

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

ALEXANDRE KONANYKHINE,)
)
 Petitioner,)

)
 v.) CIVIL ACTIONS
)
)
 UNITED STATES OF AMERICA,) 97-449-A
 DEPARTMENT OF HOMELAND SECURITY,) 04-34-A
)
 Respondent.)

)

REPORTER'S TRANSCRIPT

MOTIONS HEARING - EXCERPT

Wednesday, January 14, 2004
(Proceedings from 12:03 p.m. to 3:55 p.m.)

BEFORE: THE HONORABLE T.S. ELLIS, III
Presiding

APPEARANCES: JOHN T. SZYMKOWICZ, ESQ.

For the Petitioner

OFFICE OF THE UNITED STATES ATTORNEY
BY: WILLIAM J. HOWARD, AUSA
KATHLEEN PEPPER, AUSA

For the Respondent

MICHAEL A. RODRIQUEZ, RPR/CM/RMR
Official Court Reporter
USDC, Eastern District of Virginia
Alexandria Division

INDEX

<u>WITNESS (Petitioner)</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
John J. Somjen	4	17	27	---
Alexandre Konanykhine	34 (Not Completed)			

(Court recessed)

PROCEEDINGS

(Partial Afternoon Session - 12:03 p.m. to 3:55 p.m.)

(Court called to order at 12:03 p.m. in
Konanykhine v. Homeland Security)

THE COURT: Mr. Szymkowicz, you may call your
witness out of order. I don't know whether I will require the
government to go first, since it's claiming a breach, or not.
But let's have this witness first. Who is this witness?

ATTORNEY SZYMKOWICZ: This witness is attorney
John Somjen, spelled S-o-m-j-e-n, Somjen.

THE COURT: All right.

Are you on the line, sir?

MR. SOMJEN: Yes, I am, your Honor.

THE COURT: All right. This is a little unusual,
because typically we would have an officer there so that you
can take the oath. But we will have to administer the oath by
telephone.

MR. SOMJEN: All right.

THE COURT: Do you wish to affirm or take an
oath?

MR. SOMJEN: I will take an oath.

THE COURT: The deputy clerk may administer the
oath to the witness.

(Witness sworn)

THE COURT: All right, Mr. Szymkowicz, you may
proceed.

ATTORNEY SZYMKOWICZ: Thank you, your Honor.

JOHN J. SOMJEN, having been first duly sworn, was examined and testified telephonically as follows:

DIRECT EXAMINATION

BY ATTORNEY SZYMKOWICZ:

Q. Mr. Somjen, please state your full name for the record.

A. John Joel Somjen.

Q. What is your occupation?

A. I am a lawyer up here in Toronto, Canada.

THE COURT: Spell your name, please, sir.

THE WITNESS: That's S-o-m- -- for "Michael," --
-j-e-n, for "Norman."

THE COURT: All right.

Proceed, Mr. Szymkowicz.

BY ATTORNEY SZYMKOWICZ:

Q. Please state your educational experience.

A. I received a bachelor of commerce degree from the University of Toronto, and then a jurist doctorate, which is a bachelor of law, from the same university. I received my degree in 1969, and I was called to the bar in 1971.

Q. Where are you admitted to practice law?

A. In the Province of Ontario, Canada.

Q. Briefly state your work history, beginning with your admittance to practice law.

A. Upon admission of the bar, I immediately opened my own practice, and I ran that practice for about two and a half years. Then I did one and a half years as in-house counsel

for a public Canadian company, after which I resumed my own practice, and have been in my own practice ever since.

Q. Do you have a specialty?

A. I do. It's immigration law in Canada.

Q. Briefly describe your familiarity with the procedures and laws related to an alien's application for political asylum in Canada?

A. Well, I would estimate that I have been involved in approximately a thousand or more refugee claim cases during my career.

Q. And what procedures are to be followed when someone wants to seek political asylum in Canada?

A. Well, there are several ways that a case can be launched. One way would be when the applicant is already in Canada as a visitor or in some other fashion, physically inside Canada, the applicant can launch a claim in front of an immigration officer or an adjudicator. When a claimant is outside Canada, he could launch a claim at one of our embassies.

I believe the case that you are dealing with today is related to a claimant who wished to make a claim at one of our ports of entry, which has its own special procedure to make a claim. So that is another way, at the port of entry, which is basically an airport or a land border.

Q. Mr. Somjen, can you explain the procedures if you were to utilize the asylum application procedures at a Canadian Embassy, such as the one in Washington, D.C.?

A. Well, there has to be a proper application filed at the

embassy, and they would, you know, entertain that application if all of the requirements were met in terms of the format of the application, because there are certain forms under the regulations that have to be used.

In addition, if an embassy is used there has to be a group of five resident Canadians in Canada who are willing to sign a financial sponsorship for the applicant. And without that -- without those five Canadian residents having signed and filed those sponsorship confirmations, the case would not be entertained at all at the embassy.

Q. And how long, assuming you obtain the five sponsors, would the procedure take if you utilized the embassy procedure?

A. You mean how long until a determination of the claim?

Q. That's correct.

A. It could take a year or more.

Q. And would the person be permitted to go to Canada and be awarded asylum pending that determination, or would they still be in the same country that they came from?

A. Yes, they would not be allowed entry into Canada until the case was successfully determined.

Q. Now, can you contrast that procedure, the embassy procedure, with the procedure at the border, the port of entry?

A. Okay. At a port of entry launching of an application, the applicant is given an appointment -- if it's a busy port of entry, the applicant would be asked to return to the United States and asked to come back with a fixed appointment in

hand.

But in any event, what happens at the port of ever entry is that there is an examination, as it's called under our law, by a border immigration officer to determine whether the applicant might be eligible to have his case heard by the relevant tribunal inside Canada, which is called the Immigration Refugee Board.

The eligibility examination is an interview which can take, let's say, an hour, and there are certain topics that have to be covered at that interview, which I can go into if you want.

But essentially, if the interview is favorable to the applicant -- in other words, the applicant is considered eligible to make the claim -- he is then allowed into Canada and is actually given, right then and there, an appointment with the Refugee Board, which there is a date given to him already to appear.

Also, he is given a notice that he must file his written claim for asylum within 28 days. So, he is already -- by the time he is actually found eligible, he is then immediately being scheduled already for the first steps of this process.

Q. What questions are asked by the asylum officer at the port of entry?

A. Well, first of all, it's important that the applicant be able to identify himself somehow in a satisfactory manner, because without proper identity documents, nothing else that he says would have much credibility.

