

DECISION

In the name of the Russian Federation

Kuibyshevsky Federal Court of the Central District of Saint Petersburg

Composed of:

Chairperson I. A. Vorobyeva

Assisting: I. A. Balyasnikova, a secretary

Has considered in an open session the civil case as regards the appeal filed by Farid Gulam Dastaghir, an Afghan national, against the decision of the Saint Petersburg Migration service to deny him refugee status in the Russian Federation

ESTABLISHED THE FOLLOWING

Mr. Farid Gulam Dastaghir, an Afghan national, born n 1971, was denied refugee status in the Russian Federation by Decision 42 of 20 October 1995 of the Saint Petersburg Migration Service.

On 5 August 1996 the appellant filed an appeal in court against the above decision; he requested the court to recognize the decision as being unlawful and to grant him refugee status owing to the fact that he was a member of the National Democratic Party of Afghanistan, served in Presidential Guards, as a guard of President Nadzhibulla. Therefore, he believes that he may have a well-founded fear of being persecuted by mujahedins in his home country for political reasons. He specified that presently he is afraid of being persecuted by Talibs.

Due to the disintegration of the Saint Petersburg Migration Service, the Migration Service of Saint Petersburg and Leningrad region was involved into the case as an interested party and legal successor of the Saint Petersburg Migration Service. Representative of the migration organ appeared in court. He considers that the appeal should be dismissed as the appealed decision was taken within the terms of reference of the migration organ; information provided by the appellant shows that he does not fall under the definition of a "refugee" contained in the Federal Law "On Refugees". The appellant left his country owing to economic rather than political reasons.

Having listened to the appellant, the court and, having studied the materials, the interested person presume that the appeal should be dismissed for the following reasons.

In accordance with the provisions of 1951 Convention on Refugees and its 1967 Protocol (Article 1, Clause 1, para 1) of the Federal Law of the RF "On Refugees" (1997 version) a refugee is a person who is not a citizen of the Russian Federation and owing to well-founded fear of being prosecuted for reason of race, religion,

citizenship, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country, or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable, or owing to such fear, is unwilling to return to it.

In accordance with Article 2 (2) of the same law, foreign nationals and stateless persons who left the countries of their nationality (former habitual residence) for economic reasons or due to hunger, epidemic or natural and man-caused emergencies do not fall under the law.

According to Article 3 of the Law in question the decision to issue the certificate, to recognize someone as a refugee or to deny substantive examination or recognition as a refugee shall be taken as a result of questioning the person, completion of a questionnaire on the basis of individual interviews as well as on the basis of examining the credibility of the data obtained about the person after thorough examination of the reasons and circumstances described in the application.

The court finds the MS decision as lawful as Mr. Farid Gulam Dastaghir did not produce any persuasive evidence of having a well-founded fear of being persecuted for political reasons in Afghanistan either at the MS during the individual interview or at the court session. Therefore, this statement of the appellant contradicts the information provided by him about himself.

The questionnaire filled in October 1995 and confirmed by the appellant in court as well as his explanations given during the court session provided the information that he was born in 1971 in Afghanistan, the town of Pervan. He is an ethnic Tadjik and Moslem Sunnit. He has been a member of the National Democratic Republic of Afghanistan since 1990 (he did not occupy any senior posts and was an ordinary member of the party). After leaving secondary school and lyceum he served for a fixed period in the army and then, in February 1992, he was discharged from the army after serving his term.

He arrived in Saint Petersburg in October 1992 on a tourist visa issued in the Russian Embassy in Kabul. His foreign passport was issued by the Kabul Central Department on 12 April 1992. Its validity was twice extended (in April 1992 in the Embassy of the Islamic State of Afghanistan in Moscow and in 1994 - in the Interior Ministry of Afghanistan). Since 1992 he has been permanently residing in Saint Petersburg. He approached the Saint Petersburg Migration Service in October 1995.

Until present the appellant's family (his mother and brothers) has been residing in Kabul, Afghanistan. The appellant is a private tradesman. He is not involved in any political activities and does not propagate any of his political views. He has never participated in any anti-Talib or anti-mujahedin combat operations.

The above information testifies to the fact that the appellant has never revealed his political opinion in public and has never been in the focus of the Afghan authorities' attention for his political views. He does not uphold any active political position that could bring him in a conflict with the authorities of Afghanistan. The fact that he has political opinion that is not shared by the government of his country cannot by itself

be a reason for granting him refugee status. In this connection, the fact of his membership in the National Democratic Party of Afghanistan cannot be regarded as an indisputable evidence of his well-founded fear of being persecuted by Talibs and mujahedins. The court views critically the appellant's argument to the effect that has a fear to be persecuted in his native country for the reasons of his being on service at the Presidential Guards, as it was his fixed period of army service in the capacity of an ordinary soldier. He was not involved in any punitive or combat operations. He was transferred to the reserve before the collapse of the pro- Soviet regime. At the same time, the court takes into account the information provided by the Federal Migration Service of Russia that reads that Talibs do not persecute all former NDPA members. Retaliatory measures have been applied only against the most active supporters of the pro-Soviet regime who led Talibs' armed units as well as many officers and soldiers of the pro-Soviet government.

As it follows from the explanation given by the appellant it was the disintegration of the Democratic Republic of Afghanistan that urged him to leave the country in 1992. However the appellant approached the immigration organ for the first time only in October 1995 (The Saint Petersburg Migration Service was set up in 1994). The delayed application for refugee status as well as his actions during the period before he filed the application with the immigration organ testify to the fact that the appellant did not consider himself as a political refugee at that period of time, and consequently, they confirm the fact that the appellant has no well-founded fear of being persecuted in his native country and that he has an intention to become legalized in Russia by all means.

The fact that the appellant availed himself of the protection of his country (at the time when mujahedin were in power) and was issued a passport in 1992 to enable him to leave Afghanistan, which was subsequently extended twice, serves as evidence of absence with the appellant of any well-founded fear of being persecuted by the authorities.

The Court views critically the appellant's argument to the effect that he was persecuted by mujahedins, as relevant clarifications provided by the appellant are highly contradictory. The Court also takes into account the fact that the appellant's older brothers, who used to occupy more senior posts under the Najibullah's regime, remained in Afghanistan following the downfall of the pro-Soviet regime.

The Court holds that the information was provided by the appellant voluntarily and was duly registered by immigration service officials.

Dismissing the appellant's claim for just satisfaction, Court is guided by Article 164 of the UN 1951 Convention, according to which persons who were forced to leave their home country as a result of internal armed conflicts are not regarded as refugees under 1951 Convention and 1967 Protocol. From which it follows that military operations in Afghanistan as such can not be the ground for determining the applicant's eligibility for refugee status.

Accordingly, the Court maintains that there are no valid grounds for granting Mr Farid Gulam Dastaghir refugee status in the Russian Federation. The decision against which an appeal was filed had been taken within the Court's terms of reference as specified in the RF Law "On Refugees". The a/m decision does not violate the appellant's legitimate rights and interests.

For these reasons and in accordance with Article 1 of the UN 1951 Convention Relating to the Status of Refugees, Article 1 of the RF Law “On Refugees”, while being guided by Articles 197, 239-1 – 239-7 of the RF State Procedural Code,

The Court has ruled as follows:

Mr Farid Gulam Dastaghir’s appeal against decision No.42 issued by the St.Petersburg Migration Service on October 20, 1995 shall be dismissed.

An appeal against this ruling can be filed with the St.Petersburg City Court within the next ten days.

I.A. Vorobiyeva
Federal Judge