

DECISION

In the name of the Russian Federation

On January 5, 2000 at an open court session, the Basmanny municipal court of the Moscow Central Administrative District

Composed of:

Chairperson I. V. Osokina

Attending: T. Dolbneva, a lawyer

Assisting: N. Batova, a secretary

Considered civil case # 2-239/99 - an appeal filed by Mr. Abdul Rashid Ali Jan against lawless actions of the Moscow and Moscow region Immigration Control Department and

ESTABLISHED THE FOLLOWING:

Mr. Abdul Rashid Ali Jan filed an appeal in court against actions of the Moscow and Moscow region Immigration Control Department indicating that he was denied refugee status for groundless reasons.

To justify his appeal, the plaintiff pointed out that in 1992 he and his family (wife - Salikha Nazar Mokhamoud and his children) left Afghanistan because it was dangerous for them to remain in the country after the previous regime had been overthrown. He was a member of the People's Democratic Party of Afghanistan and an Officer of the State Security Ministry. He studied in Checkoslovakia - one of the states that belonged to the communist camp. He is a relative of Babrak Kamal. The plaintiff's grandmother was Babrak's cousin. This fact is known to everybody. He grew up in the same settlement of Kamri where Babrak Karmal used to live in his childhood. As soon as they had left Afghanistan their house was captured and robbed by Islamists. He is sure that upon their return to Afghanistan they will be killed. He approached the Moscow and Moscow region Immigration Control Department and submitted an application for refugee status. He was denied the status on the decision of the ICD dated 3 December 1997. Abdul Rashid Ali Jan has found the decision groundless and lawless and requests to oblige the ICD to grant him refugee status.

At the court session the plaintiff confirmed his appeal and explained the court that he and his family could not return to Afghanistan because there was a direct threat to their lives. After his colleagues had been arrested talibans were searching for him. While he was away from Afghanistan some unidentified persons came to his house and were interested to know his whereabouts and demanded that his folks would lay down his weapons and money. It was not because it was safe for him in Mazar-I-Sharif that he went there. In Masari-I-Sharif he could obtain his Russian visa. The appellee (the Moscow Immigration Control Department) does not recognize the complaint of being denied the status as the plaintiff arrived in Russia in 1992.

Talibans had not yet come to power at that time. Being on service at the financial department of the State Security Ministry does not necessarily imply involvement in any political activities and, therefore, the plaintiff does not meet the criteria required to be recognized as a refugee.

Having heard the statements of the participants of the court proceedings and having examined the materials related to the case, the court came to the conclusion that it should find in favour of the plaintiff on the following grounds:

The fact that Mr. Abdul Rashid Ali Jan used to be an officer of the State Security Ministry of Afghanistan and that he is a relative of Babrak Karmal was confirmed at the court session by Mohamad Ali Balachi. Apart from it, the witness confirmed that after mojaheideens had come to power several (over 20) officers from this Department of the Ministry were killed. They caught them in the city and did away with them. In the event the plaintiff returns to Afghanistan he will be killed as well. Mr. G. Yezhov, the expert interrogated at the court session, confirmed that the plaintiff had sufficient grounds to be granted refugee status for the following reasons: 1) he worked at the State Security Ministry under the democratic regime in Afghanistan; 2) he was a member of the People's Democratic Party of Afghanistan that was headed (the whole party and for some time one of its factions) by his relative Babrak Karmal; 3) he studied in a socialist country (Checkoslovakiya); 4) he belongs to Babarak Karmal's clan. The expert thinks that the combination of all the above facts does not give any chance either to the plaintiff or to his family to survive in the event they are caught by talibans.

In view of the above and guided by Article 1 of the Law of the RF "On Refugees"; articles 239 of the RSFSR Civil Procedural Code, the court

HAS RULED AS FOLLOWS:

The court shall find ungrounded decision # 411 dated 3 November 1997 of the Moscow and Moscow region Immigration Control Department and the decision of the Commission of Appeal of the FMS of the RF dated 9 February 1998 denying Mr. Abdul Rashid Ali Jan refugee status.

The plaintiff's application for refugee status shall be forwarded for re-consideration to the Moscow Migration Service. The other part of the plaintiff's claim shall not be satisfied.

An appeal against the decision can be filed with the Moscow City Court within the next 10 days.