

**JUDGEMENT**  
**(In the Name of the Russian Federation)**

The Kuibyshevsky Federal Court of the Central District of St. Petersburg represented by  
Presiding Judge I.A. Vorobyova  
with the assistance of  
Secretary I.A. Balyasnikova,  
having reviewed the civil case based on the complaint of the citizen of Afghanistan Rahmatulla, the son of Khasan Khan, against the decision of the Migration Service of St. Petersburg and the Leningrad region on denial to consider on its merits the application for refugee status in the territory of the Russian Federation,

HAS ESTABLISHED the following:

According to decision No. 293 of February 15, 1999, of the Migration Service of St. Petersburg and the Leningrad region the citizen of Afghanistan Rahmatulla, the son of Khasan Khan, born in 1957, got a refusal to consider his application for refugee status in the territory of the Russian Federation for which purpose he was sent notice No. 285-og of February 15, 1999.

On April 12, 1999, the appellant lodged a complaint with the court against the decision of the executive migration body that refused to consider on its merits his application for refugee status in the territory of the Russian Federation. At the court session he specified that he is requesting that the court invalidate the above decision and oblige the immigration service to consider his application on its merits. He refers to his ignorance of the Russian law as a reason for the failure to timely apply to the immigration body and considers this delay to be insignificant; he also stated that he could not apply to the migration service because he was ill.

The representative of the Migration Service appeared at the court session. He believes that the claim should be rejected as the disputed decision was taken within the competence of the migration body; the appellant illegally arrived in the Russian Federation and did not apply in a timely manner to corresponding frontier, immigration and other authorities for refugee status; he also failed to provide any evidence of an excusable delay in filing such application. Besides, in the opinion of the representative of the migration body, the personal information rendered by the appellant does not meet the criteria that determine the definition of "a refugee" in accordance with Sub-Clause 1, Clause 1 of Article 1 of the Russian Refugee Law; in particular the appellant failed to advance convincing arguments that would confirm the fact of his political persecution in Afghanistan; the appellant's immigration and his application for refugee status in the Russian Federation are caused by economic rather than political reasons.

Having heard the appellant and the interested party and examined the case materials, the court considers that the complaint is to be dismissed for the grounds given below.

Pursuant to provisions of the 1951 Geneva Convention Relating to the Status of Refugees, UN Protocol of 1967 Relating to the Status of Refugees, Sub-Clause 1, Clause 1 of Article 1 of the Russian Refugee Law (version in effect from July 3, 1997), a refugee is a person who is not a citizen of the Russian Federation and who, on account of well-grounded apprehension of becoming a victim of persecution on the basis of race, religion, citizenship, nationality, affiliation with a certain social group or political convictions, stays outside the country of his citizenship and either cannot or does not wish to avail himself of the protection of this country because of such apprehension.

In accordance with Clause 2, Article 2 of the above law, this law shall not apply to foreigners and stateless persons who left the country of their origin (their former place of residence) for economic reasons or on account of famine, epidemics or natural or man-caused emergencies.

It appears from the appellant's complaint, his explanations given in the questionnaire at the Immigration Service and pleadings at the court session that he apprehends political persecutions in case of his return to his motherland, therefore he filed an application with the Migration Service of St. Petersburg and the Leningrad region for granting him refugee status.

It follows from the questionnaire that he was born in 1957 in the village of Batsahel, Gurbaz region, Khost district, Paktia province, Afghanistan; he is an ethnic Pushtu (Afghan) and Moslem Sunnite. In 1972 he joined the People's Democratic Party of Afghanistan. After finishing the elementary school in 1967 he entered a lyceum in Khost where he studied till 1977. From 1977 till 1978 he studied at the Academy of Internal Affairs in Kabul. Then he joined the army (service for a fixed period). In 1980 he was a student of short-time courses in Kiev. From 1988 till 1990 he was a deputy chief of department at the Central Administration of the Ministry of Internal Affairs. From 1990 till 1992 he was a deputy commander of the 504th battalion responsible for technical issues. From April 1992 till August 1998 he was a landowner in the province of Paktia. On August 13, 1998 he arrived in Russia via Tcharjdjou without an entry visa. On August 18, 1998 he came to Volgograd and there he took a train to Moscow on August 19, 1998. On August 20 he left for St. Petersburg where he arrived on August 21, 1998. Since that time he has lived in St. Petersburg working as a tradesman in the city markets. On September 16, 1998 he filed an application to the Immigration Service for granting him the refugee status.

In accordance with Sub-Clause 3, Clause 1 of Article 4 of the Russian Refugee Law, a person who announced his desire to be recognized as a refugee and has reached 18 years of age shall personally or through a duly authorized representative lodge a written application with a frontier control body of the federal frontier executive authority or a territorial body of the federal immigration executive authority in case of a forced illegal crossing of the state border of the Russian Federation at the frontier admission point or beyond the frontier admission point within 24 hours from the date of crossing by such person of the state border of the Russian Federation.

