



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 5 November 2014

FIRST SECTION

Application no. 38389/14
Elfida Orudzhevna NASIBOVA
against Russia
lodged on 6 May 2014

STATEMENT OF FACTS

The applicant, Ms Elfida Orudzhevna Nasibova, is a Georgian national, who was born in 1975 and lives in the Samara region. She is represented before the Court by Mr A. Akhmedov, a lawyer practising in Samara.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

The applicant's husband and four minor children are Russian nationals and live in Russia.

The applicant arrived in Russia in 2011. On 26 September 2011 she received a three-year residence permit.

On 6 September 2013 the Samara Regional Department of the Federal Migration Service ("the local FMS department") revoked the residence permit by reference to section 7 § 1 (1) of the Foreign Nationals Act, on the ground that the applicant posed a threat to the security of the Russian Federation citizens.

The applicant challenged that decision before the Samarskiy District Court of Samara.

On 15 October 2013 the Samarskiy District Court found that the decision of 6 September 2013 had been lawful. The local FMS department had complied with the procedure prescribed by law and had based its decision on lawful grounds. The residence permit had been revoked after the local FMS department had received information from the Samara Regional Department of the Federal Security Service ("the local FSB department") that the applicant posed a national security risk. Russian law did not impose on the local FMS department an obligation to verify the information submitted to it by the local FSB department. Nor did it have any competence to do it. Its reliance, without verification, on the information from the local FMS department had been therefore lawful.

The court further took note of a letter by the local FSB department dated 4 October 2013 from which it followed that operational search activities had been conducted in respect of the applicant. It had been established that she had disseminated in the village of Sukhiye Avrali the ideas of superiority of ethnic Azerbaijanis over other ethnic groups and had attempted to stir interethnic hatred in the village. The results of the operational search activities were a State secret and could not be made public. The court also relied on statements by two FSB officers that they had received information about the applicant's involvement in instigating interethnic conflicts from undercover agents. The court had no reasons to doubt their submissions. At the same time, it found the submissions by the applicant's neighbours that she had never spread ideas about the superiority of Azerbaijanis over Russians or had stirred interethnic conflicts unconvincing. The witnesses were all the applicant's relatives or friends and had therefore a personal interest in the case. Moreover, they could have been unaware of the applicant's activities.

Finally, the court rejected the applicant's argument that the revocation of her residence permit had breached her right to respect for her family life under Article 8 of the Convention. It found that the revocation of the residence permit had not interfered with the applicant's family life because it had not had the effect of breaking the family bonds. It did not prevent the applicant from entering Russia or from applying for a new residence permit.

The court concluded that the applicant's residence permit had been revoked as part of the State's lawful control of the entry of aliens into its territory and their residence there. The measure had been lawful, had pursued the aim of protecting the national security and had been proportionate to that aim.

On 17 January 2014 the Civil Chamber of the Samara Regional Court upheld the decision of 15 October 2013 on appeal. It noted that the local FSB department's letter of 20 August 2013 which had served as a basis for the local FMS department's decision of 6 September 2013 had not been examined by the District Court because it had been classified. It had been in the meantime declassified and submitted to the Regional Court. The Regional Court also took note of a certificate issued by the local FSB department on 2 September 2013 which had not been produced before the District Court. It followed from that certificate that the applicant had participated in several interethnic conflicts in the Sukhiye Avrali village and that her behavior had aggravated those conflicts. She had disseminated among her nearest relations the ideas of superiority of ethnic Azerbaijanis over the Slavic population of the Sukhiye Avrali village.

The court held that the above documents, together with the documents and witness statements examined by the District Court, showed that the applicant presented a national security risk. The fact that the applicant had not been charged with any criminal or administrative offences did not mean that the information submitted by the local FSB department had been incorrect. Furthermore, the applicant's positive references and the fact that she had not been charged with criminal or administrative offences were irrelevant and could not have any influence on the decision as to whether her residence permit should be revoked. The findings made by the local FSB department were not subject to judicial scrutiny. The court had not

competence to assess issues which were within the executive's discretionary power.

