

Seoul Administrative Court

The Second Branch

Decision

Case No.	2020GuHap78100 Revocation of Disposition Rejecting Application for Rental Housing on Deposit Basis
Plaintiff	[REDACTED]
Defendant	Head of Gwanak-gu Office, Seoul Metropolitan City
Closing of Hearings	4 November 2021
Date of Decision	23 November 2021

Rulings

1. The Defendant's 18 June 2020 disposition to reject application for rental housing on a deposit basis to the Plaintiff are revoked.
2. The litigation costs are borne by the Defendant.

Purport of the Claim

As stated in the rulings

Reasoning

1. Background of the disposition

A. The Plaintiff is a nationality of [REDACTED] who was granted refugee status under the Refugee Act on 21 March 2018, and became a recipient of living, housing, and medical benefits under the National Basic Living Security Act on 6 June 2018. The Defendant is the authority responsible for selecting tenants in Gwanak-gu, Seoul, based on the tenant recruitment notice by the Korea Land and Housing Corporation, a public housing project operator, for its existing rental housing project on 1 June 2020 (hereinafter referred to as the "Housing Project").

B. On 18 June 2020, according to the Plaintiff, the Plaintiff, accompanied by his lawyer A representing the Plaintiff in this proceeding, visited the B-dong Community Service Center, designated as the application site in the tenant recruitment notice for the Housing Project, to apply for a rental

housing on deposit in the Housing Project. However, the Defendant rejected the Plaintiff's application on the grounds that the Plaintiff is a foreign national and not eligible for public rental housing, and the Plaintiff subsequently filed this lawsuit.

2. Judgment on the preliminary objection before the merits

A. The Defendant's preliminary objections

1) The disposition of refusal does not exist

The Plaintiff visited the B-dong Community Service Center on 18 June 2020 and requested a consultation regarding the procedures for supply of new houses for the Housing Project and eligibility criteria thereof. The responsible official informed the Plaintiff that foreigners are not eligible, and the Plaintiff left without any objections. However, the Plaintiff never submitted a written rental housing application in accordance with the laws; therefore, this lawsuit seeking the revocation of the rejection for a non-existent application is unlawful.

2) The refusal decision is not a disposition

Even if the Plaintiff submitted a lease application form for rental housing on a deposit basis similar to the Plaintiff's evidence #10, the Plaintiff's application does not satisfy the pro forma elements, as it was submitted without necessary attachments as required by law. As a result, the Defendant's refusal thereof cannot be considered to be a disposition subject to appeals suit.

3) Absence of benefit of lawsuit

As the selection process for the Housing Project has already been completed, and occupancy contracts have been signed between the Korean Land and Housing Corporation and the selected tenants, the Plaintiff is unlikely to benefit from seeking a revocation of the Defendant's refusal to apply the housing project, even if the refusal disposition is deemed illegal. As such, the lawsuit is unlawful as there is no benefit of lawsuit for the Plaintiff.

B. Decision

1) Finding on the existence of the disposition of refusal

Considering the Plaintiff's evidence 9, 10, and 13 and the overall purport of the argument, the following facts can be established: The Plaintiff wrote an application for rental housing on 18 June 2020. On 23 June 2020, the lawyer A, who accompanied the Plaintiff to the Community Service Center B-dong, sent to the Head of the B-dong Community Service Center in Gwanak-gu a request for a written statement that specifies the grounds and reasons for the rejection of the Plaintiff's rental housing supply

application. The Head replied to A's request on 6 July 2020, stating that "Inquiries have been made regarding the reasons for the rejection of application for rental housing by a recognized refugee. The general rule is that applications for rental housing are excluded for foreigners and are only available for overseas Koreans who hold Korean nationality." In the response, the Head also attached the "Guidelines for Processing the Occupancy of Rental Housing for Foreign Nationals, etc." distributed by the Housing Welfare Planning Office. Considering the fact that the Head of the B-dong Community Service Center provided a document that specifies the grounds for rejection as a response to A's request, which was made closely after the Plaintiff's visit to the Center, to disclose the reason for the rejection of the application, it can reasonably be assumed that the Plaintiff made the application for a rental housing unit (hereinafter referred to as the "Application") on 18 June 2020, by submitting the supply agreement [sic] for Rental Housing on Deposit Basis, the Plaintiff's Evidence #10, to the B-dong Community Service Center, and that the Defendant rejected this application (hereinafter referred to as the "Refusal").

