

Ruling

Civil case No. 33-2265

February 28, 2000, the Civil Chamber of the Moscow City Court composed of Presiding Judge L. V. Borisova, and judges Ye. M. Bazykova, I. A. Ionova
with the participation of public prosecutor
and laweys L. Ye. Pismushkina, B. Z. Slobodkin

upon hearing in open court session the presentation by I. A. Ionova

on the case of appeal of the Migration Service of Moscow

against judgement of the Basmanny Municipal Court of the City of Moscow

dated July 30, 1999,

which ruled:

To declare invalid the refusal of the Immigration Control Department for the City of Moscow and Moscow Region to grant a refugee status to Afghan nationals Mohammad Khasan Gulamin Bear and Shah Salitan Shah Bali Khan.

To oblige the Immigration Control Department for the City of Moscow and Moscow Region to settle the issue of granting refugee status to Afghanistan nationals Mohammad Khasan Gulamin Bear and Shah Salitan Shah Bali Khan,

FOUND:

Spouses Mohammad Khasan Gulamin Bear and Shah Salitan Shah Bali Khan are citizens of Afghanistan. In 1996 they applied to the Immigration Control Department for the City of Moscow and Moscow Region for refugee status but their appeal was dismissed.

As they considered the refusal unlawful, they appealed the actions of the Immigration Control Department for the City of Moscow and Moscow Region, pointing out that following mujaheddin coming to power in Afghanistan, their family was victimized, because since 1976 Mohammad Khasan Gulamin Bear had been an NDPA member, served in the army of mujaheddin political opponents, studied in the USSR which was regarded by mujaheddin as a hostile country, and in view of all the above, due to a real threat to their lives they cannot return to their homeland, whereas the refusal of refugee status was unlawful.

Representative of the Immigration Control Department for the City of Moscow and Moscow Region protested against the allowance of the appeal, and testified in the court that the motives the applicants stated in their application do not meet the criteria underlying the notion "refugee".

The court decided (...) the above judgement which is appealed by Head of the Migration Service of Moscow.

Having studied the case materials and heard testimony by representatives of the Migration Service of Moscow under power of attorney, appellants, their lawyers, and having discussed the appeal arguments, the Civil Chamber does not find grounds to reverse the judgement passed in compliance with the Federal Law "On Refugees".

Having found that the reasons which forced Mohammad Khasan Gulamin Bear to leave the country of his citizenship are apprehensions that he might be victimized in his country, as since 1976 he had been member of the NDPA and secretary of party organizations, while his wife had left the country because of such activity of her husband, the court has arrived at a well-founded conclusion that the motives set forth by the applicants in their application for refugee status meet the criteria determining the notion "refugee", therefore the refusal to grant such status is unlawful.

Such court conclusion has been confirmed by evidence of witnesses questioned during the court hearing and the opinion of the expert – specialist of the Institute of Asian and African Studies at the Lomonosov Moscow State University (file pages 76-79).

The Civil Chamber considers that the court has studied in detail all facts of the case, duly evaluated them, and the Civil Chamber agrees with such evaluation.

The judgement is not at variance with the collected evidence and requirements of the law, while the appeal arguments are aimed at another evidence evaluation and cannot serve as the grounds for the reversal of the judgement.

Pursuant to Article 305 of the Civil Code, the Civil Chamber

RULED:

The judgement of the Basmany Municipal Court of the City of Moscow dated 30.07.99 shall remain unchanged and appeal of the Migration Service of Moscow shall be dismissed.

Presiding Judge /Signed/

Judges /Signed/

This is a true copy of the original document