In the event of any circumstances that are beyond the person's control and prevent him from filing an application in a timely manner, the filing time can be in excess of one day though not exceeding the effective period of such circumstances.

Pursuant to Sub-Clause 7, Clause 1 of Article 5 of the above law, a ground for the refusal to consider on its merits the person's application shall be the following circumstance: such person had to illegally cross the state border of the Russian Federation with the intention to apply for refugee status though failed to file an application in accordance with the procedure specified in Sub-Clause 3, Clause 1 of Article 4 of this law.

The appellant illegally arrived in the Russian Federation and was supposed to apply to corresponding authorities within 24 hours from the date of crossing of the state border of the Russian Federation. The appellant came to St. Petersburg on August 21, 1998, however, he did not address a migration body until September 16, 1998.

The appellant explains his tardy application to the Migration Service of St. Petersburg and the Leningrad region and his failure to contact the frontier and immigration authorities throughout his journey within the Russian Federation by his desire to live only in St. Petersburg and well as his ignorance of the Russian law. He realizes that this can hardly be good reasons though he states that this delay in applying to immigration and other bodies was not intentional. Besides, the appellant considers such delay to be insignificant.

It follows from the appellant's explanations that, having arrived in St. Petersburg, he stayed with his compatriots who lived in the hostel at 21 Shevchenko St. Later he met with his acquaintance Din Mohammad who had arrived in Russia earlier. Din Mohammad explained to him that he was supposed to apply to the migration service. Din Mohammad examined at the court session testified that the appellant arrived in St. Petersburg in August 1998 but he (i.e. Din Mohammad) met with the appellant in mid-September and immediately let him know that he should urgently apply to the migration service where they went together on the next day or the day after. Din Mohammad also testified that the appellant was ill, got tired after the trip and did not consult the doctors.

The appellant did not deny the witness's testimony at the court session.

The court holds that from the time of his arrival in St. Petersburg the appellant knew of the requirement to immediately apply to the immigration body but he failed to do so in a timely manner, therefore the argument relating his "ignorance of the Russian law and lack of knowledge of where he should apply to" cannot be taken into consideration. The court gives critical assessment to the explanations of Rahmatulla, the son of Khasan Khan, that prior to his meeting with Din Mohammad nobody ever told him of the requirement to address the immigration service as the appellant stayed at the hostel which accommodates a numerous Afghan community; he communicated with Afghans who arrived in Russia like him (including those who had arrived much earlier and were familiar with the procedure of applying to national authorities).

The court takes into consideration the fact that the appellant did not make any attempts to timely apply for the refugee status either to the frontier authorities of the Russian Federation or Moscow immigration bodies or any other locations within Russia that he passed on his way. Under such circumstances, in the court's opinion, a delay exceeding 10 days from the specified date is significant.

The court also gives critical assessment to the arguments of Rahmatulla that he was ill as the appellant never consulted any doctors. At the same time the appellant stated in the questionnaire of the immigration service that he did not contact the immigration body as he “got very tired after the trip” and never referred to any illness.

The court holds that the appellant voluntarily furnished the personal data to the migration service (including the dates of arrival in Volgograd, Moscow and St. Petersburg); the translator S.E. Grigoriev was present during completion of the questionnaire and interview of the appellant and his translation was not contested by the appellant.

The court gives critical assessment to the argument of the representative of Rahmatulla, the son of Khasan Khan, that setting of a fixed term for application to an immigration body represents a discriminatory action as, in the court’s opinion, by operation of the 1957 Convention this issue (setting of a fixed term for application to official authorities of the country in the event of an illegal arrival to its territory) is referred to the competence of the state and shall be governed by national laws. The court considers the fact that the Russian Refugee Law does not stipulate any penalties for an illegal arrival in the Russian Federation; setting of a fixed term for application to corresponding authorities is just a measure to restrict illegal immigration.

Thus, the court is of the opinion that the immigration authorities lawfully refused to consider on its merits the appellant’s application as no circumstances were available that were beyond the appellant’s control and prevented him from prompt filing to competent Russian authorities of an application for granting him the refugee status; there was no good reason for Rahmatulla the son of Khasan Khan to miss the date for application.

Considering the above, governed by Articles 239-7 of the Code of Civil Procedure of the Russian Federation, the court

**HAS AWARDED THE FOLLOWING JUDGEMENT:**

The complaint of the citizen of Afghanistan Rahmatulla, the son of Khasan Khan, shall be dismissed.

An appeal of this judgement can be lodged with the St. Petersburg City Court within 10 days.

Federal judge: /Signed/ I.A. Vorobyova