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Employment visa is not a foreign national's right: HC

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MUMBAI: Closing the doors to a Ukraine citizen seeking employment in India, the Bombay High Court on Thursday ruled that it is not a foreign national's fundamental right to get an employment visa in the country.

The ruling was given by a division bench of Justice P B Majmudar and Justice Mridula Bhatkar while rejecting a petition filed by a Ukrainian. Petitioner Lulila Leonid Stelmakh (22) had moved the high court in August this year, challenging the denial of visa because of a new rule that stipulates an annual package of \$25,000 (approximately Rs 11 lakhs) for a foreigner.

Stelmakh had secured a job as an analyst with J P Morgan Services India. Stelmakh's lawyers, S Malik and Prashant Uchil, argued that when she applied for visa in June 2010, the criterion was applicable. For a period in-between, it was given a go-by, but was reintroduced in August 2010.

The petitioner also argued that even as a foreign national, Article 21 provides her a right to life and Article 14 right to equality. Also, she has a right to equal opportunities in matters of employment under Article 16 of the Constitution of India.

The lawyer for the Union government argued that the petition is not maintainable as a non-citizen cannot invoke rights under articles 14 and 21. It was a policy decision and an analyst is not such a highly skilled job and many are available in India, he argued.

Hearing the arguments, the judges remarked that it is a settled position in law that all fundamental rights are not available for foreign nationals. "Asking for visa can never be said to be fundamental right of a foreign national and if visa is rejected by the Government of India, it is not for this court to sit in appeal and decide visa

applications," observed the court. The petitioners are likely to appeal in Supreme Court.