

DECISION

In the Name of the Russian Federation

On January 17, 2001, the Presnenski Intermunicipal (Area) Court of Moscow's Central Administrative Area chaired by Federal Judge V.A. Rogozhin under Secretary Y.S. Klimova,

Having examined, in an open court hearing, Civil Case #2-132\2001 based on Vui Thi Lan Hyong's complaint against the Moscow Migration Service's refusal to grant her refugee status,

HAS ESTABLISHED AS FOLLOWS:

The applicant had filed her complaint with the court motivating her claim by the fact that she is a national of Vietnam, and that owing to well-founded fear of being persecuted for her political opinion she is outside her country of nationality and is unwilling to avail herself of the protection of her country owing to such fear. On March 4, 1996 the Immigration Control Office for Moscow and Moscow Region refused to accord her political asylum. On November 20, 1998 the Appeal Commission under the Federal Migration Service of Russia reworded the refusal, recognizing the grounds for her political asylum claim as insufficient, and recommending that the applicant file a refugee status claim. She followed the recommendation and lodged the appropriate claim with the Immigration Control Office for Moscow and Moscow Region. On October 26, 1999 the Immigration Control Office refused to grant her refugee status by referring to the absence of grounds as listed in Article 1.1.1 of the Russian Federation Law on Refugees. Within one month after the refusal, the applicant submitted a complaint to court.

She asked the court to overrule the refusal as unlawful and oblige the Moscow Migration Service to grant her refugee status.

The applicant and her counsel supported the complaint in the courtroom.

The Moscow Migration Service representative considered the complaint unfounded. Still, he recognized that that if she returned to her country, the applicant would face a real risk of being persecuted on account of her political opinion.

Having heard the explanations of the applicant and the Moscow Migration Service representative and having examined the material of the case, the court has found the complaint to be well-founded and subject to being granted. The court has based its judgment on the following considerations. The court has established that the applicant was born in Hanoi in 1970 and that she holds Vietnam nationality. From August 5, 1988 to June 30, 1994 she was in the Soviet Union (Russia) as a student of international economic exchanges at the MGIMO Institute under the Ministry of Foreign Affairs of the Russian Federation. She graduated with a master's degree in economics and is fluent in English, Spanish, Russian, and Vietnamese. At the moment, she is unable to return to her country owing to persecution on account of political opinion, and since she does not have the appropriate legal status in Russia, she may not live or work here. As an undergraduate

student, she was involved in institute-wide campaigns such as A Week of Conscience (organized by Memorial in commemoration of Stalin's victims) and in a boycott of classes in the history of the Communist Party of the Soviet Union. Furthermore, in 1992-1995, she was an announcer, editor and translator at the *Voice of Freedom from Moscow* Radio (also known as Radio *Irina* and Radio *Nadezhda*) broadcasting Russian and international authentic news to Vietnam in the Vietnamese language. She played an active role in a *Human Rights in Vietnam* International Symposium held in Moscow on April 23, 1993 where she gave two presentations on violations of human rights and the role of young people in Vietnam. As an employee of a free radio, she received repeated warnings, orally and in writing, from the Embassy of the Socialist Republic of Vietnam. The Embassy demanded that she repent in writing, and demanded that the Ministry of Higher Education expel her from MGIMO (an Embassy note to this effect is appended). But neither MGIMO nor the Ministry did as requested because in their opinion there were no valid reasons to expel a high-performing student. In fact, the MGIMO administration suggested that she take her graduation examinations ahead of her class to get her diploma, which she did. In the course of her undergraduate studies and work at the radio, the Embassy repeatedly summoned her for "re-education" and, possibly, for arrest and deportation to Vietnam (the Embassy summons are appended). On April 15, 1993 she went to the Embassy for an interview but for safety reasons seven Russian and foreign journalists accompanied her. The Embassy used the visit to provoke a scandal and even sent a note to the Russian Ministry of Foreign Affairs. The journalists were forcibly kept on the Embassy compound for a whole day. On April 16, 1993 *Moscow Time* carried a story about dissident Vui Thi Lan Hyong. The Embassy, in turn, sent a circular letter to all schools in Moscow in which there were students from Vietnam, charging her with sedition (the circular letter is appended). The allegations contained in the circular letter fall under Articles 72, 82 and 85 of the Vietnam Criminal Code and are punishable by imprisonment for a term of three to twenty years, up to a life imprisonment and even capital punishment (a pertinent extract from the Criminal Code is appended). Since 1993, the applicant has granted many interviews and written many articles for various democratic newspapers, magazines and radio stations (in the United States, Canada, France, Australia, Germany, and other countries), including the Voice of America and the Australian Government Radio. In the meantime, there have appeared a series of publications about Vui Thi Lan Hyong in the international press, and she became widely known as a Vietnamese dissident in many countries of the world. Since June 1993 when the Embassy formally accused her of sedition and she realized that her return to Vietnam was not possible any more, she has repeatedly lodged political asylum applications (including with the President of the Russian Federation and the Human Rights Commission). But in accordance with the *Regulations on the Political Asylum Procedure in the Russian Federation* and with a letter from the Nationality Commission under the President of the Russian Federation, her claim was forwarded to the Moscow Migration Service. On February 20, 1998 the Immigration Control Office for Moscow and Moscow Region rejected her political asylum claim. The Appeal Commission under the Federal Migration Service examined her complaint against the Immigration Control Office decision, and on November 20, 1998 recommended that she re-apply to the Immigration Control Office for refugee status. The court has concluded that if she returned to her country of nationality, the applicant may face a real risk of being persecuted for her

