

COURT DECISION
In the name of the Russian Federation

June 26, 1999, Basmanny Municipal Court of CAO of Moscow, composed of federal judge V. M. Pilganova, with the participation of lawyer T. V. Dolbneva, in the presence of clerk N. S. Gukova, having considered in open court civil case No. 2-66/2000 based on the appeal by Abdul Vali Parhiz against acts of the Immigration Control Department for Moscow and Moscow region,

ESTABLISHED THE FOLLOWING:

Abdul Vali Parhiz lodged with the court an appeal against acts of the Immigration Control Department for Moscow and Moscow Region, which had decided against granting him refugee status.

The appellant gives the following reasons for his claims: he is a PDPA member, was an aide to President Babrak Karmal, is known in Afghanistan as a staunch supporter of Babrak Karmal and advocate of progressive democratic society, held the post of head of the personnel department of the Political Administration of Afghanistan's Ministry of the Interior, actively propagated his democratic views by holding meetings and demonstrations and regularly makes public speeches; in 1982-1987, he studied at the political academy named after the 60th anniversary of the Young Communist League of the USSR Interior Ministry in Leningrad and graduated with honors; was a lecturer in the Social Sciences Institute in Kabul specialising in the theory of the state and law, theory of national reconciliation; is a vigorous opponent of the policy of the Islamic State of Afghanistan. He cannot return to his home country as it was because of his political convictions incompatible with the policy of the Islamic state that he had been persecuted with a view to be arrested and dealt with as a political opponent.

During the court hearing, the appeal was supported by Abdul Vali Parhiz and his lawyer.

By Order of FMS of Russia No. 77 of 24.09.99, the Immigration Control Department (ICD) for Moscow and Moscow region was abolished 24.12.99, and Order of FMS of Russia of 20.09.99 established the Migration Services of Moscow and Moscow regions as a successor of the abolished ICD for Moscow and Moscow region.

The appellant is registered with the Migration Service of the Moscow region, therefore, the court considers that the party concerned in this case is the Migration Service of the Moscow region.

The representative of the Migration Service of the Moscow region A. N. Metelev did not agree with the appeal and explained that the reasons stated in the appellant's application for refugee status do not meet the refugee status determination criteria as specified in Article 1 of the Law of the Russian Federation "On Refugees" and 1951 UN Convention, namely: despite his stay outside the country of his nationality, a real threat to his life or of persecution for any reason by the authorities in the event of his return to his home country does not exist.

Having heard the parties, read out witness evidence and studied the case materials, the court comes to the conclusion that the appeal shall be satisfied on the following grounds:

As defined in Article 1 of the Federal Law "On Refugees", "A refugee is a person who is not a citizen of the Russian Federation and who, due to well grounded

fears that he might become a victim of persecution on the basis of race, religion, citizenship, ethnic origin, affiliation with a certain social group or political convictions, is outside the country of his nationality and is unable or is unwilling to enjoy the protection of that country owing to such fears; or having no definite citizenship and being outside of the country of his former usual place of residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.

In compliance with Article 45 of the Regulations for refugee status determination procedure and criteria, a person applying for refugee status must state convincing reasons why he/she personally fears to become a victim of persecution.

Pursuant to Article 29 of the same Regulations, the refugee status determination procedure shall consist of two stages. First, facts related to the case in question should be ascertained. Secondly, the provisions of the 1951 Convention and 1967 Protocol should be applied to those facts.

Abdul Vali Parhiz filed an application for refugee status in the territory of the Russian Federation with the Immigration Control Department for Moscow and Moscow region on July 31, 1997. To establish the facts which forced the appellant to leave his country of residence, the Immigration Control Department for Moscow and Moscow region asked the appellant to complete a form and a questionnaire. By decision of 28.08.97, the appellant's application for refugee status was dismissed. The appellant appealed the said decision in the Commission of Appeals of FMS of Russia. By decision of the Commission of February 12, 1997, the ICD decision was declared rightful and the appeal was dismissed.

It has been established during the court hearing that Abdul Vali Parhiz was forced to leave his country of citizenship due to fears that he might become a victim of persecution there because since his young years, he has been actively engaged in political activity, his grand-father was the editor of the newspaper “Mashraki”, his father was a poet and writer well known in Afghanistan and the editor of the regional newspaper “Nangarkhar”. Since 1974, the appellant worked in the state security bodies, took part in detaining members of the Islamic Party of Afghanistan, was a PDPA member, in 1975 was arrested on suspicion of disclosing PDPA classified information, was released a month after and appointed a border officer. In 1978 he was the secretary of Kuskunar city party organization. In 1978, when he studied at the Police Academy courses, the revolution broke out. His brother was shot, and he himself had to go underground where he was responsible for the association of officers supporting Babrak Karmal. In 1979, after Babrak Karmal came to power, he became his aide and held that post for several years. After graduation from the Leningrad Political Academy in 1987, where he was the secretary of the primary organization and member of the Leningrad PDPA city committee, Abdul Vali Parhiz returned to Kabul where he taught in the Political Academy; in 1989 he was appointed head of the personnel department of the political administration of the Interior Ministry; in 1990-1992, he was a lecturer in the Social Sciences Institute of PDPA CC. In 1992, he was promoted colonel. In 1992, due to the changes in the internal political situation in Afghanistan, the appellant, fearing for his life, emigrated to Russia.

For the same reasons the appellant does not wish to return to his home country now.