2) Finding on the disposability of the disposition of refusal

According to the above findings, the Refusal was not due to the lack of pro forma elements such as lack of attachment documents, but because the Plaintiff was a foreign national without Korean nationality. Therefore, we dismiss the Defendant's preliminary objection that it was an act of return of an application that did not satisfy pro forma elements, and thus was not a disposition.

3) Finding on the benefit of lawsuit

Even if the Refusal is revoked, the Plaintiff's legal status cannot be restored because the tenants for the Housing Project have already been selected and the project has ended. However, if the Plaintiff applies for rental housing in the future or another type of public rental housing, there is high likelihood of being denied due to the same reason as the Refusal. Also, since the time required to complete the selection of tenants, from the date of the public housing tenant recruitment notice, is not long (in this case, about 13 weeks), if we deem that there is no legal benefit in seeking to revoke the refusal disposition solely based on the fact that the tenant selection process was completed during the ongoing lawsuit, there is a risk of repeated refusals for the same reason in the future. Therefore, we find that this is a case where it is necessary to confirm the illegality of the administrative disposition or to clarify ambiguous legal relationships.

Therefore, the Plaintiff has a legal interest in seeking to revoke the Refusal and the Defendant's preliminary objection in this regard is dismissed.

3. Legality of disposition

A. The Plaintiff's argument

According to the Special Act on Public Housing, foreigners are not explicitly excluded from being selected as tenants, and the Plaintiff is entitled to the same level of social security as nationals, according to the Articles 30 and 31 of the Refugee Act as well as the Convention Relating to the Status of Refugees (hereinafter referred to as the "Refugee Convention") which the Republic of Korea ratified in 1992. Therefore, the Plaintiff, as a refugee, also has the right to apply for public housing.

B. Finding

1) Scope of determination of illegality of the disposition

If administrative agency's refusal to accept an application is not simply due to pro forma procedural issues, but is actually based on the fact that the applicant is clearly outside the scope of the administrative disposition, the legality of the refusal should not be determined solely based on procedural illegality but should be determined by its substance, as befits the intent of the parties and the efficiency of legal proceedings (see, *inter alia*, Supreme Court Decision 95Nu12897, delivered on 30 July 1996).

As seen above, the Defendant did not refuse to accept the Application after a pro forma review thereof, based on the grounds that the Plaintiff has not submitted necessary attachments. The Defendant refused the Application on a substantial ground that only Korean nationals or overseas Koreans holding Korean nationality can apply for rental housing and that foreigners like the Plaintiff cannot apply. Therefore, we delve into the substance of whether the Plaintiff is eligible to reside in rental housing on deposit basis.

2) Finding

A) According the Article 30 of the Refugee Act, which was enacted for the purpose of determining the status and treatment of refugees according to the Refugee Convention and the 1967 Protocol Relating to the Status of Refugees, refugees residing in South Korea shall receive treatment under the Refugee Convention regardless of other laws [paragraph (1)], and the state and local governments shall establish and implement policies on the treatment of refugees, revise related laws, support related departments, and take other measures [paragraph (2)]. As the Republic of Korea is a party to the Refugee Convention without any reservations, various articles on the rights of refugees under the Convention have the effect of domestic law. The paragraph 1, Article 24 of the Refugee Convention stipulates that contracting states shall grant refugees in their territory the same treatment as they grant their own nationals in matters of social security (industrial accidents, occupational diseases, maternal protection, diseases, disability, old age, death, unemployment, family support and other causes eligible for social security system according to domestic laws).

B) The reason for enactment of the Refugee Act is as follows: "The Republic of Korea has

ratified the Convention and Protocol Relating to the Status of Refugees in December 1992, and since then, it has regulated the procedure for recognition of refugees in the Immigration Act. However, compared to other advanced countries, it has not accepted enough refugees and has not fulfilled its international obligations. There have been persistent criticisms both domestically and internationally regarding the speed, transparency, and fairness of the refugee determination procedure. Also, there exist numerous issues regarding the treatment of refugees, etc., such as lack of means for refugees to maintain minimum livelihood, and inability to enjoy rights guaranteed by the Convention even by those who have received refugee recognition. By substantially providing for refugee determination procedures and treatment of refugees, etc., the Act aims to harmonize international law, such as the Convention Relating to the Status of Refugees, with domestic laws and to lay the foundation for becoming an advanced country in terms of human rights.”

