

Seoul Administrative Court

Decision

Case No. 2020GuDan19418 Cancellation of the Decision of Non-Recognition of Refugee Status

Plaintiff [REDACTED]

Defendant [REDACTED]

Closing of Hearings 29 April 2021

Date of Decision 27 May 2021

Rulings

1. The defendant's decision of non-recognition of refugee status on 29 July 2019 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 decision

The nationality of the plaintiff, the date of Plaintiff's entry to the Republic of Korea, the Plaintiff's type of visa at the time of entry, first application for recognition of refugee status and the decision of non-recognition, the following appeal and dismissal of appeal, summary of the dismissed administrative lawsuit against the first decision of non-recognition of refugee status, the second application for recognition of refugee status and the decision of non-recognition (hereinafter referred to as "Application" and "Non-Recognition Decision"), summary of appeal against the Non-Recognition Decision and the dismissal of the appeal are listed in the table below.

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Nationality of the Plaintiff	Islamic Republic of Iran (hereinafter "Iran")	Entry to the Republic of Korea	15 July 2010	Type of Visa	Short-term Business Visa (C-2)
1 st application for recognition of refugee Status	Date of Application	27 May 2016			
	Date of Decision	7 June 2016			
	Result	* Decision of non-recognition of refugee status * Grounds: non-finding of well-founded fear of being persecuted			
1 st appeal to non-recognition of refugee status	Date of Appeal	18 July 2016			
	Date of Decision	27 October 2016			
	Result	Dismissal			
1 st administrative lawsuit against non-recognition of refugee status	Court of first instance	Seoul Administrative Court Decision 2016GuDan[REDACTED] delivered on 25 January 2018 (Dismissal of Plaintiff's Claim)			
	Court of appeal	Seoul Administrative Court Decision 2018Nu[REDACTED] delivered on 6 December 2018 (Dismissal of Plaintiff's appeal, decision confirmed on 25 December 2018)			
2 nd application to recognition of refugee status ("Application")	Date of Application	19 February 2019			
	Date of Decision	29 July 2019			
	Result	* Decision of Non-recognition of Refugee Status ("Non-Recognition Decision") * Grounds: non-finding of well-founded fear of being persecuted (however, permission of sojourn on humanitarian reasons)			
Appeal	Date of Appeal	6 September 2019			
	Date of Decision	20 August 2020			
	Result	Dismissal			

[Grounds for Reasonings] Undisputed facts, Plaintiff's evidence 1,2, and 3, Defendant's evidence 1, 2, 3, 6, and 7(including branch numbers if there are branch numbers, the same shall apply hereinafter), and the overall purport of pleadings

2. Assessment of the Non-Recognition Decision

A. Summary of Plaintiff's Arguments

After the Plaintiff's entry to the Republic of Korea, the Plaintiff first converted from Islam to Christianity at the recommendation of the Plaintiff's son, who had already gone through conversion. Later, around March 2017, the Plaintiff and the Plaintiff's son converted to Catholicism, receiving

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baptism and Confirmation. The Non-Recognition Decision, which did not accept the Plaintiff's application for recognition of refugee status even though the Plaintiff possesses well-founded fear of being persecuted for religious reasons as follows, is illegal.

1) The Plaintiff's family currently residing in Iran cut off contact with the Plaintiff and his son for the reason that conversion constitutes an act of apostasy.

2) Prior to the Plaintiff's Application, the Plaintiff and his son had each applied recognition of refugee status, which were each denied. They had then filed lawsuits against the decision, which were each dismissed and confirmed. Later, the Plaintiff's son filed a second application for recognition. This was followed by a petition to the President's office to recognize the Plaintiff's son as a refugee, which received wide support, and the Plaintiff and his son's story was reported by media. On 19 October 2018, the Plaintiff's son was granted recognition of refugee status. Thereafter, domestic and foreign media reported on the conversion of the Plaintiff and his son and the refugee recognition decision. Considering that the Iranian government has been practicing a policy of persecution against apostates, because the conversion of the Plaintiff has become widely known through media reports as seen above, there is a high possibility that the Plaintiff will come under close attention of the Iranian government.

3) Since the Plaintiff's son, a minor, has been granted refugee recognition, there exists a humanitarian reason to recognize the Plaintiff's refugee status, in the interest of ensuring the right to family unification.

