

DECISION
ON BEHALF OF THE RUSSIAN FEDERATION

On December 7, 2000 the Presnya Inter Municipal Court of Moscow in the presence of the Judge-in-Chair Mrs. L.V.Kolchinskaya, the Lawyer Mr. B.Z.Slobodin and the Secretary Mrs. V.A.Chupina, having studied in an open Court session civil case #2-4234 under complaint of Mr. Nuhmatulla Kudratul against the denial of the Immigration Control Department for Moscow and the Moscow Oblast to grant him a refugee status

HAS ESTABLISHED:

The plaintiff has filed his complaint with the Court against the decision taken on January 15, 1999 by the Office of Immigration Control for Moscow and the Moscow Oblast to deny the plaintiff from Afghanistan a refugee status.

In the Court session the plaintiff confirmed the substance of his complaint by informing that he was born in 1970 in Kabul. After graduating from secondary school he entered the Kabul Mechanical Technical School from which he graduated in 1991 having obtained both civil and military specialities. After the power in their country had been seized by the anti-democratic regime the plaintiff was arrested by the members of "Hizbi-Vadat" Hazari grouping that discovered with him the PDPA member's military ticket, assaulted and imprisoned him at the Central Prison where he was kept for 14 months. During his imprisonment the plaintiff was daily assaulted and beaten, kept starving and threatened by death in the oven of the brick plant. He was set free only after his parents had paid a considerable ransom for him.

Some time later in the police archives the mujaheds detected his name on the list of the members of "Defenders of the Revolution" Organisation.

Through his friends he received warning about the forthcoming arrest and was compelled to leave Afghanistan via Mazar-i-Charif.

Representative of the appellee refused to accept the complaint and asked to reject its satisfaction.

Having heard the plaintiff, the representative of the respondent, the lawyer of the plaintiff and having studied the materials of the case, the Court finds that the complaint shall be satisfied on the following grounds.

The materials collected on the case show that when the plaintiff applied to the organs of immigration control for refugee status he declared that the reasons compelling him to leave his former place of residence were as follows: persecution and fear to be further persecuted. He also felt that there was a threat to his life from anti-democratic regime owing to his adherence to the opposition and to his membership of PDPA.

On January 15, 1999 he was denied to be granted refugee status.

Moreover, the plaintiff has explained that, though he strives to return back to his country of origin, he can not do so due to the political situation in his country of origin and to the fact that the power was illegitimately seized by mojaheds and by other bandits.

In accordance with para 1 Article 1 of the Federal Law on Refugees, a refugee is a person who is not a citizen of the Russian Federation and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, is 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, is unwilling to return to it.

In accordance with Article 3 of the Federal Law "On Refugees" a person can be recognized as a refugees after undergoing the procedure established by this Federal law which stipulated that:

- 1) the persons shall apply for refugee status;
- 2) his/her application shall undergo some preliminary consideration;
- 3) decision shall be taken on the issuance of an asylum seeker's certificate(hereinafter - certificate) or on refusal to consider the application on the merits;
- 4) the asylum seeker's Certificate or a notification on the denial t? consider the application on the merits shall be issued;
- 5) the application shall be considered on the merits;
- 6)decision on refugee status recognition or on denial to recognize him/her as a refugee shall be taken;
- 7) the asylum seeker's Certificate or a notification on the denial t? recognize him/her as a refugee shall be issued.

The decision on the issuance of the Certificate or on the recognition of his/her refugee status or on the denial to recognize him/her as a refugee shall be taken on the basis of the interview to be conducted with this person, the questionnaire to be filled in during individual interviews and on the basis of verification of information received on the person and his/her family members, finding out under what circumstances they arrived to the Russian Federation and revealing grounds for their staying in the territory of the Russian Federation as well as on the basis of a profound analysis of reasons and circumstances described in the application.

The Court is of the opinion that the appellee did not take into consideration substantive circumstances which give ground for recognizing the plaintiff as a refugee.

Thus, the plaintiff explained that he had been arrested by persons who had seized the power in Afghanistan, that he had been imprisoned for 14 months and that his life had run a real threat.

References of the representative of the appellee to the fact that the plaintiff has been bailed out and, that subsequently, the threat of death was not real, can not be taken into consideration for the reason that the fact of bailing out does not prove the fact of absence of the threat to the life. Explanations of the plaintiff given during interviews at the office of immigration control are consequent and the circumstances described do give grounds to recognize the plaintiff as a refugee. As to a certain discrepancy in time dating, the plaintiff explained it by difference in calendar order in Afghan and European standards.

Thus the complaint of the plaintiff should be satisfied.

On the basis of the above-mentioned and guided by Articles 191-197, 293-1 - 230-7 of the Civil and Processual Code of the Russian Federation

THE COURT HAS DECIDED

That the Complaint of Mr.Nahmatula Kudratull against the decision of the Immigration control for Moscow and the Moscow oblast t? deny him refugee status shall be satisfied.

To oblige the Regional organ of the Ministry of Federation, National and Migration Policy of the Russian Federation to grant Mr Nahmutula Kudratula refugee status.

The decision can be appealed at the Moscow-City Court within the next 10 days.

The Judge

(Signature)