

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

*On December 25, 2002 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 civil case No. 2-5433/02 concerning a complaint filed by Afghan nationals Mr Shakila Nasrulla and Mr Asadulla Mokhammad Sarvar against the decision of the Moscow GUV D Department for Migration denying the applicants consideration of their applications for temporary asylum and

**ESTABLISHED THE FOLLOWING:**

The applicants - Afghan nationals Mr Shakila Nasrulla and Mr Asadulla Mokhammad Sarvar - filed a complaint in court against the unlawful decision of the Moscow GUV D Department for Migration of August 29, 2002 denying them temporary asylum in the RF.

At the court session, the applicants changed their demands and requested the Court should recognise the decision of the Moscow GUV D Department for Migration of August 29, 2002 denying them for no good reason temporary asylum in the RF as being unlawful and obligate the defendant to examine their applications for temporary asylum on the merits according to the duly established procedure.

A representative of the Moscow GUV D Department for Migration did not acknowledge the validity of the complaint and submitted his own comments on the complaint in writing.

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 on the following grounds.

It follows from the case materials that the applicants left their country of origin on July 7, 1994 accompanied by their under age children and arrived in Dushanbe (Tadjikistan) where they stayed for 7 days. On July 14, 1994, they left Tadjikistan and on July 18, 1994 they arrived in Moscow by train.

In accordance with the decisions of the Moscow Territorial Branch of the RF Ministry of Federal Affairs, National and Migration Policy of July 22 and 23, 2001, the applicants were denied substantive consideration of their refugee applications. The applicants submitted applications for temporary asylum in Russia. However, they were denied temporary asylum as well in view of the fact that they had earlier been denied substantive consideration of their applications for refugee status in Russia.

Nevertheless, the Court cannot agree to the defendant's arguments.

In accordance with Article 12, Clause 2 of the Federal Law "On Refugees", temporary asylum shall be granted to a foreign national or a stateless person if they

- a) are eligible for refugee status but prefer to submit an application in writing with a request for permission to stay temporarily in the Russian Federation;

- b) are not eligible for refugee status for reasons specified in this Federal Law but cannot be expelled (deported) from the Russian Federation for humanitarian considerations.

Therefore, the Court maintains that the applicants are eligible for temporary asylum under Article 12, 2-2 of the said Federal Law, as the fact that the applicants were denied substantive consideration of their refugee applications serves as one of the grounds that makes them not eligible for refugee status in Russia under the RF Law "On Refugees".

During the court session, the applicants pointed out that they could not return to Afghanistan for humanitarian reasons and had to temporarily stay in Russia, the reason being the current unstable political, social and economic situation in Afghanistan where their lives may be endangered.

Nonetheless, the defendant, in violation of the RF Law "On Refugees", has failed to examine the humanitarian reasons set forth by the applicants, due to which they can not presently return to Afghanistan,. The defendant's representative did not deny the said fact. The Court can not recognise the fact that their applications for temporary asylum were refused on formal grounds as being lawful.

For these reasons and being guided by Articles 191- 197, 239-1 – 239-7 of the RSFSR Civil Procedural Code, the Court

**HAS RULED AS FOLLOWS:**

The negative decision of the Moscow GUV D Department for Migration denying Afghan nationals Mr Shakila Nasrulla and Mr Asadulla Mokhammad Sarvar the consideration of their temporary asylum applications in accordance with the current legislation on temporary asylum shall be recognised unlawful.

The Moscow GUV D Department for Migration shall be obligated to consider the applications for temporary asylum lodged by Afghan nationals Mr Shakila Nasrulla and Mr Asadulla Mokhammad Sarvar in accordance with the current legislation on temporary asylum.

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 JANUARY 5, 2003