B. Finding

1) In accordance with Article 1, Article 2 subpara. 1, and Article 18 of the Refugee Act; Article 1 of the Convention Relating to the Status of Refugees; and Article 1 of the Protocol relating to the Status of Refugees, the Minister of Justice shall recognize a foreigner, who is staying in the Republic of Korea 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 unable or unwilling to avail himself of the protection of the country of his nationality, as a refugee. Here the term "persecution", a requirement for refugee recognition, can be understood as "acts causing a serious infringement of, or discrimination against, inherent human dignity, including threats to life, body or freedom". A foreigner requesting refugee status bears the burden of proving a "well-founded fear" of being persecuted. However, it is difficult to impose upon foreigners the burden of proving the entirety of the alleged facts by objective evidence, if we consider the foreigner's special circumstances. Thus, the alleged facts shall be deemed as proven if it is reasonable to recognize them based upon the consistency and persuasiveness in his allegations and the credibility of his entire statement in light of the following: the route of entry into the country, the period between the date of entry into the country and the filing of the request for refugee status, the circumstances surrounding the request for refugee status, the circumstances in the country of

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nationality, the degree of fear to which the foreigner is feeling subjectively, the political, social, cultural environment of the region where the applicant had been residing, and the degree of fear felt by an ordinary person residing in the relevant region(see, e.g., Supreme Court Decision 2007Du19539, delivered on 24 July 2008; Supreme Court Decision 2007Du3930, delivered on 24 July 2008; and Supreme Court Decision 2016Du56080, delivered on 11 July 2017).

2) In light of the following facts and circumstances that can be acknowledged or known considering the Plaintiff's evidence 4 to 40, 43 and 45, the results of the examination of the Plaintiff before the court, and the overall purport of the pleadings, we accept that there exists the Plaintiff's well-found fear of persecution due to religious reasons should he return to Iran, and that there exists a humanitarian need to grant refugee status to the Plaintiff, based on the principle of family unification. Therefore, the Non-Recognition Decision is illegal and shall be revoked.

A. The sincerity of the Plaintiff's conversion

The Plaintiff claims as below on his conversion to Catholicism and religious practices.

Since the Plaintiff's son (born on [REDACTED], year of 2003) began attending church around 2011, he has participated in Sunday school, retreats, training, and Bible study until March 2017. The Plaintiff enrolled to [REDACTED] Church on 18 January 2015 due to his son's recommendation. Afterwards the Plaintiff has been participating in the mass of the [REDACTED] Catholic Church at the recommendation of his neighbor [REDACTED] who helped the Plaintiff settle in Korea, and became interested in Catholicism, attracted by the reverent and calm atmosphere. The Plaintiff was baptized around November 2017 after 8 months of Catechism education, and then received 8 more months of education and then going through the Confirmation on 7 July 2018. Currently, the Plaintiff is attending weekly mass at the [REDACTED] Catholic Church, also participating in necessary church work such as cleaning.

Also, the Plaintiff stated in his examination that he gained hope for life through baptism and Confirmation just as when Jesus was resurrected, and learned to be kind, warm, and generous to others. He also claimed to once have had an opportunity to share the gospel with a Turkish person. He claims that evangelizing is a necessity although he has difficulties due to his limited Korean skills. The Plaintiff also stated during the refugee interview that he had been dissatisfied with the Islamic faith, but after conversion he felt as if there was a bright shining light in his heart when giving prayers, felt a change in his soul, came to know many good people, and also mentioned that his favorite teaching of the Bible was to give to others. According to the Plaintiff's statements during the refugee interview, the Plaintiff seems to have an overall understanding of the Bible's content, the gospel, and doctrines.

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Given that circumstances of his conversion from Islam to Christianity, and then from Christianity to Catholicism are natural, that he completed an eight-month course of doctrinal studies that culminated in his baptism and Confirmation, and that he has consistently expressed his admiration for the teaching to give to others during refugee interview and examination in court, we find that his statement on his conversion and religious faith is credible, and that he has genuinely converted to Catholicism.

B. Iran's oppression on Christian converts

The Iranian Constitution states that "Iran is an Islamic Republic" and mandates that "all laws and regulations are based on Islamic standards and the official interpretation of Islamic law." While apostasy is not criminalized in Iranian law, the death penalty can be imposed for charges of hostile acts against God (moharebe) and insults against prophets (sabb al-nabi).

According to a 2018 report on Iran from England's Home Office, the Iranian government targets those who engage in "all kinds of Christian congregations, evangelism, possession of Bible and Christian books, Christian student classes, Christian contacts, Christian meetings at home and abroad." The 2017 UN Human Rights Council's Report of the Special Rapporteur on the Situation of Human Rights in the Islamic Republic of Iran and a 2020 report on Iran's violations of human rights against Christians indicate that organizing a family church and attending a family service are often indicted as violations of national security-related criminal provisions, such as acts hostile to national security under Article 499 and incitement to the government under Article 500 of Iran's Criminal Act.

Moreover, a 2017 report from Norway on country of origin information on Iran reveals that "(1) Iranian authorities tend to target leaders and organizers of family churches rather than ordinary converts who do not actively evangelize; (2) the European Court of Human Rights has ruled that converts who do not draw the attention of Iranian authorities and live quietly do not face the actual risk of abuse even if they return to Iran; and (3) the degree of "visibility" of a convert's actions, activities, and conversions may determine whether they are at real risk in Iran, and there is a real risk of persecution if a conversion is likely to attract the attention of Iranian authorities for any reason in the past."

