

DECISION
in the name of the Russian Federation

On February 10, 2003 at an open court session, the Presnensky District Court of the City of Moscow Composed of:

Chairperson V.A.Rogozhin, a federal judge

Assisting: O.A. Sutyapova, a secretary

considered a civil case concerning a complaint filed by Mr Feda Vakil Akhmad Feda Mokhammad, an Afghan national, against the decision of the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy (the Moscow GUV D Department for Migration is also a party to the case) and

ESTABLISHED THE FOLLOWING:

Mr Feda Vakil Akhmad Feda Mokhammad, an Afghan national, filed a complaint in court, in keeping with RF Law “On appealing in court actions and decisions violating civil rights and freedoms”, against the decision of the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy denying him refugee status in Russia. To substantiate his claim, the applicant pointed out that in 1986, when he was twelve years old, he and his family left their home country. His father, Mr Feda Mokhammad, was employed at the Embassy of the Democratic Republic of Afghanistan in Moscow as First Secretary from August 22, 1986 till September 15, 1988. (The said fact is supported in a letter of the Head of the External Policy Archive affiliated with the RF Ministry of Foreign Affairs of 10.01.2003 drawn up in reply to the court inquiry). In 1988, the applicant’s father was summoned back to Afghanistan where he was appointed Deputy Head of the Finance Department of the Central Committee of the People’s Democratic Party of Afghanistan. His family stayed in Moscow. In 1992, mujahedeens came to power in Afghanistan, and the Najibullah regime, under which the applicant’s father had occupied a high post in the political hierarchy, was brought down. Many of his father’s colleagues were exterminated. By a lucky chance, his father managed to escape extermination. He left Afghanistan for Russia, and then, in 1999, he moved to Holland. The applicant stayed in Moscow throughout all that period, when he, first, left a secondary school, and in 1995, he graduated from the Moscow State Institute of International Relations majoring in international law. The applicant cannot return to Afghanistan due to well-founded fears of persecution for his father’s political activities under the Najibullah regime. The applicant has no close relatives currently residing in Afghanistan. They all have left fearing persecution on the same grounds. In this connection, in 1994 the applicant approached the defendant with an application for refugee status in Russia. However, in its decision of 05.11.2001, the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy denied the applicant refugee status as per Article 1-1-1 of the RF Law “On Refugees”. The applicant does not agree to this decision and requests the Court should recognise it as unlawful and obligate the defendant to grant him refugee status in the Russian Federation.

During the court hearing, the applicant sustained his complaint.

A representative of the Moscow GUV D Department for Migration found the complaint ill-founded. Nevertheless, he does not deny the fact that the applicant's father Mr. Feda Mokhammad was employed at the Embassy of the Democratic Republic of Afghanistan in Moscow as First Secretary from August 22, 1986 till September 15, 1988.

Having listened to the accounts of persons involved in the case and after examining the materials on the case, the Court has found the complaint sound and valid and subject to just satisfaction. At the court session, the applicant proved the fact that his rights as an asylum seeker had been violated as a result of the disputed decision. In the meantime, the defendant's representative has failed to submit documentary proof of the lawfulness of the disputed decision. The Court proceeds from the following grounds.

It has been established that in 1986, the applicant, when he was twelve years old, and his family left their home country. His father, Mr Feda Mokhammad, was employed at the Embassy of the Democratic Republic of Afghanistan in Moscow as First Secretary from August 22, 1986 till September 15, 1988. (The said fact is supported in a letter of the Head of the External Policy Archive affiliated with the RF Ministry of Foreign Affairs of 10.01.2003 drawn up in reply to the court inquiry). In 1988, the applicant's father was summoned back to Afghanistan where he was appointed Deputy Head of the Finance Department of the Central Committee of the People's Democratic Party of Afghanistan. His family stayed in Moscow. In 1992, mujahedeens came to power in Afghanistan, and the Najibullah regime, under which the applicant's father had occupied a high post in the political hierarchy, was brought down. Many of his father's colleagues were exterminated. By a lucky chance, his father managed to escape extermination. He left Afghanistan for Russia, and then, in 1999, he moved to Holland. The applicant stayed in Moscow throughout all that period, when he, first, left a secondary school, and in 1995, he graduated from the Moscow State Institute of International Relations majoring in international law. Presently, the applicant cannot return to Afghanistan due to well-founded fears of persecution for his father's political activities under the Najibullah regime. The applicant has no close relatives currently residing in Afghanistan. They all have left fearing persecution on the same grounds. In this connection, in 1994 the applicant approached the defendant with an application for refugee status in Russia. However, in its decision of 05.11.2001, the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy denied the applicant refugee status as per Article 1-1-1 of the RF Law "On Refugees".

