

DEFAULT JUDGEMENT
In the Name of the Russian Federation

On December 4, 2001, the Presnensky District Court of Moscow represented by the presiding federal judge V.A. Rogozhin with the assistance of the secretary Yu.S. Klimova, having reviewed in the open the court a civil case based on the complaint of the citizen of Iraq Omar Khama Garib Muhamed against the decision of MFANAMP/Moscow on denial to consider on its merits his application for refugee status in the territory of the Russian Federation

HAS ESTABLISHED the following:

The appellant lodged the above complaint to the court. He reasons his claim by the fact that he is not a citizen of the Russian Federation and had to leave his home country on account of well-grounded apprehension of becoming a victim of persecution on the basis of race, religion, citizenship, nationality. Having arrived in Russia, the appellant came to Moscow where he filed an application with the Moscow Territorial Administration of the Russian Ministry of the Federal Affairs, National and Migration Policy (MFANAMP/Moscow) for refugee status. However, by decision of MFANAMP/Moscow he was denied the refugee status in the territory of the Russian Federation. The appellant considers this decision of the interested party to be unlawful and requests that the court invalidate it. He also requests that the court oblige MFANAMP/Moscow to consider on its merits his application for refugee status.

At the court session the appellant sustained the complaint. He insists that the case should be tried in the absence of a representative of the interested party in the form of an *in absentia* proceeding.

MFANAMP/Moscow was notified of the time and place of the case hearing. It sent to the court a telephone message specifying that the interested party requests the continuance of the case on account of work pressure of its representative. The appellant raises objections against continuance of the case on the specified grounds. With due consideration of the appellant's application the court determined to hear the case in the form of an *in absentia* proceeding.

Having heard the appellant and examined the case materials, the court considers the complaint to be grounded and subject to satisfaction. The court proceeds from the following facts: The appellant's explanations imply that he had to leave his home country on account of well-grounded apprehension of becoming a victim of persecution on the basis of race, religion, citizenship, nationality.

According to Sub-Clause 1, Clause 1 of Article 1 of the Russian Refugee Law, 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, stays outside the country of his citizenship and either cannot or does not wish to avail himself of protection of this country because of such apprehension.

Thus, the court deems it established that the disputed actions relating to denial in considering on its merits the appellant's application for a refugee status are not lawful and violate the appellant's rights for consideration of his application on its merits.

Pursuant to Article 6 of the Russian Law "On Appeal to the Court Against Actions and Decisions that Violate the Rights and Freedoms of Citizens", executive officers and civil servants whose actions (decisions) are disputed shall be bound by the law of procedure to provide documentary evidence of lawfulness of disputed actions (decisions) while a citizen shall be dispensed from the duty to prove unlawfulness of disputed actions (decisions) though he shall prove the fact of violation of his rights and freedoms.

Pursuant to Part 1, Article 50 of the Code of Civil Procedure of the Russian Federation, each party should prove the circumstances to which it refers as a ground for its claims and objections.

The interested party has failed to provide documentary evidence of lawfulness of disputed actions (decisions), therefore the court arrives at the conclusion that the complaint is valid.

In compliance with Articles 191-197, 213-4 of the Code of Civil Procedure of the Russian Federation, the court

HAS AWARDED THE FOLLOWING JUDGEMENT:

The refusal of the Moscow Territorial Administration of the Russian Ministry of the Federal Affairs, National and Migration Policy to grant the refugee status to Omar Khama Garib Muhamed in the territory of the Russian Federation shall be deemed unlawful.

The Moscow Territorial Administration of the Russian Ministry of the Federal Affairs, National and Migration Policy shall be bound to consider on its merits the application of Omar Khama Garib Muhamed for refugee status in the territory of the Russian Federation.

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

The party that did not attend the court session is entitled to file with the court that passed the default judgement an application for review of this judgement within 15 days from the judgement date.

Judge: /Signed/

True copy

Judge /Signed/

Secretary /Signed/

Seal of the Presnensky District Court
Moscow Central Administrative District
Ministry of Justice of the Russian Federation