So, although it's interesting, because even if he is able to identify himself, he would still be -- he might be detained until his identity is determined properly.

But anyway, the types of questions that are asked are, number one, "Have you ever made a claim before our tribunal in Canada and failed?" So, in other words, to discourage multiple claims to the same tribunal.

Number two, "Have you ever been recognized as a convention refugee by any other nation in the world, which will accept you back as a resident?"

Number three, "Have you ever been convicted of a crime in any country outside Canada?"

And Number four, "Have you ever been convicted of any crime inside Canada?"

So, basically, those are the types of questions that are asked. And his answers will be taken basically at face value, unless the Canadian Immigration computers show some indication to the contrary.

Q. And where does that interview take place?

A. It takes place at the Canadian -- well, in the case that you are dealing with, I believe -- well, I don't believe, I know, it was scheduled to have taken place at the Canadian side of the Peace Bridge over Niagara River.

The Canadian side is called Port Erie, and there is actually a separate building right across from the Immigration Building, which is called the Refugee Unit, and it's in that building where these eligibility interviews are handled.

Q. How is the interview scheduled?

A. Well, there are a couple of ways. First of all, like I say, an applicant could just come up to the bridge, the Canadian side, without any formality, and ask to be seen.

And again, because that happens to be a very busy port of entry, they would give him an appointment slip to come back, let's say, in two weeks.

Another way it could be scheduled is, it could be done -- in Buffalo, New York, there exists a charitable organization called Casa la Viva, which actually is also a hostel where people can live and eat and stay as they are making their way up to Canada, making the asylum claim.

That place, Casa la Viva, the area director can schedule appointments, also, because they have a very good relationship with the Peace Bridge immigration authority.

And the third way it can be scheduled is the way that this case, Mr. Konanykhine's case, interview, was scheduled, was in this case, I called the area director of immigration for the Province of Ontario, whose office is in Toronto, and that area director indicated that he had an appointment scheduled back in December.

So, those are some ways that appointments can be scheduled.

Q. What would happen if someone were to just walk across the bridge and say, "I can't return to the United States"?

Would the Canadians still return them at that point, pending the interview.

A. Yes, absolutely.

Q. And why is that?

A. Well, because they -- because without having passed through the eligibility examination interview, the applicant has absolutely no right to set foot on Canadian soil.

Well, I mean, there could be exceptions. If the applicant had, for example, a passport for which we do not require a visa, then, you know -- but I am just speculating there.

But in the case where someone who came from a country whose nationals we don't allow into Canada without a visa, that type of person would then be immediately returned back to the United States.

Q. And does Canada require a visa for Russia citizens?

A. Yes.

Q. Did there come a time when you met the acquaintance of an individual named Alexandre Konanykhine and his wife, Elena Gratcheva?

A. Well, yes. I -- specifically, Alexandre Konanykhine approached our firm in order to retain us as his lawyers up here in Canada.

Q. And when was that?

A. That was at the end of November, about November 28th or so.

Q. Did there come a time when you scheduled an appointment with the Canadian immigration authorities with regard to a asylum interview for Mr. Konanykhine and his wife, Elena?

A. Yes, I did. I did that through the area director of immigration for Ontario.

Q. And do you know what date that was -- you actually scheduled it?

A. I would say I scheduled that on December 3rd of 2003.

Q. And when was the interview scheduled for?

A. I'm sorry, I stand corrected here. I scheduled the interview December 4th, 2003. Well -- okay. I called the area director a few days earlier. But at the behest of the area director, the scheduling people at the bridge, on December 4th, 2003, fixed an appointment for December 18th, 2003, at 8:30 in the morning.

Q. Why was the appointment scheduled so far in the future?

A. Basically, it's their normal cycle. They are very busy there. There are hundreds and hundreds of thousands of people that pass through, back and forth, practically every day over that part of the world, and they just cannot see anyone earlier.

Q. Do you know if Mr. Konanykhine was dissatisfied with that late timing?

A. I believe he was.

Q. And did you offer any advice as to how to speed up the process?

A. Well, I told him about Casa la Viva, and I said, "Look, if you want, you can go up to -- travel up to Buffalo and see if -- you know, speak to the director of Casa la Viva and see if they can get an earlier appointment slotted for you."

And I believe he did do that.

Q. Do you know if he was successful in obtaining a sooner interview than December 18th?

A. No. He was unsuccessful in that effort.

Q. Do you know how long Mr. Konanykhine and his wife were in Buffalo?

A. I don't know exactly how long, but I believe they were up there for several days. And because they had nothing left to do after they found out that they couldn't get an earlier appointment, I believe they returned to -- I believe New York City. I'm not sure.

Q. Were you in telephone contact with the Konanykhines during this time?

A. Yes, I was. I was in telephone contact and e-mail contact with Alexandre Konanykhine, only. I had no contact with his wife at all, actually.

Q. Did you have his number, or did he call you?

A. Both. I had his number and he would call me as well.

Q. Okay.

Do you know if Mr. Konanykhine and Ms. Gratcheva made it to their December 18th interview.

A. I was informed they did not.

Q. And how did you find out that they did not make it to their interview?

A. On December 18th, about 11:00 in the morning, I got a call from Michael Maggio, who is one of Alexandre Konanykhine's lawyers, calling me from the United States, to tell me that --

THE COURT: What difference does it make how he learned of it? And it's hearsay, anyway, what Mr. Maggio told him.

Next question.

BY ATTORNEY SZYMKOWICZ:

Q. Have you had any contacts with the Canadian immigration authorities about the Konanykhine case after December 18th?

A. Yes. I called up the -- Annette Tennier (phonetic), who is a female immigration officer there at the -- at Peace Bridge, and I mentioned to her that the -- the plight that the Konanykhines were in, in the sense that they were in detention now, and how fast -- were they to be released, how fast could she schedule a new appointment.

And she said to me, "Well, in these circumstances, because of the way everything unfolded, I" -- she said, "If a court in the United States orders their release and they are available for interview, give me a call, Mr. Somjen, and I will then give you another appointment within the week." Those were her words.

Q. So, if the Court in this case today were to release the Konanykhines and free them to go to Canada, they couldn't get an interview today or tomorrow; is that correct?

A. That's what it seems like. Like I say, she promised an interview within the week, which is, by itself, about half the speed of the normal interview, which the turn-around rate is about two weeks.

Q. Have you scheduled another asylum interview for the Konanykhines at this point?

A. No, I have not.

Q. Why is that?

A. Because I am not aware that they are available for such

an interview at this time.

