

**DECISION**  
***in the name of Russian Federation***

On November, 13, 2001 at an open court session, the Zamoskvoretsky municipal court of the Moscow Central Administrative District,  
Composed of:

Chairperson: Ms. Karagodina L.A., a federal judge

Assisting: Ms. Ovchinnikova V.A., a secretary

Mr. Sadek Mohammad Yasin, an interpreter

has considered civil case #2-3736/11 \* an appeal filed by Gulam Mahiddin Mohammad Ibrahim and Abdul Khabib Monira against the decision of the RF Ministry of Federal Affairs in Moscow and the Moscow region and

**ESTABLISHED THE FOLLOWING:**

On April, 5, 2001 and on April, 24, 2001 the territorial body denied the applicants substantive consideration of their refugee claims on the grounds that they had arrived from the territory of the third country, where they could have been granted refugee status and that they had left the country of their citizenship in the absence of the reasons envisaged in Article 1.1.1. of the RF Law *On Refugees*.

The applicants filed an appeal against the a/m decision, considering it groundless, and requested that it should be invalidated and the territorial body should be obligated to consider their claim on the merits. During the court session the applicant explained that he and his wife Abdul Khabib Monira were both nationals of Afghanistan. Before the Talibans came to power he had been working as a pilot and his wife as a teacher, both had been members of NDPA. In 1996, the forces of Talibans came to power, the new authorities regarded him with suspicion because of his former employment considering him a communist. For some time he was forced to work for them as a military pilot, to transport loads, but they demanded that he fight on their side, threatening to hang him, than he and his family sold secretly their house and used the money to flee the country. They headed for Pakistan and later proceeded to Russia via Kyrgyzstan. Staying in the territory of Pakistan, they did not apply for refugee status, considering it dangerous, because they could have been repatriated to Afghanistan. The applicants stayed in the territory of Kyrgyzstan for 24 hours accompanied by a mediator, who did not even let them leave the premises.

Having come to Moscow, they approached the UNHCR Office and the migration service and have been waiting for 2 years already for the their refugee claim to be considered on the merits, but it was not.

The representative of the territorial body by proxy Tutikov objected to ruling in favor of the applicants, indicating that they had been staying

in the territory of Pakistan and Kyrgyzstan, but they failed to apply for refugee status, though they could have been granted it in the territory of Kyrgyzstan, which signed the 1951 Convention in 1996. Besides, the applicants left the country of their citizenship in the absence of the circumstances which in accordance with the current legislation entitle them to refugee status in the territory of the RF. The a/m facts are the reason for denying them the consideration of the applicants= appeal on the merits. Having heard the testimony from both sides and having studied the materials related to the case, the court has reached the following conclusions.

The territorial body denied the substantive consideration of the applicants= appeal, being guided by Article 5.5,6 of the Federal Law [On Refugees](#). In accordance with this law, the fact that a person has arrived from a foreign country where he could have been granted refugee status or has left the country of his nationality in the absence of the events envisaged in Sub-Clause 1, Clause 1, Article 1 of the a/m law and is unwilling to return to the country of his former habitual residence for fear of punishment in compliance with the current legislation for illegal departure outside the territory of the country or another offence committed in its territory are the grounds for the denial of substance consideration of a person\*s refugee claim.

However the court can not acknowledge the validity and legality of the decision taken by the territorial body, proceeding from the following.

Taking the decision, denying an asylum-seeker the substantive consideration of his refugee claim for reason of his stay in the third countries, and the countries where the applicants stayed were Pakistan and Kyrgyzstan, the territorial body should verify whether those countries were safe for the applicants.

During the court session the petitioner explained that they hadn\*t applied for refugee status in Pakistan, considering this country unsafe, where they could be deported to the country of origin. In Kyrgyzstan their claim was impossible, because they were staying there in transit and were forbidden to leave premises.

The fact of signing by the state of Kyrgyzstan the 1951 Convention [On Refugees](#) can=t be the reason for coming to conclusion that the applicants could have been recognized as refugees, to prove that the territorial body should have verified whether there was a legislation on refugee status determination in that country, as in the absence of such legislation the denial of consideration for reason that the applicants could have been granted refugee status is groundless, due to the fact that in the event of the absence of the a/m legislation, the applicants could not have been recognized as refugees even in case of their application.

Denying applicants consideration of their claim on the merits for reason that they had left the country of their nationality in the absence of the grounds on which they can be granted refugee status and are unwilling to return to the country of their citizenship owing to fear of

punishment in compliance with the current legislation for illegal departure from the country, the territorial body came to conclusion, that the applicant has no political opinion and is ready to serve any regime, as being a military pilot he transported loads both for mojaheideens and the regime of Talibans.

The applicant did not deny the a/m consideration and explained that he had been forced to leave the military service with Talibans when the latter started demanding that he participate in military operations, and that was the reason for fear of persecution from their side, in other words, the fact that the applicant refused military service, could be the reason for persecution and punishment. The territorial body failed to take into account the reason for which the applicant dropped out of the military service, because besides the political opinion a person can give up military service for reasons of conscience, moral and humanitarian nature. The a/m convictions as such can not be grounds for a person to be granted refugee status, but taking into consideration the fact that the military acts carried out by Talibans, condemned by the international community as being contrary to the elementary rules of human behavior, the punishment for desertion or draft evasion with all other conditions of the definition can be regarded as persecution (Art.171 On Refugee status determination).

The preliminary consideration of a refugee claim envisages the examination of reasons and circumstances set forth in the appeal, since when taking a decision with regard to the appeal of Gulam Mahiddin Mohammad Ibrahim, the territorial body failed to examine all the reasons and circumstances indicated in it and failed to verify whether the third country was safe and secure for him. The Court comes to conclusion that in order to examine thoroughly the reasons and circumstances indicated in the a/m claim the territorial body will be obligated to consider the appeal on the merits. In view of the above the court upholds the applicant=s claim and recognizes the decision taken by the territorial body as being invalid.

Recognition as refugees of members of one family concerns each family member taking into consideration the grounds on which they can be recognized as refugees. The applicant, member of Gulam Mahiddin Mohammad Ibrahim=s family, who did not provide a single reason for which she could have been recognized as a refugee in the territory of the RF, could have been granted the a/m status in order to guarantee the family reunification in the event of her husband=s recognition as a refugee, but as the question of his status is not settled due to the reversal of the decision denying substantive consideration of the appeal, and the decision taken in this case will influence the essence of the decision taken with regard to the applicant=s wife, the court upholds her complaint as well.

In view of the above, and being guided by Articles 191, 197, of the RSFSR Civil Procedural Code, the court  
HAS RULED AS FOLLOWS:

The appeal filed by Gulam Mahiddin Mohammad Ibrahim and Abdul Khabib Monira will be upheld.

The decision of the territorial body of the RF Ministry of Federal Affairs in the Moscow region of April, 5, 2001 denying Gulam Mahiddin Mohammad Ibrahim and of April, 24, 2001 denying Abdul Khabib Monira Consideration of the refugee claim will be recognized null and void and the territorial body will be obligated to consider their appeals on the merits.

The appeal against the decision can be filed with the Moscow City Court through the Zamoskvoretskiy inter-municipal district court within the next 10 days.

Chairperson=s signature