

DECISION
In the name of the Russian Federation

On November 28, 2002 at an open session the Presnensky district court of the Moscow City Composed of
Judge: Ms. T. A. Pechnina
Assisting: Ms. E. N. Kutuzova, secretary

Considered civil case #2-5129/2002 regarding a complaint filed in court by Mr. Said Idris Kamara, a Sierra-Leone national, against actions (inaction) of the Moscow Territorial Branch of the RF Minfederation

ESTABLISHED THE FOLLOWING:

The appellant filed in court his complaint with actions of the Moscow Territorial Branch of the RF Minfederation. His complaint is based on the fact that he left his country for the purpose of entering a University in the former Soviet Union but could not return to his country owing to fear of being persecuted for reason of his political views. On November 26, 2001 the appellant approached the interested party and submitted an application for refugee status in the Russian Federation. However, the Territorial branch of Migration Service of the RF Minfederation in Moscow actually denied him an access to the status determination procedure established by the current refugee legislation. The Territorial branch sent him a letter by which they informed him that the content of his application does not indicate to any facts confirming his legal stay in the territory of the Russian Federation.

Indicating that the interested party actually denied the appellant an access to the status determination procedure and without this procedure came to the conclusion that his staying in the territory of the RF is illegal, the appellant requests the court to oblige the relevant person to consider his application for refugee status within the framework of the existing refugee law.

The appellant confirmed his complaint at the court session. He requested to recognise the inaction of the interested party, as being unlawful in respect of non-application of the status determination procedure to the appellant. The appellant also requests to oblige the Migration Department of the Moscow GUV D to consider the refugee claim of Mr. Said Idris Kamara by subjecting it to the status determination procedure.

A representative of the Migration Department of the Moscow GUV D (the former Territorial Branch of Migration Service of the RF Minfederation) finds the appellant's complaint as groundless pointing out to the fact that the appellant stayed illegally in the territory of the Russian Federation. Apart from it, the appellant did not personally approach the relevant person in the Territorial Branch of the Migration Service of the RF Minfederation, but forwarded to the relevant person his written application. The representative of the interested party believes that under such circumstances the appellant's refugee claim cannot be accepted and considered and the status determination procedure shall not be applied to the appellant. At the same time the representative does not deny the fact that the interested party did not check whether the appellant had legal grounds for his stay in the territory of the Russian Federation.

In addition to it, the representative does not deny the fact that for some objective reasons the relevant person cannot personally receive all those who apply for refugee status.

Having listened to the persons authorised to speak on behalf of the appellant and having studied the materials of the case, the court considers that the complaint is well founded and shall be satisfied. The decision of the court proceeds from the following:

In the course of the court session it was established that on November 26, 2001 the appellant approached the relevant person with a refugee claim. However the Moscow Territorial Branch of the RF Minfederation actually denied him an access to the status determination procedure established by the refugee legislation in the territory of the Russian Federation and forwarded to him the relevant letter. In this letter he was informed that his application for refugee status did not contain any information confirming that the appellant had legal grounds for his stay in the Russian Federation.

It was also established that the interested party did not check whether the appellant had legal grounds for his stay in the territory of the Russian Federation.

In accordance with Article 4 (Clause 5, (Sub)clause 2) of the Federal Law "On Refugees" an application of a person staying in the territory of the Russian Federation shall be preliminarily considered by the Territorial federal executive body for migration within 5 working days since the date of its submission.

In compliance with Article 3 (Clause 2, (Sub)clause 3) of the above Law, on the basis of preliminary consideration of a refugee claim the territorial body shall either take a decision on issuance of a certificate on his/her undergoing the refugee status determination procedure or take a decision on denial of the application's substantive consideration.

However the interested party failed to meet the deadlines established by the law, did not invite the appellant to be interviewed, did not consider his refugee claim and did not take a decision on either issuing the appellant a certificate or denying his application substantive consideration.

The court finds the inaction of the Territorial branch of the migration service of the RF Minfederation unlawful and violating the appellant's right for submission a refugee claim and undergoing the status determination procedure established by the current refugee law.