Q. What would be the procedures you would follow if you wanted to schedule another interview?

A. Well, Ms. Tennier -- I mean, I have her private line. I can call her. She invited me to call her or her colleague, Toni Velan, who is another female officer. I am apparently supposed to call back, when I know something, and schedule another interview.

Q. Would the fact that the Konanykhines' asylum claim has been denied by the Board of Immigration Appeals here in the United States have any impact on the Canadians with regard to their asylum processing?

A. You mean, as regarding the eligibility examination?

Q. Yes, or the entrance examination at the Peace Bridge.

A. Well, no, because -- because the relevant statute up here, which is called the Immigration Refugee Protection Act, based that -- it is only when another country has recognized them to be a convention refugee, and they can be sent or returned to that country, are they ineligible.

So in the case of the United States, it seems that the United States has not recognized them as such, and they are not eligible to be returned.

Q. What would happen in a typical case, not the Konanykhine case, but if someone were accused of a crime in another country, but not convicted; would that have any impact on their ability to gain entry at the -- at the border point asylum office?

A. No, it wouldn't.

Q. Why is that?

A. Because -- well, it specifically states that only convictions, and they must be of a serious nature, where at least ten years of imprisonment is available under the penal statute of the local country.

But anyway, in the case of accusations of crime only, some of these accusations can be the very -- or the very center of the persecution claim, because some accusations are politically motivated, for example.

Q. Have you received any payment for your testimony today?

A. No.

ATTORNEY SZYMKOWICZ: I have no further questions, your Honor.

THE COURT: Mr. Howard, you may cross-examine.

Ms. Pepper, you may do so.

CROSS-EXAMINATION

BY ATTORNEY PEPPER:

ATTORNEY PEPPER:

Q. Hello, Mr. Somjen. My name is Kathleen Pepper, and I am attorney for the government in this case.

A. Yes.

Q. Are you saying that all refugee claimants who go to a port of entry and who meet the eligibility criteria are admitted into Canada?

A. They are not all admitted, because sometimes there is a problem with their admissibility, where there are -- the

underlying question of whether they, for example, are a danger to the public here, or whether they are a threat to our security, et cetera, et cetera.

So, if there is -- if there is information in the Canadian immigration system that the applicant may be such a person, the eligibility interview actually can be suspended and that other issue of whether, for example, they are a security risk in Canada, that issue can be determined by an adjudicator.

Q. Okay.

And what happens to persons in such a position if they are not admitted?

Are they sent back.

A. Under the current regime, what will happen is they that will be held in detention up here in Canada, and then referred to an adjudicator for a hearing of that issue.

THE COURT: That is the security risk issue?

THE WITNESS: Yes, for example.

ATTORNEY PEPPER: Okay.

BY ATTORNEY PEPPER:

Q. And are there other --

THE COURT: Just a moment.

Go back for a moment, Mr. Somjen -- this is Judge Ellis. What about that second question about whether or not they -- or third question, relating to another convention country. Would you elaborate?

THE WITNESS: Well, Section -- Section 101(1)(d), for "David," states that a claim for asylum in Canada is

ineligible to be referred to the Refugee Protection Division, which is the tribunal, if the claimant has been recognized as a convention refugee by a country other than Canada, and can be sent or returned to that country.

THE COURT: What does that mean?

THE WITNESS: Well, that means that they have refugee status in another country, you know, and that country has granted them status as such, and will accept them back to continue to live there.

THE COURT: So that would obviously have to be a country other than their country of origin, from which they seek asylum status.

THE WITNESS: That's right.

THE COURT: All right. So as I understand your testimony, they are asked to identify themselves.

THE WITNESS: Right.

THE COURT: That's the first question.

THE WITNESS: Right.

THE COURT: What do they need to identify themselves?

THE WITNESS: Well, the classic piece of ID, of course, is a valid passport. But there has to be more than that. Usually, we recommend that they bring a birth certificate, a passport of some kind. The passport can be expired, it doesn't matter, as long as there is proper identification through the passport; a birth certificate, a driver's license, you know, items like that.

Some refugees land here with absolutely just a

very tattered birth certificate, for example, because they have been on the run all over the world for a long time, and this is all they have with them. And even that can serve as identification, you know, subject to confirmation later.

So -- but again, just proper, plausible identification would serve the purpose.

THE COURT: Does that include, for example, bank statements?

THE WITNESS: Oh, no, I never heard of bank statements being used forward identification purposes.

THE COURT: All right.

Then the second question, and the third, as I see them, is: Have you ever made a claim in Canada, and failed, for asylum; and have you ever been recognized as a refugee for asylum in some other country?

THE WITNESS: That's right.

THE COURT: And those questions, you say, as well as the answers to all the questions, are taken at face value, including, "Have you ever been convicted of a crime?"

THE WITNESS: That's right.

THE COURT: Now, overlaying all of that, you say, there are some people who might give satisfactory answers to all of those, and yet still not be provisionally admitted for consideration of their asylum claim if there is some information Canada has relating to whether they would be a threat to Canadian security.

THE WITNESS: Well, yes, but they would be physically admitted in the sense that they would be living

here in detention while this issue is determined by the proper adjudicator.

THE COURT: Well, let me see if I understand it. If the questions that you said, the identification, whether they have ever previously made a claim in Canada or elsewhere for asylum, and whether they have ever been convicted of a crime, if the questions -- the answers to those questions are satisfactory, then they are provisionally admitted to Canada for the adjudication of their asylum claim in Canada?

THE WITNESS: That's right, Judge.

THE COURT: And that would be true even if they were thought to be of some security risk; but in that event, their admission would be subject to detention.

THE WITNESS: Most likely detention, and an immediate referral for what is called an admissibility hearing, which is specifically designed to deal with whether they are or not someone who would be a security risk, and a few other matters, such as, you know, a war criminal or something like that.

THE COURT: All right.

Go on, Ms. Pepper.

BY ATTORNEY PEPPER:

Q. Mr. Somjen, isn't it possible that during the interview regarding eligibility criteria, that officers must consider various criteria, including that under R.245, in determining whether to detain a person seeking refugee claimant status?

A. Are you talking about our Regulation 245?

Q. Yes, regarding detention of potential applicants and the

criteria that interview officers need to examine.

A. I am just looking at 245 here.

This is the -- (pause). Yeah. Well, 245 is a sequel to 244, which is the, yeah, the question of detention or release turns around the normal issues, which is whether the person is a flight risk, a danger to the public, or someone whose identity has not been established.

Q. Okay.

And didn't you say that persons who might fall within those types of criteria would be -- would not be admitted to Canada, but their case -- they would be detained while these issues are examined.

