

**DECISION**  
**In the Name of the Russian Federation**

On 29.05.2002, the Presnensky District Court of the Central Administrative District of Moscow represented by the federal judge V.A. Rogozhin, in the presence of court clerk T.A. Pavlishina, having examined in open court a civil case based on the appeal of the citizens of Afghanistan Gulam Dzhan Khadzhi Mirza Dzhan, Alamuddin Miradzhuddin; Mohammad Shaker Mir Afzal; Abdul Rakhim Said Mohammad; Abdul Khakim Abdul Mokim; Abdul Sabur Abdul Salam; Khomayun Abdullah; and Abdul Rafi Yar Gul against actions (decisions) of the Territorial Subdivision of the Ministry of the Federal Affairs, National and Migration Policy in Moscow,

**ESTABLISHED:**

The appellants – citizens of Afghanistan – lodged with the court the appeal against actions of the Territorial Subdivision of the Russian Ministry of the Federal Affairs, National and Migration Policy (MFANAMP) in Moscow. In support of their appeal the appellants refer to their requests to the Territorial Subdivision for a refugee status in the territory of the Russian Federation. In respect of their applications the appellants received replies from Territorial Subdivision whereby they were informed that they were entitled to apply to the Territorial Subdivision if they resided in Moscow on legal grounds. The appellants applied at the address specified in the replies of the Territorial Subdivision, but were denied access to the refugee status determination procedure because they did not have entry visas. After that the appellants again sent letters to the Territorial Subdivision in which they once again requested that their applications be considered and gave additional details of the circumstances of their arrival in the Russian Federation. The Territorial Subdivision sent the appellants the replies from which it followed that their applications would not be considered as the time limit for filing applications was exceeded. The appellants request that the actions of the Territorial Subdivision, namely, the denial of access to the refugee status determination procedure, be declared illegal and the Territorial Subdivision be obligated to consider their applications by applying the refugee status determination procedure.

The appellants did not appear before the court and asked for the trial in absentia in the presence of their representative.

The representative of the Territorial Subdivision of MFANAMP in Moscow did not appear before the court, was duly notified of the date of the court hearing and did not inform the court about the reasons for default in appearance. The court finds it possible to consider the case in the absence of the representative of the Territorial Subdivision.

Having heard the representative of the appellants who supported the claims of the appeal and having examined the materials of the case the court finds that the appeal is justified and should be satisfied on the following grounds.

As was established at the court session, the appellants – citizens of Afghanistan – had arrived in the territory of the Russian Federation with a view to applying for refugee status in the territory of the Russian Federation.

They applied to the Territorial Subdivision of MFANAMP in Moscow with requests for refugee status in the territory of the Russian Federation.

They received replies whereby the Territorial Subdivision informed them that if they stayed in Moscow on legal grounds they should apply to the Territorial Subdivision of MFANAMP in Moscow at the address specified in the letters.

In accordance with the given recommendations, the appellants personally applied to the Territorial Subdivision but were denied access to the refugee status determination procedure because they did not have entry visas.

After that the appellants again applied in writing to the Territorial Subdivision and again asked that their refugee status requests be considered, and also gave additional details of the circumstances of their arrival in the territory of the Russian Federation.

Under Subclause 2 of Clause 5 of Article 4 of the Federal Law “On Refugees”, the request of a person who is at the check-point at the State Border of the Russian Federation or in the territory of the Russian Federation should be preliminarily examined at the Point of Immigration Control or territorial migration service subdivision of the federal executive authorities within five working days of the date of the request.

Under Subclause 3 of Clause 2 of Article 3 of the said law, based on the results of the preliminary examination of the refugee status request the territorial subdivision must either decide on issuing a certificate on the examination of the request on the merits or refuse to consider the request on the merits.

However, the Territorial Subdivision did not comply with the above period of time, did not summon the appellants for an interview, did not examine the refugee status requests, and did not adopt a decision on the issue of a certificate on the examination of the request on the merits or on refusing to examine the request on the merits.

Instead, the Territorial Subdivision sent the appellants the letters from which it followed that their requests would not be considered due to the failure to comply with the time limits for filing the requests.

The court considers the above actions of the Territorial Subdivision of MFANAMP in Moscow unlawful and unjustified.

In compliance with Subclause 7 of Clause 1 of Article 5 of the Federal Law “On Refugees”, the ground for refusing to consider a person’s request on the merits is the following circumstance: if the person was forced to illegally cross the State Border of the Russian Federation with the intention to request for refugee status and

did not apply for the status in accordance with the procedure specified in Subclause 3 of Clause 1 of Article 4 of the said Federal Law.

The Law also provides for the possible prolongation of the period for filing applications.

