

DECISION
in the name of the Russian Federation

On October 3, 2000 at an open court session, the Zheleznodorozhny district court in the City of Oryol, Oryol region,

Composed of:

Chairperson: S.M.Sedykh

Attending: representative A.A. Zaitseva

Assisting: Y.V. Prokhorova

considered an appeal filed by Mr. Mokhd Tarik Jakhandra Shakha against the decision passed by the Oryol regional MS and

ESTABLISHED THE FOLLOWING:

Mr. Mokhd Tarik Jakhandra Shakh, an Afghan citizen, turned to court with an appeal against the decision taken by the Oryol regional MS in March, 2000 denying him refugee status as per Article 5, Clause 1, Sub-Clause 7 of the RF Federal Law "On Refugees".

At a court session, Mr. Mokhd Shakh reiterated his position to the effect that the MS decision should be recognised null and void. He had failed to approach the MS within the duly established timeframe, as initially he did not intend to gain the status in question. However, presently he is in need of such status, since he can not go back to Afghanistan for a number of reasons, including the fact of his former employment with the Ministry of Interior of the Republic of Afghanistan, his membership with the NDPA and his training at Soviet educational institutions. In the event of his return to Afghanistan, his life can be imperilled, as he will be subjected to persecution by the forces of Talibans who are presently in power in Afghanistan.

The defendant's representative refused to recognise the validity of the appeal, providing clarification in court to the effect that Mr. Mokhd Shakh was denied refugee status on the grounds that he had failed to apply to the MS within 24 hours after illegally crossing the RF state border and present evidence confirming that he would be persecuted in Afghanistan in the event of his return. To prove that the appellant's life wouldn't be endangered in Afghanistan, the defendant's representative provided information to the effect that he had been issued a passport in Afghanistan and his family was staying in Pakistan. The defendant's representative did not present any other evidence in court to substantiate his negative decision.

Having heard the testimony from both sides and having studied the available materials on the case, the court recognised the negative decision passed by the Orlov regional MS, under which Mr. Mokhd Shakh was denied refugee status, as ill-founded and established that the appeal should be ruled in favour of the appellant on the following grounds:

In accordance with Article 4, Clause 1 of the Federal Law "on Refugees", an applicant for refugee status, being 18 years old and older, is to apply in writing, either in person or through his/her authorised representative, to a relevant agency within 24 hours. Article 5, Clause 1, Sub-Clause 7 indicates that an applicant can be denied the consideration of his application on the merits on the grounds that a person was forced

to illegally cross the RF state border with an intention to apply for refugee status and failed to apply in keeping with the procedure established under Sub-Clause 3, Clause 1, Article 4 of the Law. In accordance with Clause 3, Article 3 of the Federal Law "On Refugees", a local MS body needs to prove that it has conducted credibility assessment of the information supplied by the applicant and its negative decision should be well-founded. It follows from the documents presented in court and clarifications provided by the defendant's representative at a court session that the MS rejected the asylum claim without conducting proper credibility assessment of the information provided by the applicant, including the fact indicated by the applicant in the questionnaire filled in on February 18, 2000. It stipulated that in December 1997, he arrived in Russia from Turkmenistan travelling by train "Dushanbe-Moscow". Though he did not carry entry visa, he still chose to come to Russia, as he had studied in Oryol earlier, made friends there and felt safe and secure. He did not apply to the MS, as he was not aware of the established procedure. The MS representative did not dispute the fact that Mr. Mokhd Tarik was denied refugee status on formal grounds and the MS did not conduct any special assessment of the information provided by the applicant. When passing a negative decision, the MS proceeded from the fact of his illegal crossing of the RF state border without an entry visa and the failure to approach the MS with refugee claim within 24 hours. However, according to the filed materials on the case, no inquiries were forwarded to relevant bodies about visa requirements for Afghan citizens when crossing the Turkmenistan-Russian border, as well as to the effect that there indeed was a border check point at the time in question, passage through which required relevant documents. Neither were the applicant's arguments checked into to the effect that he was not aware of the need to apply for refugee status within 24 hours, that he came to Russia fearing for his life back in Afghanistan, that he intended to stay with his friends in Oryol, etc. Neither did the MS check into the fact that Mr. Mokhd Tarik applied to the local body of interior for registration and failed to get it. However, he went on staying in the city of Oryol and administrative proceedings were instituted against him for violating the rules of registration. Both in his application for refugee status and at a court session, Mr. Mokhd Tarik presented plentiful evidence about his earlier service with the Afghan Ministry of Interior, his membership with the NDPA, his training at Soviet educational institutions, his subsequent imprisonment for political reasons in Kabul from October 1992 till August 1996 following his return from the USSR. He managed to obtain his passport in July 1997, using his connections, as well as a tourist visa to Turkmenistan. He came to Turkmenistan on November 22, 1997 and on December 3, 1997, he crossed the Russian border and came to Oryol in December 1997, where he applied to local interior authorities for registration.

It follows from the documents submitted by Mr. Mokhd in court, that he had indeed studied at the MVD school in Oryol, that he was a member of the NDPA and served with the Afghan Ministry of Interior. According to the Information supplied by the UNHCR Office in Moscow, most of the Afghan territory today is under the control of Talibans. Their presence is characterised by brutality and intolerance towards their enemies. More than once did Taliban leaders call upon their supporters to expose communists, NDPA members, ex-officials of the Najibullah government, including former officers of the Afghan Ministry of Interior and State Security Ministry. According to the information received from Afghanistan, the exposed people had been subsequently executed. The reason for persecution by Talibans of Afghan citizens, who used to study in the USSR, is that they see ex-USSR, as well as Russia, as an enemy state. One can say with certainty that in the event of their return

to Afghanistan, the a/m group of Afghan citizens will be persecuted by Taliban or even subjected to physical extermination. All this information is provided in a letter of the FMS of Russia of May 23, 2000 forwarded to court, newsletters issued by the Russian Academy of Sciences and mass media news programmes.

In view of the above, the court has come to the conclusion that the a/m facts with regard to the threat to Mr. Mokhd's life and health in the event of his return to Afghanistan are obvious and well-founded and under Article 55 of the RSFSR GPK, do not need to be proved. Consequently, the court finds Mr. Mkhad's appeal against the MS negative decision well-founded and recognises the need for the MS to grant him refugee status. Mr. Mokhd Tarik's case is covered by Article 1, Clause 1, Sub-clause 1 of the RF Law "On Refugees".

Being guided by Articles 1 and 3 of the Federal Law "On Refugees" and Articles 191-197, 239-1 – 239-7 of the RSFSR GPK, the Court

HAS RULED AS FOLLOWS:

The Court shall find in favour of Mr. Mokhd's appeal against the negative decision passed by the Oryol regional MS denying him refugee status.

This negative decision of March 1, 2000 shall be recognised null and void and the Oryol regional MS shall be obliged to grant him refugee status.

An appeal against this decision can be filed with the Oryol regional court within 10 days.