A. Well, yes, because these are -- the eligibility for making an asylum claim is only available to people who fall under those headings that we have discussed today, but also people who have been convicted of crimes outside Canada or inside Canada, serious crimes, or who are security risks, or who are, say, war criminals or members of organized crime, those types of people are also not eligible to make their claim in front of the tribunal.

So, what would happen is that if our immigration computer database contained information that someone may -- reasonably may be thought -- may be seen as one of these people, and if an officer, if an immigration officer forms the opinion that this may be the case, he can cause the examining officer to suspend the examination for eligibility, and divert the matter into the adjudication stream to determine whether the person is, for example, a war criminal or a member of

organized crime or something like that.

THE COURT: The person then would be detained or incarcerated in Canada?

THE WITNESS: That's right.

THE COURT: All right.

Go on, Ms. Pepper.

BY ATTORNEY PEPPER:

Q. If --

THE COURT: Well, let me ask.

Did you make any inquiry, whether Mr. Konanykhine was a person who might fit under that category when you communicated with the Canadian officials?

THE WITNESS: No. No, I did not make any inquiry to that effect at all. They -- and they were not concerned about it, either.

I -- just to give you some background, I mean, when I caused this appointment to be made by the office of the area director of immigration, I forwarded to the area director a press clipping from, I believe it was the Baltimore Sun, which briefly outlined the nature of the -- of Mr. Konanykhine's journey through the asylum process in the United States. And that article in the Baltimore Sun was in the possession of the area director, and that caused him to make this special appointment.

The only -- the only comment that I got from the Peace Bridge people, had nothing to do about their concern about Mr. Konanykhine's background. They simply said to me, in a kind of half joking way, "We certainly hope that this

examination will not be attended by members of the press in the United States, because we don't want" -- you know -- "we want to have a nice, you know, orderly day. We don't want to be interrupted by the press."

That's the only unusual thing they said to me.

THE COURT: Go ahead, Ms. Pepper.

BY ATTORNEY PEPPER:

Q. If Mr. Konanykhine had applied for refugee claimant status, and that claim was ultimately denied, would he have been returned to the United States?

A. Yes. There is a treaty between the United States and Canada concerning the reciprocal law, handing over deportees. I believe it's called the reciprocal agreement.

It's been in force for many years. And if someone who fails with the refugee claim can be returned to the United States, and the United States must accept them back. It's a mechanism to sort of share the cost of removing people from North America.

Q. Okay.

And would that agreement have applied to Ms. Gratcheva and Mr. Konanykhine as well.

A. I'm pretty sure it would apply to them if they finally failed in their efforts up here, yes.

Q. Okay.

Are you aware of a reciprocity agreement between Canada and the United States, which is near adoption but has not yet been adopted, where the two countries agree that if a claimant is denied asylum or refugee claimant status in one

country, then they would not be allowed to apply or be granted refugee claimant statute or asylum in the other country.

A. I am aware of that.

ATTORNEY SZYMKOWICZ: Your Honor, I object --

THE WITNESS: It has not --

THE COURT: Just a --

WITNESS: -- been implemented yet.

THE COURT: What's your objection?

ATTORNEY SZYMKOWICZ: I object to the asking of this question, if it's something in discussion but not yet ratified.

THE COURT: All right. I don't see the relevance. But go ahead, Ms. Pepper. Anything further on this?

ATTORNEY PEPPER: Yes, your Honor.

BY ATTORNEY PEPPER:

Q. Has that portion of the agreement been adopted by Canada?

A. No. And it is very -- just to let you know the background a little bit to this. This is the so-called safe herd country concept, where we -- our parliament has always had in mind to implement a provision in our rules stating just what you said, that if a -- a sort of a civilized nation has already accepted them -- I should say has already entertained their claim, whether it was successful or not, and if such a civilized nation did entertain their claim previously, that we will not entertain their claim.

That idea has been tossed around our parliament

for, I would say, ten or fifteen years, but it has never been implemented.

Now, I know that the two heads of state of Canada and the United States have signed this treaty now, but the implementation has never actually taken place to date.

However, in anticipation of the implementation of that, our statute, which is the Immigration Refugee Protection Act, already makes provision that in the event that it is ever implemented, then such a person who has been -- who comes directly from one of these safe countries is not eligible to make a claim.

But as we speak, this concept is not part of our law here. And I don't believe it's part of your law, either, but I might be wrong. I don't think either nation has implemented this treaty.

Q. And are you familiar with United States immigration law?

A. Only in the most rudimentary way.

Q. Okay.

So, are you aware of any specific legalities affecting self-deportation or voluntary departure under United States law, if someone applied for refugee claimant status in Canada.

A. I'm sorry, I don't know it to that extent.

Q. Okay.

ATTORNEY PEPPER: I have no further questions, your Honor.

THE COURT: Any redirect?

(No response)

REDIRECT EXAMINATION

BY ATTORNEY SZYMKOWICZ:

Q. Mr. Somjen, this is Mr. Szymkowicz again.

A. Yes.

Q. Would the Canadian officials have agreed to schedule a new interview with Mr. Konanykhine and his wife if they believed that they would be immediately detained in Canada upon their arrival?

A. It could be the case that they would have scheduled such an interview, believing or knowing there is a likelihood of detention, sure. I don't see how those two ideas are inconsistent.

Q. So, the point of the question is: They would have still been allowed to go to Canada, even if they had been detained by the Canadian authorities; is that correct?

A. You mean, if they were planning a detention?

Q. Excuse me?

The question is: If the Konanykhines would be detained because of a risk to Canadian citizens or in order to perfect their documents, the Canadian would have admitted them at that point, correct.

A. Well, sure. I mean, you know, once an appointment is made, I mean, it's basically going to be followed through with. So, in other words, there either may or may not be a detention.

ATTORNEY SZYMKOWICZ: I have no further questions, your Honor.

THE COURT: All right.

Anything further based on that, Ms. Pepper?

ATTORNEY PEPPER: No, your Honor.

THE COURT: All right.

Thank you, Mr. Somjen.

THE WITNESS: Thank you, your Honor.

(Witness excused)

THE COURT: All right, the Court will recess at this time for lunch.

You may hang up the telephone.

(End of teleconference)

THE COURT: Well, I am very much averse to taking testimony that way, and I would not have done it in a case where it was important for the Court to see the demeanor of the witness and for there to be detailed testimony.

This was fairly straightforward matter. I am not even sure that the testimony ultimately is critical or relevant to the issues that the Court has to decide, namely whether there is a violation of the agreement. But I was eager to try our new system, which was installed in the courtroom at great expense to the taxpayer for another notable case, and was never used. And I was very curious to try it. And I must say that the system works quite well.