According to Article 31 of the Refugee Act, aliens recognized as refugees who reside in the country are entitled to social security at the same level as the Korean nationals, notwithstanding the Article 8 of the Framework Act on Social Security. The Article 8 of the Framework Act on Social Security stipulates that the application of the social security system to foreign residents in the Republic of Korea shall be made in accordance with the principle of reciprocity and related legislation or regulations. We view that this form of legislation was used to address possibility of individual wording or contents of a law related to social security leading to exclusion of refugees or being used as the basis to exclude refugees, as there exist diverse legislations related to social security systems. Therefore, the provision must be interpreted as allowing refugees same level of social security as Korean nationals, notwithstanding any provisions of laws related to social security that restrict or provide exceptions in social security benefits for foreigners. Based on the purport of the provision, we find that restriction or exceptions in social security for refugees should be explicitly provided in relevant legislations in order for refugees’ social security that is of the same level as Korean nationals to be limited or excluded.

C) The Special Act on Public Housing aims to contribute to the comfortable dwelling of citizens by providing public housing units to stabilize the dwelling of ordinary people and to improve their residential standards and is regulating one of the social security systems. The Article 45-2 of the Act and the Article 40(1) of the Enforcement Decree of the Act does not specify any requirements for eligibility of tenants of public rental housing, which is provided by public housing operator through leasing existing housing. Also, Article 21 (1) of the previous Enforcement Rules of the Special Act on Public Housing (before being amended by the Decree of the Ministry of Land, Infrastructure and Transport No. 818 on 2 February 2021) specify the criteria for being selected as a tenant for public rental housing, which include monthly average income of a certain amount or less among members of non-homeowner household. The Article 21(2) of the Enforcement Rules delegate specific criteria and procedures for selecting tenants to the Directive of the Ministry of Land, Infrastructure and Transport,

"Guideline for Processing Public Rental Housing." The Guideline requires that the tenant be a member of a non-homeowner household. A non-homeowner household member is defined as a member of a household in which all household members does not own a house. A household consists of an applicant for housing, applicant's spouse, and lineal ascendant/descendants, etc., If the applicant is not registered on the resident registration record by household, the applicant is not considered. A resident registration record is created by the head of a Si/Gun/Gu to promote convenience in the lives of residents and to properly process administrative affairs by clearly ascertaining the residential situation of residents and the movement of the population through resident registration [Article 1 and Article 7 (1), Resident Registration Act]. If an alien intends to stay in the Republic of Korea for more than 90 days from the date of entry, the alien shall file for alien registration with the head of the Regional Immigration Service having jurisdiction over his or her place of stay within 90 days from the date of entry into the Republic of Korea, and the head of a Regional Immigration Service shall file registered alien record and alien registration card (Articles 31, 32, and 34, Immigration Act).

In light of the legislative purpose and legislative form in the above relevant laws, we view that the requirement to be a non-homeowner household member to be selected as a tenant for rental housing on deposit basis and provisions to determine this criteria through household registration in the resident registration record are not intended to exclude refugees, who are foreigners and thus cannot obtain resident registration; they are guidelines to determine the non-homeowner status of an applicant for rental housing, by ascertaining the residence status of the applicant and identifying the individuals who constitute the same household with the applicant. The Housing Welfare Planning Office's 'Standard for Processing Rentals for Overseas Koreans, etc.' provides that foreign nationals without Korean nationality cannot apply for public rental housing, given the nature of funding for public rental housing and the fact that foreigners are unable to meet the criteria for being a non-homeowner household member. However, social security for refugees cannot be restricted or excluded by this Standard, which is not a law. Therefore, refugees who receive the same level of social security as Korean nationals are eligible for rental housing on deposit basis in the same manner as Korean nationals. Whether the foreigner refugee is a non-homeowner household member can be determined through objective evidence other than resident registration record, such as foreigner registration record.

D) Therefore, the Plaintiff as a refugee have the right to be selected as a tenant of rental public housing on deposit basis in the same manner as Korean nationals, in accordance with the Article 45-2 of the Special Act on Public Housing, Article 40 of the Enforcement Decree of the Act, Articles 31 and 30(1) of the Refugee Act, and Article 24 of the Refugee Convention. The Refusal based on grounds in variance with above is illegal, and we find for the Plaintiff and accept the Plaintiff's argument.

4. Conclusion

Therefore, we find for the plaintiff and accept the Plaintiff's claims and it is so decided as per rulings.