Following the coup d'etat in April 1992, many of the applicant's father's colleagues were killed due to their political activities during the pro-Soviet regime.

It has been established that numerous opponents of the pro-Soviet regime in Afghanistan are aware of the political activities of the applicant's father as a highly placed official of the Central Committee of the People's Democratic Party of Afghanistan. They also know that the applicant is Feda Mokhammad's son. Therefore, the applicant, owing to well-founded fear of being persecuted for reason of membership of a particular social group (well-founded fears of persecution for his father's political activities under the Najibullah regime) is outside the country of his nationality and is unable to avail himself of the protection of that country,

In accordance with Article 1-1-1 of the Federal Law "On Refugees", a refugee is a person who is not a citizen of the Russian Federation and owing to well-founded fear of being persecuted 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.

Article 2 of the RF Law “On refugees” sets forth limitations on the Scope of the said Federal Law. E.g., the Federal Law does not apply to persons:

1) with respect to whom there are serious reasons to believe that he has committed a crime against peace, a war crime or a crime against humanity as defined in the international instruments drawn up to make provision in respect of such crimes;

2) who committed a serious or particularly grave non-political crime outside the territory of the Russian Federation prior to his admission to the territory of the Russian Federation as an applicant for refugee status;

3) who have been guilty of acts contrary to the purposes and principles of the United Nations Organization;

4) whose rights and obligations arising from the citizenship of the State of his former residence have been recognised by the competent authorities of the said State;

5) who at the moment avail themselves of the protection and/or assistance of organs or agencies or institutions of the United Nations Organization other than the United Nations High Commissioner for Refugees.

This Federal Law shall not apply to foreign nationals and stateless persons who have left the country of their nationality (former habitual residence) for economic reasons or due to famine, an epidemic or an emergency caused by natural or man-made disasters.

It was established during the court session that the RF Law “On Refugees” was applicable with regard to the applicant. Moreover, it was established that the applicant was an Afghan national who couldn’t go back to the country of his nationality due to well-founded fears of persecution for reason of membership of a particular social group.

Therefore, the Court has established that the disputed actions are not based on law and constitute violation of the applicant’s right to refugee status in Russia.

Under Article 6 of the RF Law “On appealing in court actions and decisions violating civil rights and freedoms”, officials and civil servants, whose actions (decisions) are appealed, are charged with the procedural obligation to submit documentary evidence confirming the lawfulness of disputed actions (decisions). A person is relieved of the obligation to prove the unlawfulness of the appealed actions (decisions); however, he has to prove the fact that his civil rights and freedoms have been violated.

Under Article 56-1 of the RF Civil Procedural Code, each party is to submit evidence of those circumstances to which it refers as being the ground for its requirements and objections.

The defendant has failed to submit documentary evidence confirming the lawfulness of the disputed actions (decisions). Consequently, the Court shall find the complaint valid and subject to satisfaction.

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

HAS RULED AS FOLLOWS:

The decision of the Moscow City Territorial Branch of the RF Ministry of Federal Affairs that denied refugee status to Mr Feda Vakil Akhmad Feda Mokhammad, an Afghan national, shall be recognised unlawful.

The Moscow GUV D Department for Migration shall be obligated to grant refugee status in the Russian Federation to Mr Feda Vakil Akhmad Feda Mokhammad, an Afghan national.

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

Judge
(signature)

THE DECISION WAS ENFORCED ON FEBRUARY 21, 2002