But I am not convinced how much relevance this will have.

Just to frame it -- we are going to take the luncheon recess, and not resume until 2:30. I have another matter at 2:00.

Basically, the government contends that it is entitled to deport or remove Mr. Konanykhine to Russia because there is a final order of the Board of Immigration Appeals that has not been stayed, except by an order of this Court. It has not been stayed by the Court of Appeals for the Fourth Circuit, and that is otherwise final and enforceable in the absence of that stay; and because the agreement between Mr. Konanykhine and the Federal Government has been breached by Mr. Konanykhine, in several ways: First, that he did not advise the Arlington office that his address had changed from the last address they were given in New York; second, that he traveled outside the New York Metropolitan Area --

Was there a third way, Mr. Howard, or were those the two ways? Travel outside the New York Metropolitan Area and the failure to advise of the change -- of leaving his permanent address.

ATTORNEY HOWARD: And reporting consistently, your Honor. Paragraph 4.

THE COURT: So, you contend he didn't report every 60 days?

ATTORNEY HOWARD: Not consistently, your Honor.

THE COURT: All right.

ATTORNEY HOWARD: That's what I am advised.

THE COURT: So that's the third way.

And, of course, the petitioner contends that he did report every 60 days, telephonically, as the modification of the agreement requires. That's an issue of fact the Court will have to determine.

In addition, Mr. Konanykhine argues that his trip to the Peace Bridge outside of the New York Metropolitan Area was not prohibited by the agreement, that he had an oral modification with somebody, presumably in Arlington, that he could travel without notice within the United States; and that he did not advise them of a new permanent address because he didn't have a new permanent address. He said he had left his permanent address and didn't have a new permanent address, in view of the uncertainty surrounding his situation.

The government says, essentially, that he should have. Once he left his permanent address, he, at a minimum, should have said, "I will be in this or that hotel, or with these friends, intermittently," and he did not do that.

The government says that those are all material breaches of the agreement. And we'll have to see.

I think the issue of jurisdiction is clearer. This is an agreement between the petitioner and the government, and there has to be a forum where his rights and the government's rights can be adjudicated under the agreement.

Whether or not there is any habeas jurisdiction really depends on whether the agreement is still in effect or not. If the agreement is not in effect, I don't know. It seems to me Mr. Howard's argument -- and I haven't decided by any means, but I think it's important for me to communicate to you what I am thinking, so that you can address what I am thinking.

It seems to me Mr. Howard is correct, Mr.

Szymkowicz, in arguing that there is a pervasive and detailed statutory claim which excludes District Court review of asylum claims, that this matter is really here only by virtue -- and I think Mr. Howard concedes that it is here appropriately by virtue of the agreement, but that's really all.

And it is interesting, I think, to refer to the basic purpose of the agreement.

Of course, Mr. Howard would point out that he thinks the basic purpose of the agreement is to keep track of Mr. Konanykhine.

Mr. Konanykhine would point out that the basic purpose of the agreement is to allow him to remain free while he fully adjudicates his asylum claim.

And both parties feel that the other party has acted in breach of that.

I, of course, at the previous hearing did what I could to persuade the parties to find some way to resolve this matter in some sensible way, and I expressed the view that I would hope -- and I will express it again today -- that some Executive Branch policy to -- involving some promise for some quid pro quo to the Russian police or executives who want Mr. Konanykhine, some promise wouldn't deter our government from honoring what Mr. Konanykhine contends is the heart of the agreement, to let him have his asylum claim fully adjudicated.

But it appears that it isn't likely to be resolved in that fashion. Is that right Ms. Pepper, Mr. Howard?

ATTORNEY HOWARD: It appears to be so, your

Honor, because of the --

THE COURT: Because you want him to go to Russia.

ATTORNEY HOWARD: -- absence of an alternative designation country -- an alternative designated country. On the other hand, I should say --

THE COURT: Why is it so hard for you to say, Mr. Howard, "That's right, your Honor. We want him to go to Russia. That's an Executive Branch goal, and if it can be done legally, we are determined to do it"?

ATTORNEY HOWARD: Well, I think that I said that, your Honor, with the caveat -- and I'm sorry for the distinction, but --

THE COURT: Well, I think that's the fact, Mr. Howard --

ATTORNEY HOWARD: Yes.

THE COURT: -- what I just stated.

Now, what I hope is that somebody in the Executive Branch can really be proud of that.

ATTORNEY HOWARD: Well --

THE COURT: I don't think so.

ATTORNEY HOWARD: But your Honor --

THE COURT: Court stands in recess.

Let me say, Mr. Howard, I am not sure ultimately it is relevant to the Court. I am still struggling with that one. And that's another point you would make: It's really none of this Court's business what the Executive Branch wants to do, as long as it doesn't thwart the legal process.

I understand that. I would just like to feel

better about it, and I would hope they would as well.

Court stands in recess.

(Court recessed at 12:45 p.m. in Konanykhine v. Homeland Security)

(Court called to order at 3:30 p.m. in Konanykhine v. Homeland Security).

THE COURT: I apologize to counsel and the parties for this delay, but it would not be anticipated that it would take this long. Indeed, the previous matter wasn't even completed.

All right, let's see. At the time we had completed the testimony of the Canadian attorney. Do you have your next witness, then?

ATTORNEY SZYMKOWICZ: It would be Mr. Konanykhine.

THE COURT: All right.

Come forward and take the oath, please, sir.

(Witness sworn)

THE COURT: All right, you may proceed.

ALEXANDRE KONANYKHINE, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY ATTORNEY SZYMKOWICZ:

Q. Please state your name.

A. Alex Konanykhine.

Q. How old are you?

A. Thirty-seven.

Q. Are you married?

A. Yes, I am.

Q. To whom are you married?

A. To Elena Gratcheva.

Q. Is Elena present in court today?

A. Yes, at the table (indicating)

ATTORNEY SZYMKOWICZ: Your Honor, I direct that

Mr. --

THE COURT: Yes, the record will reflect he has identified his wife at counsel table.

Proceed.

BY ATTORNEY SZYMKOWICZ:

Q. How long have you been married to Elena?

A. For 14 years.

THE COURT: How long?

THE WITNESS: Fourteen.

THE COURT: How old did you say you were.

THE WITNESS: Thirty-seven, sir.

THE COURT: Thirty-seven, all right.

Go on.

BY ATTORNEY SZYMKOWICZ:

Q. Where do you live?

A. Nowhere. For the first time in my life, I don't have an address.

I am being held at the Arlington Detention Center.