political opinion inasmuch as Vietnam's public authority has already brought sedition charges against her.

The applicant did not miss the time limit to appeal against denied refugee status in court.

In accordance with Article 1.1.1 of the Russian Federation Law on Refugees, a refugee is a person who is not a national of the Russian Federation and who owing to well-founded fear of being persecuted for reasons for race, religion or nationality is outside the country of his nationality and is unable to avail himself of the protection of that country or is unwilling to avail himself of such protection owing to such fear.

Under Article 2.2, the above Law does not apply to foreign nationals and stateless persons who have left their countries of nationality (former habitual residence) for economic reasons or owing to famines, epidemics or other natural or man-made calamities.

In conformity with Article 1.1 of the RSFSR Code of Civil Procedure, the administration of civil justice at general jurisdiction federal courts is determined by the Constitution of the Russian Federation, the Federal Constitutional Law on the Judicial System of the Russian Federation, the RSFSR Code of Civil Procedure, and other federal laws. Rules of civil procedure contained in other laws must correspond to the provisions of the RSFSR Code of Civil Procedure.

Under Article 7 of the Federal Constitutional Law on the Judicial System of the Russian Federation, all persons are equal before the law and the court. Courts shall not give preference to any bodies, persons or parties involved in judicial proceedings for reasons of their government status, membership of a social group, sex, race, nationality, language or political opinion or on account of their origin, property or official status, residence, place of birth, religion, beliefs, or membership of public associations, or other grounds that are not envisaged in the Federal Law.

In accordance with Article 10.2.1 of the RSFSR Code of Civil Procedure, a court must resolve civil cases based on the Constitution of the Russian Federation, Federal Constitutional Laws and other Federal Laws, Legal Rules approved by the President, Government and other federal public authorities of the Russian Federation, the constitutions (charters) of subjects of the Russian Federation, the laws of subjects of the Russian Federation, the regulations of government bodies of subjects of the Russian Federation and bodies of local self-government, and the international treaties of the Russian Federation. If, when examining a civil case, it establishes that a decree of a public or other body or of an official is at variance with the Constitution of the Russian Federation, a Federal Constitutional Law or another Federal Law, or generally recognized principles and rules of international law, an international treaty of the Russian Federation, the constitution (charter) of a subject of the Russian Federation or the law of a subject of the Russian Federation, the court shall base its decision on the legal rules that have legal precedence.

The court has therefore established that when she applied to the Moscow Migration Service for refugee status, the applicant had every legitimate reason to be accorded such status. In the light of the above, the court has concluded that the appealed refusal to grant her refugee status is unlawful and prejudicial to her rights and liberties, and that her complaint is well-founded and must be granted.

The court takes into account Article 6 of the Russian Federation Law on Court Appeals against Actions and Decisions Violating Citizens' Rights and Liberties, which states that the public authority or official whose actions are appealed is obligated to provide documentary proof that the appealed action is lawful. An individual is exempted from submitting evidence of the legality of the appealed action (decision) but must prove the fact that his rights and liberties have been violated.

Under Article 50.1 of the RSFSR Code of Civil Procedure, each party must prove the circumstances it invokes as the basis of its claims or objections.

The court has not been provided with any evidence of the legitimacy of the appealed actions.

In the meantime, the court has established that the appealed decision of the Moscow Migration Service has violated the legitimate rights and liberties of the appellant. As a consequence, the appeal is considered to be well-founded and must be granted.

Pursuant to Articles 191-197 of the RSFSR Code of Civil Procedure, the court

HAS DECIDED:

- To recognize as unlawful the Moscow Migration Service's refusal to grant Vui Thi Lan Hyong refugee status; and,
- To oblige the Moscow Migration Service to grant Vui Thi Lan Hyong refugee status.

The decision may be appealed to the Moscow City Court within ten days.

Judge (signed)

The decision entered into legal force on January 28, 2001.