Thus, it is obligatory to preliminarily consider a refugee claim. The court finds unlawful the inaction of the interested party with regard to denying the appellant an access to the status determination procedure due to the fact that his stay in the Russian Federation is illegal and he missed the deadline established for refugee claim submission. At the same time the court is guided by the provision of the law that reads that it is in the course of preliminary consideration of an appellant's refugee claim that a territorial branch of the migration service shall establish whether an appellant's stay in the Russian Federation is legal or illegal or whether his/her missing the deadline established for application was due to the circumstances beyond his/her control.

Thus in keeping with Article 3 (Clause 3) of the RF Law "On Refugees" a decision on issuance of a certificate or refugee status recognition as well as a decision on the denial of refugee status shall be taken on the basis of an appellant's questionnaire, the questionnaire filled in the course of individual interviews, verification of the received information about the person under consideration and his/her family members that arrived with his/her, verification of the circumstances of their arrival in the territory of the Russian Federation and availability of grounds for their stay in the Russian Federation, and after thorough investigation of reasons and circumstances described in the claim. Additional interviews are admissible for clarification of facts described by the appellant.

In the case under consideration neither of the above actions were undertaken by the interested party, however in fact the appealed inaction resulted in the denial of access to the status determination procedure established by the refugee legislation.

The court also finds groundless the statements made by the representative of the interested party that the appellant had in person to submit his application for refugee status because in the above letter this reason was not indicated as a ground for denying the appellant an access to the status determination procedure.

Apart from it, as it was mentioned above, the representative of the interested party does not deny the fact that for some objective reasons the relevant person could not receive all applicants for refugee status in person.

In line with Article 7 of the RF Law "On Refugees" "On Appealing in court actions and decisions violating citizens' rights and freedoms", the appealed action is recognized as lawless in case it leads to the consequences indicated in Article 2 of the given Law. In Article 2 of this Law the consequences of actions (decisions) are indicated as follows: the ones that result in violations of a person's rights and freedoms; the ones that create obstacles for execution of a person's rights and freedoms; the ones that illegally impose on a person a responsibility or a person is illegally made answerable for something.

While considering the complaint the court does not enter into discussion on availability or non-availability of grounds for granting the appellant refugee status as this issue is not the point to be proved under this case consideration in court.

At the same time the court considers as established the fact that the appealed inaction that resulted in denying the appellant an access to the status determination procedure is not in line with the Law as it prevents the appellant from executing his right to undergo the refugee status determination procedure established by the RF Law "On Refugees".

According to Article 6 of the RF Law "On appealing in court actions and decisions violating citizens' rights and freedoms", the officials, state employees whose actions (decisions) are appealed against, are made procedurally responsible for documentary proof of lawfulness of appealed actions (decisions). A citizen is released from the necessity to prove unlawfulness of actions (decisions) appealed against by him/her, but he/she is obliged to prove that his/her rights and freedoms are violated.

The interested party failed to provide documented proofs of lawfulness of the appealed actions and at the same time at the court session it was established that the appealed actions created obstacle for execution of the appellant's right to undergo the status determination procedure established by the RF Law "On Refugees".

For these reasons and in compliance with Article 7 of the RF Law "On appealing in court against actions and decisions violation citizens' rights and freedoms" the complaint has been found well founded and subject to just satisfaction.

On the basis of the above and guided by articles 191-197, 239-1-239-7 of the RSFSR Civil Procedural Code, the court

HAS DECIDED:

To recognize as lawless the inaction of the Moscow Territorial branch of the RF Minfederation that resulted in non-appliance of the status determination procedure in accordance with the current refugee legislation with regard to the Sierra-Leone national, Mr. Said Idris Kamara.

To oblige the Migration Department of the Moscow GUV D to consider the refugee claim of the Sierra-Leone national, Mr. Said Idris Kamara, by applying the status determination procedure established by the current refugee legislation.

The decision can be appealed in The Moscow City Court within the next 10 days.

Judge (Signature)