Q. And in that respect, you asked me if you could make a

statement to the Court about your attire, briefly.

A. Oh, I just wanted to apologize for lack of proper attire.

THE COURT: All right. No apologies are necessary. I understand.

BY ATTORNEY SZYMKOWICZ:

Q. On February 19th, 1999, did Judge Bryant of the United States Immigration Court issue an opinion in your case?

A. Yes.

Q. What did the opinion say?

A. He found that the Russian Government engineered the case against me to --

THE COURT: His testimony about what the case holds is irrelevant. The decision exists. If you want to elicit that he did something as a result of seeing that decision, you may do so. But his interpretation of it isn't really relevant.

BY ATTORNEY SZYMKOWICZ:

Q. Did the INS appeal Judge Bryant's findings?

A. Yes, they did.

Q. Did the Board of Immigration Appeals enter an order with regard to the INS's appeal of Judge Bryant's February 19, 1999, opinion?

A. Yes, they did.

Q. And I understand there is some disparity on when the order was entered, but when did you believe that the order was entered?

A. I learned about it on November 20th, 2003.

Q. So even though it may have been entered on October 27th, 2003, you did not know until November 20th; is that correct?

A. That's correct. My immigration attorney said that he received it that very afternoon.

Q. And how did it come to his office? Do you know?

A. By fax.

Q. Did you file a petition for review of the November 20, 2003, Board of Immigration Appeals decision with the United States Court of Appeals for the Fourth Circuit?

A. Yes. My attorney did that on my behalf.

Q. And do you know when this was filed?

THE COURT: Aren't these matters of record?

Why do we need these facts from this witness?

ATTORNEY SZYMKOWICZ: Your Honor, they go -- it's very brief. They go to the fact that there was an appeal pending, which was a direct appeal of the Immigration Court. There is only one other question that I have.

THE COURT: All right. Go ahead. It's a matter of record. Go on.

BY ATTORNEY SZYMKOWICZ:

Q. Has the Fourth Circuit issued an opinion as to the merits of your petition for review?

A. Not yet.

Q. Did there come a time in 1996 and '97 that you were detained?

A. Yes, sir.

Q. Why were you detained?

A. I was first arrested because INS came into our apartment

and said that we had no visa. But within a day or two we were able to prove that we did have valid visas, so the charges were changed to immigration fraud.

Q. Okay.

For how long were you detained, in total.

A. Total was 13 months.

Q. And do you know if your wife was detained?

A. Yes, she was.

Q. Do you know how long she was detained?

A. She was detained for about five days.

Q. Do you know why she was detained?

A. She was arrested on the first charge. First it was no visa, and then it was changed to immigration fraud, alleged on my part. And because she was dependent on my application, her visa was also revoked.

Q. And did there come a time when you were released from detention?

A. Yes. Twice.

Q. And when were those times?

A. Once it was, I believe in September 1996, pursuant to an order of this Court. And I was immediately rearrested, and then I was released in July 1997, also pursuant to an order of this Court. I was at that time released on home electronic surveillance. And later, pursuant to settlement agreement, I was released from that as well.

Q. Okay.

Did there come a time that you entered into a contract with the Immigration and Naturalization Service,

which I'll referred to as the INS, regarding your release from detention.

A. Yes.

Q. And when was this contract entered into?

A. It was August 1997.

Q. And was this contract written or oral?

A. It was written.

ATTORNEY SZYMKOWICZ: And for the record, your Honor --

THE COURT: Was this contract in settlement of an existing case?

THE WITNESS: Yes, sir. It was in settlement of the second habeas corpus case.

THE COURT: Next question.

ATTORNEY SZYMKOWICZ: This has been already admitted --

THE COURT: Yes.

ATTORNEY SZYMKOWICZ: -- into evidence.

THE COURT: And I take it the parties agree that the government's exhibits may be admitted.

ATTORNEY SZYMKOWICZ: That's -- that's correct, your Honor.

THE COURT: All right.

What numbers are they, Mr. Howard? One through what?

ATTORNEY HOWARD: I have Exhibit 1 through Exhibit 8, your Honor.

THE COURT: And that's what the parties agree

should be shall admitted for the purposes of this hearing?

ATTORNEY SZYMKOWICZ: That's correct, your Honor.

ATTORNEY HOWARD: That is correct, your Honor.

THE COURT: Does the Court have copies of all of those, Mr. Howard?

ATTORNEY HOWARD: I'm sorry, your Honor.

THE COURT: Does the Court have copies of all of those?

ATTORNEY HOWARD: I can tender them now, your Honor.

THE COURT: All right. You may give those to the court security officer.

(Documents tendered)

THE COURT: All right, go on, Mr. Szymkowicz.

ATTORNEY SZYMKOWICZ: For the record, I believe this is the actual -- the settlement agreement dated August 21st is Exhibit Number 2.

BY ATTORNEY SZYMKOWICZ:

Q. Mr. Konanykhine --

THE COURT: The settlement agreement is exhibit what?

ATTORNEY SZYMKOWICZ: I believe it's Exhibit Number 2, the government's.

THE COURT: Two, yes.

All right. Go on, Mr. Szymkowicz.

ATTORNEY SZYMKOWICZ: May I approach the witness, your Honor?

THE COURT: No. In this court, if you want the

witness to see an exhibit, you have the court security officer hand it to him. You remain at the podium at all times.

BY ATTORNEY SZYMKOWICZ:

Q. Mr. Konanykhine, please read Section 2, Paragraph 1, aloud, and --

THE COURT: Well, why take the time to have him read it?

If you want to ask him a specific question about a provision, what he understood it to mean, do it directly.

BY ATTORNEY SZYMKOWICZ:

Q. Mr. Konanykhine, what did you believe that Section 2, Paragraph 1, meant?

A. Section 2 -- okay. Just one second.

Q. It begins, "Respondent agrees to parole..."

A. Okay. Section 2, Paragraph --

Q. One.

A. -- 1.

That the INS agrees to parole me pending final resolution of my immigration proceedings.

Q. And what did the "final resolution of the immigration proceedings" mean to you?

A. Well, it was specifically described here as proceedings including any judicial appeal thereof, meaning the decision of the administrative decision and judicial appeals of that administrative decision, if need be.

Q. And does that mean to you the Fourth Circuit Court of Appeals and the Supreme Court of the United States?

A. Yes. It was the most important point. I mean, that was

the only benefit for me of the whole agreement. Other than that, there was a payment of roughly \$100,000 to my pro bono attorneys, but it was not a benefit to me. I didn't even have to pay them.