Thus, under Subclause 3 of Clause 1 of article 4 of the Federal Law “On Refugees”, in the event of the circumstances beyond the control of the given person that prevent him/her from duly applying with a request, the period for the application filing may exceed one day but for no longer than the period during which such circumstances last.

Therefore, refugee status requests must be preliminarily considered without fail and only based on the results of such examination, in the event of non-compliance with the application filing time limits, a decision can be taken to refuse to consider the request on the merits. The issue of the validity of reasons for such non-compliance must also be solved in the process of the preliminary consideration of the request. Sending any letters instead of considering the request and taking a decision thereon is not provided for by the law.

The court also considers illegal the denial of access to the refugee status determination procedure on the ground that the appellants are illegally staying in the territory of the Russian Federation, as the issue of legality or illegality of the arrival in the territory of the Russian Federation, legality or illegality of staying in the territory of the Russian Federation should also be established in the process of preliminary consideration of the request. This is expressly provided for by law.

Thus, under Clause 3 of Article 3 of the Federal Law “On Refugees”, a decision to issue a certificate or to recognize a person as a refugee or to refuse to consider a request on the merits or to deny refugee status is to be taken based on the results of interviewing a person, filling in a questionnaire on the basis of individual interviews, as well as based on the results of the verification of the accuracy of the obtained data on the given person and his/her family members that arrived together with such person, check of the circumstances of their arrival in the territory of the Russian Federation and the grounds for their stay in the territory of the Russian Federation, after thorough investigation of all the circumstances set out in the request. Additional interviews may be conducted in order to clarify the facts reported by the person concerned.

In this case, the Territorial Subdivision did not take any actions specified in the above Article, however, conclusions were made based on relevant in law circumstances and the appellants were denied access to the refugee status determination procedure.

Pursuant to Article 7 of the Russian Law “On Appealing in Courts Against Actions and Decisions Infringing upon Rights and Freedoms of Citizens”, the action appealed against is considered unlawful if it leads to the consequences specified in Article 2 of that Law.

Article 2 of the above law specifies the following consequences of actions (decisions): those that result in violation of rights and freedoms of citizens; prevent the exercise by a citizen of his/her rights and liberties; illegally impose any duty on a citizen or lead to illegal institution of legal proceedings against a person.

In considering the appeal the court will not enter into discussing the issue of granting the appellants the refugee status as this issue is beyond the ultimate facts of this case.

At the same time, the court considers it established that the actions appealed against expressed in the non-appliance to the appellants of the refugee status determination procedure are not based on the law and infringe on the appellants' rights as persons seeking refugee status in compliance with the Russian law "On Refugees", as well as prevent the exercise of the rights specified in Article 6 of the above law which the appellants would have had if their requests had been duly considered.

Under Article 6 of the Russian law "On Appealing in Courts Against Actions and Decision Infringing upon Rights and Freedoms of Citizens", the officials or government employees whose actions (decisions) are appealed against are charged with the procedural duty to give documentary evidence of the validity of the actions (decisions) that are appealed against; a citizen is exempt from proving the unlawfulness of the actions (decisions) under appeal, but has to prove the fact of his/her rights and liberties having been infringed upon.

The person concerned has not provided documentary evidence of the lawfulness of the actions that are appealed against, at the same time, it has been established during the court hearing that the decision under appeal has infringed on the above mentioned rights of the appellants.

Consequently, by virtue of Article 7 of the Russian Law "On Appealing in Courts against Actions and Decisions Infringing upon Rights and Freedoms of Citizens", the appeal is justified and should be satisfied.

In view of the above, in compliance with Articles 191 through 197 of the Code of Civil Procedure of the RSFSR, the court

### **DECIDED:**

that the actions (omission) of the Territorial Subdivision of the Russian Ministry of the Federal Affairs, National and Migration Policy in Moscow, expressed in non-appliance of the refugee status determination procedure to citizens of Afghanistan Gulam Dzhah Khadzhi Mirza Dzhah, Alamuddin Miradzhuddin, Mohammad Shaker Mir Afzal, Abdul Rakhim Said Mohammad, Abdul Khakim Abdul Mokim, Abdul Sabur Abdul Salam, Khomayun Abdullah, Abdul Rafi Yar Gul be declared unlawful;

that the Territorial Subdivision of the Russian Ministry of the Federal Affairs, National and Migration Policy in Moscow be obligated to consider status requests of

citizens of Afghanistan Gulam Dzhan Khadzhi Mirza Dzhan, Alamuddin Miradzhuddin, Mohammad Shaker Mir Afzal, Abdul Rakhim Said Mohammad, Abdul Khakim Abdul Mokim, Abdul Sabur Salam, Khomayun Abdullah, Abdul Rafi Yar Gul by applying to them the refugee status determination procedure.

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

Judge / Signed /  
Clerk / Signed /

True Copy  
The Decision took effect  
on June13, 2002  
Judge  
Clerk