In accordance with Article 66 of the Regulations for refugee status determination procedures and criteria, to be considered a refugee, a person must produce evidence of well-founded fears that he might become a victim of persecution

for one of the reasons, namely: on the basis of race, religion, citizenship, affiliation with a certain social group or political convictions.

Under Clause 80 of the Regulations, political convictions other than those shared by the government per se do not constitute the grounds for applying for refugee status and the applicant must prove that he has sufficient reasons to fear that he might become a victim of persecution for his convictions. This implies that the applicant's convictions are unacceptable for the authorities as he criticizes their policy and methods.

Abdul Vali Parhiz, Afghan, belongs to ethnic Pathans, he is an atheist, a PDPA member since 1979 which is confirmed by a copy of the party-membership card. The arguments of the representative of the Immigration Control Department to the effect that PDPA membership does not constitute the grounds for the appellant's fears are unfounded. During the court hearing it was established and confirmed by the case materials that the appellant was not only was a PDPA member for a long time but also fulfilled the duties of the party organization secretary, and was engaged in active political activity. Furthermore, Abdul Vali Parhiz was an aide to President and PDPA CC Secretary General B. Karmal and for a long time had been working in the internal affairs bodies of Afghanistan, studied in the USSR, a communist country, in an ideologically alien educational institution and graduated as jurist-political officer, i.e., advocate of communist ideas; in the Social Sciences Institute of PDPA CC gave lectures in theory of the state and law and national history which is strongly opposed by the Talibs, and advocated communist ideas. He put into effect communist principles. In 1992, after the mujaheddin came to power, the appellant, having every reason to fear for his life, illegally left Afghanistan via Uzbekistan.

The arguments of the representative of the Immigration Control Department for Moscow and Moscow region to the effect that the present internal political situation in Afghanistan and the declared amnesty for all political opponents make the appellant's return to his home country quite safe are unfounded, as they are not in accord with reality.

Having occupied Kabul in 1996, the Talib leaders declared amnesty for all political opponents, however, subsequent developments proved that that was nothing more than a propaganda trick, as the first thing the Talibs did after occupying Kabul was to do away with the last President of Afghanistan and PDPA CC Secretary General Nadjibullah and his brother.

According to the evidence by the witnesses Said Mohammad Gulabzoi, Hayatullah Ziornal, Gulam Mohamad, Nikbin Nik Muhammad, who had been questioned during the previous court hearing, Abdul Vali Parhiz was a PDPA member, propagated the party activity, held high party posts, worked in the Ministry of Interior, in 1979 was an aide to President of Afghanistan Babrak Karmal, studied in the USSR, was the secretary of the primary political organization, upon graduation returned to the Ministry of the Interior of Afghanistan, went into hiding following the mujaheddin coming into power, was an ideological opponent of the existing regime. Abdul Vali Parhiz left Afghanistan because of his political activity and also because he had held key posts in the Interior Ministry. If he had stayed in Afghanistan, he would have been arrested and killed. After the change of power persecution began with 20 party members being shot in one day, and one of Babrak Karmal's aides killed. The witnesses testified that the risk of Colonel Abdul Vali Parhiz's being persecuted by the Talibs is very great, as even rank-and-file soldiers are persecuted for their service for republicans.

The court called in question the arguments of the Immigration Control Department for Moscow and Moscow region that the issuance to the applicant of a new passport in the Embassy of Afghanistan in Moscow in 1995 should be regarded as a voluntary resumption of enjoying the protection of his country of citizenship, as it has been established during the court hearing that the government and the regime which existed in Afghanistan in 1995 ceased to exist after the Talibs occupied Kabul in the autumn of 1996, and the lawful authorities of Afghanistan outside of the country in reality are not in a position to protect anyone's interests.

The court has heard the opinion of expert G. P. Ezhov, assistant professor in the Institute of Asian and African Studies of the Lomonosov Moscow State University, who has all the necessary expertise to produce such opinion. According to him, the amnesty the Talibs announced in 1996 was purely of a declarative nature which is proved by their subsequent actions. Thus, in May 1998, the Taliban movement leader Mullah Omar issued a religious directive binding upon all Moslems on measures to struggle against "infidels, communists, opponents of the regime and their sympathizers". Therefore, in the event of the appellant's return to Afghanistan at the present time, he may be indicted for many years' PDPA membership, having been the secretary of party organizations, aide to President of Afghanistan Babrak Karmal, holding, for a long period of time, key posts in the Interior Ministry, study at the military academy in the USSR. Any of the above charges may have grave consequences for Abdul Vali Parhiz, while taken together they may mean his physical destruction, therefore, the appellant and his family have every reason to claim refugee status in Russia, as their return to Afghanistan is impossible.

Having assessed the total evidence in the case and considering the specific facts of the case, the court has come to the conclusion that the arguments stated by Abdul Vali Parhiz meet the refugee status determination criteria. Therefore, the decision of the Immigration Control Department for Moscow and Moscow region to refuse him refugee status is wrongful.

In view of the above and pursuant to Articles 191-197 of the RSFSR Code of Civil Procedure, the court

HAS DECREED AS FOLLOWS:

The refusal of the Immigration Control Department for Moscow and Moscow region to grant the citizen of Afghanistan Abdul Vali Parhiz refugee status shall be declared unlawful;

The Migration Service of Moscow shall be obligated to grant Abdul Vali Parhiz refugee status.

This decision may be appealed in the Moscow City Court within 10 days.

Federal Judge /Signed/ V. M. Pilganova

True copy
/Signed/ V. M. Pilganova

Seal of Basmany Municipal Court