6 of 12 of Law of Ukraine "On Refugees" as amended on June 21, 2001 and governed by provisions of articles 15, 30, 62, 89, 202, 202-1, 203, 209, 248-1, 248-2, 248-4, 248-5, 248-6, 248-7 of the Civil Procedure Code of Ukraine, the Court

DECIDED:

Sustain the claim filed by XXXXXX.

Adjudge illegality of the order No. 818 issued by the Department for Nationalities and Migration of the Kyiv City Public Administration on the 23rd of December 2003 prescribing refusal in **further** admittance of XXXXXX into RSD procedure; cancel the order No. 818 dated the 23rd of December 2003.

Oblige the Department for Nationalities and Migration of the Kyiv City Public Administration to admit XXXXXX asylum application into RSD procedure.

This judgment can be appealed in the Court of Appeals of the city of Kyiv within one month following one day after the date of publication by lodging the appeal to the Podilskyi District court.

Judge:
/signed/

O. Roman
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