The court further found that the decision to revoke the residence permit had been issued in accordance with the procedure prescribed by law, had been reasoned by reference to the information submitted by the local FSB department and had been therefore lawful. Finally, the court held that the decision to revoke the applicant's residence permit did not amount to an interference with her family life. According to section 6 § 6 of the Foreign Nationals Act a year after the revocation she was entitled to apply for a new residence permit.

The court concluded that the residence permit had been revoked by a competent authority in accordance with the procedure prescribed by law. The revocation had not breached the applicant's rights. The District Court's decision confirming the revocation of the residence permit had been therefore lawful.

On 26 March 2014 a judge of the Samara Regional Court refused to refer the applicant's cassation appeal for examination by the Presidium of the Samara Regional Court, finding no significant violations of substantive or procedural law which influenced the outcome of the proceedings.

B. Relevant domestic law

Law on Legal Status of Foreign Nationals in the Russian Federation no. 115-FZ of 25 July 2002 ("the Foreign Nationals Act") provides that a foreign national married to a Russian national living on Russian territory is entitled to a three-year residence permit (section 6 § 3 (4)).

A three-year residence permit (*"разрешение на временное проживание"*) may be refused or revoked only in exhaustively defined cases, particularly if the foreign national advocates a violent change to the constitutional foundations of the Russian Federation or otherwise creates a threat to the security of the Russian Federation or its citizens (section 7 § 1 (1)).

If a three-year residence permit has been revoked, a foreign national concerned may apply for a new three-year residence permit no earlier than a year after the revocation (section 6 § 6).

A three-year residence permit may not be issued during the five-year period following a person's administrative removal or deportation from Russia (section 7 § 1 (3)).

During the validity of the three-year residence permit a foreign national may apply for a renewable five-year residence permit (*"вид на жительство"*). Such application is possible only after the foreign national has lived in Russia for at least a year on the basis of a three-year residence permit (section 8 §§ 1-3).

COMPLAINTS

The applicant complains under Article 8 of the Convention that the revocation of her residence permit violated her right to respect for her

family life. In the absence of a residence permit she is obliged to leave Russia where her four children lawfully reside and has to obtain a visa each time she wants to see them. She argues that she does not present any security risk and the authorities' findings to the contrary were unsubstantiated. Her procedural rights were violated because the decision to revoke her residence permit was taken on the basis of classified materials.

QUESTIONS TO THE PARTIES

1. The Government are requested to submit copies of the following documents:

- the decision of 6 September 2013 by the Samara Regional Department of the Federal Migration Service;
- the letter of 20 August 2013 by the Samara Regional Department of the Federal Security Service;
- the certificate of 2 September 2013 issued by the Samara Regional Department of the Federal Security Service;
- the letter of 4 October 2013 by the Samara Regional Department of the Federal Security Service.

2. Did the revocation of the applicant's residence permit constitute an interference with her right to respect for her family life within the meaning of Article 8 § 1 of the Convention? If so, was that interference in accordance with the law and necessary in terms of Article 8 § 2? Was the decision-making process leading to the measure of interference fair and such as to afford due respect to the interests safeguarded by Article 8? In particular:

(a) What was the scope of review of the domestic courts which examined the applicant's complaint against the revocation of her residence permit? Was the judicial review limited to ascertaining that the residence permit had been revoked in accordance with the procedure prescribed by law and, in particular, that the materials which formed the basis for the revocation had been issued within the administrative competence of the Federal Security Service? Did the courts have competence to verify whether the decision to revoke the residence permit had been made on genuine national security grounds and whether the executive was able to demonstrate the existence of specific facts serving as a basis for its assessment that the applicant presented a risk in that regard?

(b) Was the applicant afforded sufficient procedural guarantees in domestic proceedings? In particular, were the specific allegations mentioning the locations and dates of the actions allegedly committed by the applicant divulged to her? Were the classified materials from the Federal Security Service disclosed to her? Was she given a fair and reasonable opportunity to refute the facts and findings contained in those materials?

(c) Did the courts make a balancing exercise between the need to protect national security and the applicant's right to respect for her family life?