

APPLICATION No 8244/78

HARBHAJAN SINGH UPPAL
GURMEET KAUR
PARMINDER SINGH
JAITINDER SINGH
AJIT SINGH
CHANAN KAUR

against

THE UNITED KINGDOM

REPORT OF THE COMMISSION

(adopted on 9 July 1980)

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INTRODUCTION

This Report relates to Application No 8244/78 introduced against the United Kingdom by Harbhajan Singh Uppal, Gurmeet Kaur, his wife, Parminder Singh and Jaitinder Singh, his two children and Ajit Singh and Chanan Kaur, his parents, on 26 May 1978 under Art. 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms. They were represented before the Commission by Mr Neil Peterman, Solicitor of Messrs Arnold, Gilbert & Karsberg, Solicitors, London, legal aid having been granted by the Commission.

The European Commission of Human Rights declared this application admissible on 2 May 1979. It then proceeded to carry out its tasks under Art. 28 of the Convention, which provides that:

"In the event of the Commission accepting a petition referred to it:

- a. it shall, with a view to ascertaining the facts, undertake together with the representatives of the parties an examination of the petition and, if need be, an investigation, for the effective conduct of which the States concerned shall furnish all necessary facilities, after an exchange of views with the Commission;
- b. it shall place itself at the disposal of the parties concerned with a view to securing a friendly settlement of the matter on the basis of respect for Human Rights as defined in this Convention."

The Commission found that the parties had reached a friendly settlement of the case and, at its session on 9 July 1980, adopted this Report, which, in accordance with Art. 30 of the Convention, is confined to a brief statement of the facts and to the solution reached. The following members of the Commission were present when the Report was adopted:

MM. C.A. NØRGAARD, Acting President (Rules 7 and 9
of the Rules of Procedure)

J.E.S. FAWCETT
F. ERMACORA
L. KELLBERG
B. DAVER
T. OPSAHL
C.H.F. POLAK
J.A. FROWEIN
S. TRECHSEL
B. KIERNAN
N. KLECKER
J. SAMPAIO
J.A. CARRILLO

PART ISTATEMENT OF THE FACTS

Harbhajan Singh Uppal is an Indian citizen, born in 1947. His wife, Gurmeet Kaur, is an Indian citizen, born in 1950. His eldest child, Parminder Singh Uppal, is a United Kingdom citizen, born in 1975, and the second child, Jaitinder Singh Uppal, is also a United Kingdom citizen, born in 1977. His father, Ajit Singh, is an Indian citizen born in 1903 and lawfully settled in the United Kingdom, as is his mother, Chanan Kaur Singh, born in 1909. They all live together in London.

Mr Uppal was admitted to the United Kingdom on 4 December 1968 for a holiday. He unlawfully overstayed the allowed holiday period, police inquiries on several occasions failing to trace his whereabouts. On 13 August 1973 notice of intended deportation was served on him at his last known address. Gurmeet Kaur, who married Mr Uppal in 1959, was admitted to the United Kingdom on 25 July 1974 to join her husband, although she stated to the immigration authorities that it was her intention to marry Mr Uppal, for which purpose she was given three months' leave of entry. She also unlawfully overstayed. The two children, by being born in the United Kingdom, acquired British nationality. Mr Uppal's parents are lawfully settled in the United Kingdom, his father being given unconditional leave of entry into the country in 1966 and his mother in 1970. The children and the old parents are therefore entitled to continue to live in the United Kingdom.

Thinking that they qualified for amnesties given by the Home Secretary to illegal immigrants who entered into the country prior to the coming into force of the Immigration Act 1971 (ie 1 January 1973), in August 1976 Mr and Mrs Uppal requested permission to settle permanently in the United Kingdom. The amnesties did not, however, apply to overstayers and the Home Secretary maintained his decision to deport Mr Uppal and served a "notice of intention to deport" on Mrs Uppal on 23 December 1976. They appealed unsuccessfully against these decisions to Adjudicators and Immigration Appeal Tribunals, final decisions being given on 10 March and 20 May 1977.

There then ensued correspondence with the Home Secretary but he maintained his position, deportation orders being made on 5 December 1977 and served on Mr and Mrs Uppal on 26 January 1978. Representations were made to the Home Secretary through the Uppal's Member of Parliament. Subsequently Mrs Uppal became pregnant and her mental health deteriorated. It was also discovered that Jaitinder Singh, who suffers deafness, requires neuro-surgery.

Before the Commission the applicants submitted that the decision of 5 December 1977 to deport Mr and Mrs Uppal and the pending execution of that decision constituted a violation of their right to respect for family life ensured by Art. 8 of the Convention, a violation allegedly aggravated by being discriminatory contrary to Art. 14, not only as regards race, but also as regards birth and the artificial distinction between the status of illegal immigrants or overstayers. Mr and Mrs Uppal also submitted that the

immigration procedures constituted a denial of the right under Art. 6 (1) of the Convention to have their civil rights determined at a fair hearing by an impartial tribunal, and a failure by the State to provide an effective remedy for these alleged violations of the Convention as required by Art. 13.

The application was registered on 29 May 1978 and, in view of the imminence of deportation, notice of the application was given to the United Kingdom Government in accordance with Rule 41 of the Commission's Rules of Procedure (hereafter referred to as the Rules). The Commission decided on 11 July 1978, pursuant to Rule 42 (2)(b) of the Rules, to invite the parties to submit their written observations on the admissibility of the application and to give priority to the application pursuant to Rule 28 (1) of the Rules.

