

**DECISION**  
*in the name of the Russian Federation*

*On September 18, 2003 at an open court session, the Presnensky District Court of the City of Moscow composed of:*

*Chairperson T.A.Pechenina, a presiding judge*

*Assisting: T.A. Pavlishina, a secretary*

Considered at an open court session civil case No. 2-3787/03 concerning a complaint filed by Afghan nationals Mr Abdul Geis Abdul Fatakh and Mr Nasruddin Khadidja against the decision of the Immigration Control Department with responsibility for the City of Moscow and the Moscow Region of October 7, 1999 denying the applicants substantive consideration of their applications for refugee status in the Russian Federation and

ESTABLISHED THE FOLLOWING:

The applicants lodged the said complaint in court against the above decision and, to substantiate their claims, the applicants pointed out that the Immigration Control Department with responsibility for the City of Moscow and the Moscow Region in its decision of October 7, 1999 denied the applicants substantive consideration of their applications for refugee status in the Russian Federation as per Article 1-1-1, 1-1-2, 2-2, 8-1-5 of the RF Law "On Refugees" of 28.06.1997.

The applicants believe that their rights as persons seeking asylum in Russia have been violated as a result of the above action. The appellants requested the Court should recognise the above decision to be unlawful and obligate the defendant to consider their applications for refugee status in Russia on the merits in accordance with the RF Law "On Refugees".

To substantiate their claims, the applicants pointed out that they were Afghan nationals. In 1996, they were forced to leave Afghanistan after mudjahedins had come to power. After they approached the migration authorities, the Immigration Control Department with responsibility for the City of Moscow and the Moscow Region in its decision of October 7, 1999 denied the applicants substantive consideration of their applications for refugee status in the Russian Federation for the above reasons. The appellants also indicate that when taking decisions on their applications, the Moscow Immigration Control Department for the City of Moscow and the Moscow Region applied incorrectly the norms of substantive law.

At the court session, the applicants fully sustained their claims.

Ms. M.I. Budyakova and V.V. Sipidin - the defendant's representatives acting by proxy - did not acknowledge the validity of the complaint and submitted their comments on the complaint in writing. At the court session, the defendant's representatives requested the dismissal of the applicants' claims for just satisfaction. Besides, they pointed out that the appellants had missed the deadline for filing their complaint in court against the defendant's actions.

Having listened to the applicants' accounts and the defendant's representatives and after examining the materials on the case, the Court has found the complaint subject to just satisfaction on the following grounds.

It follows from the case materials and the applicants' accounts that the applicants are Afghan nationals. When Islamic fundamentalists came to power in Afghanistan, the applicants were forced to leave their home country and arrived in Moscow, Russian Federation, on April 8, 1996.

Upon their arrival in Moscow, the applicants approached a territorial organ of the FMS of Russia with applications for refugee status in the Russian Federation. The Immigration Control Department with responsibility for the City of Moscow and the Moscow Region in its decision of October 7, 1999 denied the applicants substantive consideration of their applications for refugee status in the Russian Federation as per Articles 1-1-1, 1-1-2, 2-2, 8-1-5 of the RF Law "On Refugees" of 28.06.1997.

The Court finds the said decisions denying the applicants substantive consideration of their applications for refugee status in the Russian Federation for the above reasons to be unlawful and ill-founded on the following grounds:

Under Article 3-1 of the RF Law "On Refugees", the refugee status determination procedure envisages the following:

- 1) submitting an application for refugee status;
- 2) preliminary examination of the submitted application;
- 3) taking a decision on the issuance of an asylum-seeker certificate or a notification denying the applicant substantive consideration of his refugee claim;
- 4) issuing an asylum-seeker certificate or forwarding a notification denying the applicant substantive consideration of his refugee claim;
- 5) consideration of the application on the merits;
- 6) taking a decision on granting or denying refugee status;
- 7) issuing a refugee card or forwarding a notice of non-issuance of refugee

status.

Article 5-1 of the RF Law "On Refugees" contains an exhaustive list of grounds for denying a person substantive consideration of his refugee claim in Russia. Articles 1-1-1, 1-1-2, 2-2 are not included in the said list as grounds for denying a person substantive consideration of his refugee claim at a preliminary stage. The Court finds the references to these law provisions made by the Immigration Control Department with responsibility for the City of Moscow and the Moscow Region in its negative decisions to be unfounded and erroneous, while the negative decisions made on the said grounds to be unlawful.

Neither is lawful the decision denying the applicants substantive consideration of their refugee claims on the basis of Article 5-1-8 of the RF Law "On refugees", which stipulates that a person can be denied substantive consideration of his refugee claim if he refuses to provide information about himself and/or the circumstances of his arrival in the Russian Federation.

It follows from the case materials that the applicants arrived at the Immigration Control Department with responsibility for the City of Moscow and the Moscow Region, presented themselves as refugees, submitted applications for refugee status, provided all the required information about themselves that was duly entered in a form, answered all the questions put by the Department's officer concerning the circumstances of their arrival in the Russian Federation and the reasons that made them leave Afghanistan. Their answers were entered in a questionnaire.

Thus, the Court has established that the applicants did not refuse to provide information about themselves and/or the circumstances of his arrival in the Russian Federation.

In view of the above, the Court finds the decision of the Immigration Control Department with responsibility for the City of Moscow and the Moscow Region of October 7, 1999 denying the applicants substantive consideration of their applications for refugee status in the Russian Federation to be unlawful.

The Court also finds the reasons for the violation by the appellants of the deadline for filing an appeal in court to be valid on the following grounds.

The Court established that the applicants had received notifications of the negative decision dated October 7, 1999 on April 18, 2000, as the notifications carried relevant stamps. The same day, April 18, 2000, the applicants filed a complaint against the negative decision with the FMS Commission of Appeals. However, no decision was taken with regard to their complaint, and it was only on March 20, 2002 that they received notification to the effect that their complaints couldn't be examined due to liquidation of the Commission of Appeals of the Ministry of Federal Affairs, and they were recommended to file their complaints in court.

The applicants observed the deadline established under Article 10 of the RF Law "On refugees" and lodged within a month their complaint with the Moscow City Presnensky Court against the decision of the Immigration Control Department. Pursuant to the definition of the Presnensky Court of April 22, 2002, the consideration of their complaint was suspended, and the applicants were given some time to eliminate the faults before May 27, 2002. However, the applicants received the above court definition on May 7, 2003 after they had approached the presiding judge, therefore they couldn't eliminate the faults within the established time. When the applicants received the court definition in question, they again filed to appeal it in court before the deadline of May 27, 2003 expired.

Consequently, it was for a valid reason that the applicants missed the deadline for filing an appeal in court.

In view of the above circumstances, the Court finds the complaint subject to just satisfaction.

For these reasons and being guided by Articles 194- 198, 258 of the RF Civil Procedural Code, the Court

**HAS AWARDED THE FOLLOWING JUDGEMENT:**

The negative decision of the Immigration Control Department with responsibility for the City of Moscow and the Moscow Region of October 7, 1999 denying Afghan nationals Mr Abdul Geis Abdul Fatakh and Mr Nasruddin Khadidja substantive consideration of their applications for refugee status in the Russian Federation shall be recognised unlawful.

The Immigration Control Department with responsibility for the City of Moscow and the Moscow Region shall be obligated to consider on the merits the applications for refugee status in the Russian Federation lodged by Mr Abdul Geis Abdul Fatakh and Mr Nasruddin Khadidja in accordance with the Federal Law "On Refugees".

An appeal against the decision can be filed with the Moscow City Court within the next 10 days.

Judge  
(signature)