C. The possibility for the Iranian government to take note of the Plaintiff

As noted above, the conversion of the Plaintiff and his son has been widespread throughout domestic and foreign media. The report's content and scope, degree of exposure of identity, and their popularity, taken together with the situation of Iran's oppression against those who converted to Christianity as discussed in B. above, constitute a case of a high degree of "visibility" for the Plaintiff, whose act of conversion was disclosed to the public, thus attracting the attention of Korean society and

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foreign media. Therefore, even if the Plaintiff does not go back to Iran and immediately engage in active evangelism or publicly renounce Islam, the fact that he and his son have already been the subject of media attention raises concerns for their safety.

(1) When the Plaintiff's son applied for the second refugee recognition, his friends and schoolteachers filed a Petition to the President's office to request approval of the above application and began active support activities such as picketing. More than 30,000 people supported the Petition, the Superintendent of Seoul Metropolitan Office of Education and a Cardinal openly met with the Plaintiff's son to urge recognition of his refugee status, and finally the Parents' Association for True Education Nationwide and three religious sects – Christian, Catholic, and Buddhist Jogye Order – also issued statements supporting his refugee recognition. Several media reported the Plaintiff and his son's story on conversion and refugee recognition, which included the current situation of Iran's oppression against Christians and also specific personal information that could reveal the identity of the Plaintiff and his son (age of the two people, how the Plaintiff and his son entered the Republic of Korea and what led them to conversion, the fact that the Plaintiff's son is currently in [REDACTED] grade in middle school, and the baptismal name of the Plaintiff's son).

(2) The Plaintiff's son was granted refugee recognition as a result of his second application for recognition on 19 October 2018, and a large number of domestic and foreign media (including Christian press written in Persian, the official language of Iran) reported on the conversion of the Plaintiff and his son, the circumstances of persecution against Christian converts in Iran, and the implications of the refugee recognition decision. In the media reports, specific personal information that may lead to specifying their identities, such as photos of the Plaintiff's son, the fact that the Plaintiff's son attends a school in [REDACTED] and was born in the region of [REDACTED], Iran and came to Korea with his father, a businessman, were included. In addition, situation a day before the court hearing of the Plaintiff and his son was produced as a film and submitted to the [REDACTED] International [REDACTED] Festival, and the fact of the film production was reported by the media. The Plaintiff's son also appeared on a [REDACTED] television news program and expressed his position on his conversion and his refugee status application.

D. The aspect of the right to family unification

The son of the Plaintiff, born on [REDACTED] 2003, is a minor and has been granted refugee recognition. It is true that Article 37(1) of the Refugee Act requires that the government allow entry of a spouse or minor child of a recognized refugee but is silent on how to handle the entry of a parent or guardian of a minor, if he or she has been recognized as a refugee. Considering the following circumstances, we find that it is necessary to guarantee the right to family unification to the Plaintiff

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and his son, who are the only family to each other. Therefore, the Non-Recognition Decision, which did not accept the Plaintiff's application for refugee recognition, even though the minor Plaintiff [sic]'s refugee status was recognized, cannot be accepted also on humanitarian grounds.

(1) Article 36(1) of the Constitution stipulates that "Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal." The Article guarantees the freedom to decide and form marriage and family life on one's own as a fundamental right, and additionally guarantees a system for marriage and family (see Constitutional Court Decision 2001HeonBa82, delivered on 29 August 2002). The right to form a family in principle includes right to live together with one's family; right to family unification, which refers to the right of a family member to enter and reside in a particular country if another family member is legally residing in that country, in order for them to live together, is protected as a specific form of right to marriage (Seoul High Court Decision 2014Nu41086, delivered on 5 September 2014; Dissenting opinion of [REDACTED] in the Constitutional Court Decision 2011HeonMa520, delivered on 28 November 2013).

(2) Recommendations from the Conference that adopted the 1951 Convention Relating to the Status of Refugees, in order to ensure the protection of refugee's family, are: (a) ensuring that the unity of the refugee's family is maintained when the head of the family has fulfilled the necessary conditions for admission to a particular country; and (b) protection of refugees who are minors, with special reference to guardianship and adoption. Article 10(3) of the Family Reunification Directive adopted by 25 EU member states allows for entry and residence, for the purposes of family reunification, of recognized refugee minor's first-degree relatives in the direct ascending line.

(3) If the principle of family unification were not to apply in the case where the minor is a recognized refugee, the minor refugee may be forced a harsh choice of returning to one's home country, where persecution is certain, to live with one's parents, or living by oneself separated from the parents in Korea, despite having been given a status to settle in Korea. In the case before the Court, the Plaintiff and his son are the only family to each other, since they have been disowned by their family in Iran after their conversion, and the Plaintiff is providing for his son.

(4) Therefore, the right to family unification is not only provided to parents; their refugee children also have a right not to be separated with their parents and to be provided by them. In order to guarantee this, we find that the parents of the minor refugee also have the right to family unification, so that they can raise their children.

3. Conclusion

Therefore, we find for the plaintiff, and the Court accepts the plaintiff's claims and it is so decided as per Rulings.