On 22 August 1978 the Acting President of the Commission indicated to the United Kingdom Government, in accordance with Rule 36 of the Rules, that it would seem desirable in the interests of the parties and the proper conduct of proceedings if measures, which, according to the applicants' information, were in train to effect the immediate deportation of Mr and Mrs Uppal, could be stayed until the Commission had had an opportunity to consider again the admissibility of the application. In view of subsequent developments, the Commission did not renew this indication after 9 October 1978.

On 13 September 1978 the Government submitted their observations on the admissibility of the application to which the applicants replied on 20 October 1978, legal aid having been granted by the Commission on 30 October 1978.

The Commission decided on 5 December 1978 to invite the parties, in accordance with Rule 42 (3)(a) of the Rules, to submit further observations on the admissibility of the application concerning the nature and scope of ministerial amnesties for illegal immigrants.

On 19 February 1979 the Government submitted their further observations to which the applicants replied on 19 March 1979.

The Commission declared the application admissible on 2 May 1979.

Finally a friendly settlement of the case was reached, as described in Part II.

PART II

SOLUTION REACHED

After declaring the application admissible, the Commission placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter, in accordance with Art. 28 (b) of the Convention.

In accordance with its usual practice it instructed its Secretary to contact the parties for this purpose. As a result the applicants' solicitor wrote to the Secretary on 16 May 1979 that the applicants, aware of the Commission's task under Art. 28 (b) of the Convention, considered that theirs was a case which could be settled "with honour" by allowing Mr and Mrs Uppal to remain in the United Kingdom as a humanitarian gesture. The humanitarian grounds put forward were the worsening of Mrs Uppal's mental health and the physical health of the young child, Jaitinder, who not only requires surgery to cure his deafness, but also requires neuro-surgery for a serious bone condition of the head (Diastasis). It was stressed that the applicants did not regard their application as a test case and were of the opinion that the facts of their family situation "are very distinguishable from a simple case where parents are claiming a right to remain /in the United Kingdom/ because of the patril status of their children". The solicitor was instructed to say "that, entirely without prejudice to the applicants' rights under their Petition, they would be prepared to ask the Commission not to consider their application any further if the United Kingdom Government were to formally indicate that they would allow Mr & Mrs Uppal to remain in the United Kingdom with permanent leave to remain and re-enter should they ever wish to go abroad on holiday or for any other purpose."

There then ensued an exchange of correspondence between the applicants' solicitor and the Secretary, between the Secretary and the Deputy Agent of the United Kingdom Government and between the solicitor and Deputy Agent themselves.

On 20 February 1980 the Deputy Agent, referring to the letter dated 16 May 1979 from the applicants' solicitor, declared,

"I have the honour to inform you that the Government, without prejudice to their position that there has been no violation of the Convention, are prepared to allow Mr and Mrs Uppal to remain in the United Kingdom. Accordingly, the deportation order against Mr Uppal will be revoked and he will be given indefinite leave to remain. Mrs Uppal will be given indefinite leave to enter the United Kingdom.

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If Mr and Mrs Uppal forward their passports to the Immigration and Nationality Department of the Home Office, Lunar House, Wellesley Road, Croydon under reference U13942, the appropriate endorsements will be made."

In reply to a query raised by the applicants' legal representative concerning the right of Mr and Mrs Uppal to leave and re-enter the United Kingdom, the Deputy Agent of the United Kingdom Government explained in a letter dated 25 March 1980 addressed to the solicitor, a copy of which was sent to the Commission, that

".... once leave to remain has been given to Mr and Mrs Uppal, they will be settled in the United Kingdom. If they were to leave the United Kingdom, their subsequent re-entry would be considered under paragraph 56 of the new Immigration Rules, HC 394, which were made and came into force on 1 March 1980. The relevant part of the rule is as follows: '.... Any other passenger returning to the United Kingdom from overseas is to be admitted for settlement on satisfying the immigration officer that he was settled in the United Kingdom when he left and that he has not been away longer than two years'. The reference to 'any other passenger' covers Mr and Mrs Uppal since, whilst they are Commonwealth citizens, they were not settled here on 1 January 1973 and do not, therefore, as you have pointed out, fall within the first part of Rule 56. The second sentence of this rule is not confined to passengers who are not Commonwealth citizens, but relates to anyone who does not come within the first part of the rule.

I trust that this explanation makes it clear that were Mr and Mrs Uppal to leave the United Kingdom for a holiday they would be entitled to re-enter."

On 13 May 1980, the solicitor for the applicants declared:

"With reference to Article 28 (b) of the European Convention of Human Rights and in particular with regard to the Declaration of the Government of the United Kingdom contained in their letter to the Commission of the 20th February 1980, and with further reference to the letter from the Deputy Agent of the Government of the United Kingdom to ourselves of the 25th March 1980, we hereby confirm that Mr and Mrs Uppal on their own behalf and on behalf of their infant children, and Mr and

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Mrs Singh consider their application to have been settled and have instructed us to withdraw their application from the Commission, which we hereby do."

The Commission, at its session on 9 July 1980 found that the above-mentioned declarations showed that the parties had come to an agreement regarding the terms of a settlement. The Commission also found, having regard to Art. 28 (b) of the Convention, that a friendly settlement of the matter had been secured on the basis of respect for human rights as defined in the Convention. For the above reasons, the Commission adopted this Report.

Secretary to the Commission

Acting President of the Commission

(H.C. KRÜGER)

(C.A. NØRGAARD)