So my only benefit was being allowed to appeal the decision of Department of Justice, which I knew -- I had already known, made a deal, basically, of delivering me to Russia.

Q. That \$100,000 you referred to went to the Arent, Fox lawyers, but none of it went to you?

A. Yes, sir.

(Pause)

And they didn't --

THE COURT: You have to avoid leading questions, only because it leaves the record ambiguous, particularly when there is a language problem.

So, the way to do it is: Did you retain any of the \$100,000?

THE WITNESS: No, sir.

THE COURT: Where did the \$100,000 go to?

THE WITNESS: I believe it was issued as a check to Arent, Fox.

THE COURT: Proceed in that fashion, Mr. Szymkowicz.

BY ATTORNEY SZYMKOWICZ:

Q. According to the language of this paragraph, what did the statement, "engaged in any conduct that would warrant revocation of your parole" mean to you?

A. Well, I understood that if I were to engage in some criminal or unlawful activity, it would, of course -- this agreement would not, of course, preclude my arrest.

Q. And have you engaged in such activity?

A. Never.

Q. Do you know if your wife has?

A. Not to my knowledge, I believe.

Q. Pursuant to the settlement agreement, what were your duties to report to the INS?

A. They changed from time to time. Original duties was to report telephonically and in person. Also, I was to remain in Washington, D.C., area. And I couldn't leave that area without requesting in advance a written permission for that travel.

Q. And what years was this understanding going on?

A. Since the day of the entering into this agreement until the next modification, which I believe occurred in March of 1998.

Q. How did you report to the INS?

A. Just as prescribed here, by phone and in person.

Q. What would you tell them?

A. I would simply come to the office or call the office and would tell them that, you know, my name, my ID number or case number, and would state that, "I am here to report in person," or if it was by phone, that I was ordered to report telephonically.

And when I would respond to the questions, sometimes questions were just single question, like, "Anything

changed?" and I would say no, or sometimes they would go through the whole list, ask me the address, the employment, questions like that.

Q. What other kinds of information did you provide to INS about yourself?

A. They only asked for basic information, like place of residence, phone number, what company I worked for, my business phone number, I don't believe it ever went beyond those questions.

Q. Did there ever come a time when the INS officials called you randomly?

A. They have never called me.

Q. Did there ever come a time when the INS officials ever visited you randomly?

A. They have never visited me, to my knowledge.

Q. Did there ever come a time when you failed to properly report any information?

A. Oh, no. I knew the penalty for that.

Q. Why did you report all the time?

Was there a reason.

A. Because otherwise I would face indefinite detention. And in case if I lost my immigration case, inevitable deportation to Russia, which for me meant death and -- or worse.

Q. Was the 1997 settlement agreement ever modified in any way?

A. Yes, sir.

Q. When was that?

A. The first modification happened on -- I don't remember the exact day. It was March 1998.

Q. I direct your attention to the last page of the packet that you have.

A. Yes, sir.

Q. Can you tell me the date of that?

A. It was March 24th, 1999.

THE COURT: Is that the first or the second modification?

ATTORNEY SZYMKOWICZ: Your Honor, for the record, he is identifying the document marked March 24, 1999.

THE COURT: I understand that. I have it in front of me. And I have just asked him whether that's the first -- he has identified -- or he has said that there were two modifications.

Is that right, Mr. Konanykhine?

THE WITNESS: Yes, that's right, your Honor.

THE COURT: And I just wanted to know whether this modification, March 24, in writing, is the first or the second of the two modifications that you referred to.

THE WITNESS: I believe it's the first one.

THE COURT: What was the nature of the second modification?

THE WITNESS: The second modification lifted the requirement to request travel authorization in advance of the travel.

THE COURT: Did you get that modification at about at the same time as this one?

THE WITNESS: Yes, sir.

THE COURT: And how did that come about?

THE WITNESS: At that time, there was a tort -- a civil tort case pending in this Court, and the INS filed a motion requesting to postpone it until the final resolution of my immigration case. And during a break or recess of this Court, we had a meeting with INS attorneys in the conference room outside, and they agreed to join them on this motion, in exchange for them to -- in exchange for them giving me that permission.

THE COURT: Go ahead, Mr. Szymkowicz.

BY ATTORNEY SZYMKOWICZ:

Q. Why was it important for you to have the ability to travel without preauthorization?

A. Because, first of all, I had prior problems, like I would file for authorization and would receive no request. So my attorney had to send some letters, and it took a long time. And I had to travel a lot because of my business. At that time, we became the -- (inaudible) -- for production for the American -- (inaudible) --

THE COURT: Just a moment. You have to speak a little slower --

THE WITNESS: Yes, sir.

THE COURT: -- Mr. Konanykhine.

THE WITNESS: Yes, sir.

THE COURT: Go back and repeat what you said.

THE WITNESS: All right. I Just had to travel on business around -- across the country, and I did it quite

often.

BY ATTORNEY SZYMKOWICZ:

Q. How often did you travel after the modification that allowed you to travel without preauthorization?

A. Roughly 50 percent of all the time; like two weeks out of four I was traveling, in 1999 and Year 2000.

Q. Was this domestic travel or international travel?

A. Domestic travel.

Q. Where would you go?

A. California several times, Boston many times, Chicago many times, Florida, New Orleans, Texas, like Houston and Dallas.

Q. Where --

THE COURT: Just a moment.

Did anyone at the INS know you were making these trips?

THE WITNESS: No, sir, because at that time I already had no obligation to report the trips, or ask for permission for advance permission to travel.

THE COURT: Did you tell anybody anyway at the INS, or the Department of Homeland Security, that you were in fact making these trips?

THE WITNESS: No, sir, because they specifically waived that requirement.

THE COURT: Next question.

BY ATTORNEY SZYMKOWICZ:

Q. Was this modification which allowed you to not have pre-required -- advance travel authorization, did that come in

a written letter or was that oral?

A. Originally it was an oral permission granted here in this very building, and then I received the letter.

Q. And is that letter here today in any pleading that is filed?

A. No, I am not in possession of this letter.

Q. Do you know if you have a copy of that letter?

A. I had it when I was arrested by the INS, but unfortunately it was sent to Moscow with my belongings.

Q. And have those belongings come back?

A. No. No.

Q. And what did that letter say specifically, if you can recall?

A. I recall vaguely that it also have certain -- some provision related to my place of residence. But because I never used that provision, I don't remember the language. I only recall that one paragraph specifically lifted the requirement for me to request authorization for travel.

Q. Why did you never use the provision regarding your residence?

A. Because I never had the need to move out of New York area. We were pretty -- pretty happy living in New York, New York City.

Q. Where did you live when you got to New York?

A. Upper West Side.

Do you need exact address? 119 West 73rd Street, Apartment 5-A.

Q. And when did you move into that apartment?

A. At the end of 1998.

Q. And when did you move out?

A. You know, looking at this letter now, I realize that the letter I initially referred to predated that, predated this particular letter, because we moved to New York in 1998, and we had already had the authorization to move to New York area.

I apologize. What was your question, sir?

Q. Can you clarify the statement you just made, with regard to the sequence of the letters?

A. Yes.

Q. Referring by the dates of the letters.

A. The authorization to move to New York, and we moved to New York in the end of 1998, was based on the permission to move to New York. So, it must mean -- I don't remember specifically the date of the first letter, but it must have been prior to this particular one.

Q. And why is that?

Why did it have to be prior to that.

A. Because we had authorization to move in New York prior to moving to New York. And we moved to New York in 1998.

Q. And did you report to the INS between the time you moved to New York and the time that letter was written in March of 1999?

A. Of course.

By the way -- and I apologize -- there is a letter from Michael Maggio notifying about the change of address. I think it must be dated 1998. It was somewhere here on the table.

Q. Did there come a time when you knew that you would be leaving your Manhattan apartment, in late 2003?

A. Not for certain; but our lease was expiring on November 30th, 2003.

Q. And when did you realize that your lease was expiring?

A. Well, for a long time, because each year we had to either renew the lease or look for alternatives.

Q. And it was a one-year lease?

A. It was --

Q. They were successive one-year leases?

A. Yes.

Q. Was there any particular reason that November 30th was picked as the expiration date?

A. No.

Q. Did there come a time when you began making plans to find a different apartment in 2003?

A. We were considering moving out because market was better and we could find a better place at the same price, or same place at a better price.

Q. And when did you starts making these plans?

A. In early November 2003.

Q. And that was -- when was that in relation to the Board of Immigration's appeal decision?

A. It was somewhat prior, a couple weeks prior to that decision.

Q. Did there come a time when you signed a lease on a new apartment?

A. No, sir.

Q. Why not?

A. By the end of November, specifically November 20th, we learned about the decision of our -- decision of the Board of appeals in our immigration case, and it kind of shattered all our plans.

Q. Why is that?

A. Because suddenly we were not certain about what was going to happen. We kind of had, you know, death sentence hanging over our heads.

Q. So, what did you do with regard to where you were going to live?

A. For a few days, nothing. We spoke to our attorneys about what would be the best thing for us to do.

Q. Which attorneys were that?

A. I spoke to a number of attorneys, but mostly to Michael Maggio.

Q. Please identify what function Mr. Maggio performed?

A. Michael Maggio is my immigration attorney here in the United States.

Q. Did you speak to any other attorneys?

A. Yes, I did. I spoke to five or six Canadian attorneys.

Q. And what was the general subject of these discussions?

A. Well, Michael Maggio said that even though INS typically wouldn't arrest anybody with pending appeal, and in my case I had agreement prohibiting them or restricting them from doing so, he also commented that since I had already been twice unlawfully arrested by them, he couldn't vouch that it wouldn't happen for a third time.

So, he said that maybe I could think about some alternative -- some alternative, and he suggested to look up Canadian alternative, even though he couldn't recommend it himself with confidence, because he is not practicing Canadian law. But he gave me a phone number for three Canadian attorneys.

And so I spoke to them, and then I spoke to a couple additional attorneys in Canada.

Q. Did you ever make a decision to hire any particular attorney?

A. Yes. I hired Mr. John Somjen.

Q. And he is the individual that testified earlier today?

A. Yes, sir.

Q. And how did you find out about Mr. Somjen?

A. When I was doing the research on the subject, his name was popping out everywhere. It seems like he was specializing in refugee cases in Canada.

Q. And did you contact Mr. Somjen in person or by telephone?

A. Initially I contacted him by e-mail. He called me back, and we spoke on numerous occasions.

Q. And when was that?

A. Late November, probably November 25th, 26th, until December 17th.

Q. And what did you hope to gain out of having the representation of Mr. Somjen?

A. Well, I learned that -- my research showed that there was nothing in the law or in the agreement which prohibited me

from filing for alternative -- an alternative application in Canada, which could run concurrently, and basically trying to save our whole lives.

Q. And did Mr. Somjen give you any advice with regard to what to do?

A. Yes. He described me the procedure. He described me the regular practice. I mean, he said that thousands of people are crossing the border in this manner every month, many of them, if not most of them, with expired visas, or self-deporting. Also, he described the procedure in Canada. That's pretty much it.

Q. Did there come a time when Mr. Somjen took any action with regard to your case?

A. Yes. I asked him to schedule an appointment for me.

Q. And who would the appointment be with?

A. With Canadian immigration officer in charge of the refugee processing on the Canadian side of the Peace Bridge.

Q. And when was that appointment to take place?

A. He was not able to schedule it for any day sooner but December 18th, 2003.

Q. Did Mr. Somjen inform you to bring any particular documents or evidence?

A. Yes.

Q. What?

A. I was bringing key documents related to my immigration status here in the United States. I was bringing identification documents, like Russia passport, driver's license, employment authorization; just documents required to

prove who I was.

Q. Did you have an American driver's license?

A. Yes, sir.

Q. And what state issued that license?

A. New York State.

Q. Is it currently valid?

A. Yes, sir.

Q. Do you know if your wife has a driver's license?

A. Yes, sir.

Q. And where is that issued?

A. New York State.

Q. Did you discuss the December 18th date with Mr. Somjen
in any way?

A. Yes. On a number of occasions I tried to check with him
if it were at all possible to move it forward, because
actually we learned about December 18th...

(Off the record)

(Further proceedings of 1/14/04 reported by
Norman Linnell)

CERTIFICATE OF REPORTER

I, MICHAEL A. RODRIQUEZ, an Official Court Reporter for the United States District Court, in the Eastern District of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the motions hearing in the case of ALEXANDRE KONANYKHINE v. UNITED STATES OF AMERICA, DEPARTMENT OF HOMELAND SECURITY.

I further certify that I was authorized and did report by stenotype the proceedings in said motions hearing, and that the foregoing pages, numbered 1 to 58, inclusive, constitute the official transcript of said proceedings as taken from my machine shorthand notes.

(Further proceedings of 1/14/04 were reported by Norman Linnell.)

IN WITNESS WHEREOF, I have hereto subscribed my name this _____ day of _____, 2004.

Michael A. Rodriguez, RPR/CM/RMR
Official Court Reporter