FIRST CHAMBER

AS TO THE ADMISSIBILITY OF
Application No. 19186/91
by B.A.
against the United Kingdom

The European Commission of Human Rights sitting in private on 19 February 1992, the following members being present:

MM.J.A. FROWEIN, President
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
SirBasil HALL
M.C.L. ROZAKIS
Mrs.J. LIDDY
M.M.P. PELLONPÄÄ

Mr. M. de SALVIA, Secretary to the First Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 27 August 1991 by B.A. against the United Kingdom and registered on 11 December 1991 under file No. 19186/91 ;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a British citizen, born in 1964 in Uganda. She lived in India most of her life until 1985 when she settled as her father's dependant in the United Kingdom and she resides in Leicester. She is represented before the Commission by Messrs. Singh & Ruparell, Solicitors, London.

The facts of the present case, as submitted by the applicant and which may be deduced from documents lodged with the application, may be summarised as follows :

The application arises out of the refusal by British immigration authorities to issue a visa to the applicant's Indian husband for him to join her in the United Kingdom, because the authorities were not satisfied that the marriage had not been entered into primarily to facilitate his immigration to the United Kingdom.

The husband, a struggling farmer in India, sought leave to enter the United Kingdom as a visitor on 24 September 1986. He told the immigration officer that he was to visit a cousin, his travel having been paid by another cousin. He declared that he had no intention to marry. Whilst on temporary leave he met the applicant. After three brief meetings she proposed marriage to him and they were married, without a Hindu religious service, at a registry office on 24 November 1986. She claims not to have known of her husband's precarious immigration status at that time. The husband did not leave the United

Kingdom when he should have done and he was removed on 6 April 1987. In September 1987 he applied for entry as the applicant's husband, which was refused on 30 December 1988. The immigration officer concerned concluded that he had not been given a wholly frank or truthful account of the circumstances leading up to the marriage ; the husband's entry into the United Kingdom was of more importance than the marriage itself ; the husband had a financial incentive to establish himself outside India ; coincidentally the applicant's sister had made a marriage in similar circumstances ; the applicant appeared more concerned with the material benefits of life in the United Kingdom than the continuance of her marriage ; no attempt had been made to have a Hindu religious ceremony in the United Kingdom as would have been expected of them, given their backgrounds. He was, therefore, not satisfied that the marriage had not been entered into primarity to obtain admission to the United Kingdom.

The applicant's husband appealed to an independent Adjudicator who noted discrepancies in the couple's account of events leading up to the marriage. He thought the immigration officer's assessment was well-founded. He also noted the following:

"I note that the sponsor <the applicant> claimed that she and the appellant <the husband> had lived as husband and wife after the marriage but no religious ceremony had taken place. They are Hindus and the sponsor had not been brought up in the United Kingdom. She had come to the United Kingdom in 1985 and had been living in her parents' household and there is no independent evidence to support her claim that she and the appellant had been living together at her parents' house. Experience shows that Hindu married couples are not expected to live together as husband and wife before a religious ceremony of marriage. Again there is no evidence to suggest that the sponsor had travelled to India since the appellant's departure in April 1987. No evidence of correspondence has been produced to show that this marriage is subsisting."

The Adjudicator therefore concluded that there was no evidence of intervening devotion which might cast light on the nature and purpose of the marriage and he dismissed the husband's appeal on 28 November 1990. His decision was upheld by an Immigration Appeal Tribunal on 21 June 1991.

COMPLAINTS

The applicant complains that the refusal of a visa to her husband to enable him to join her in the United Kingdom constitutes an unjustified interference with her right to respect for family life, ensured by Article 8 of the Convention.

THE LAW

The applicant complains of the British immigration authorities' refusal of a visa to her husband to enable him to join her in the United Kingdom. She invokes Article 8 (Art. 8) of the Convention, paragraph 1 of which provides, inter alia, that everyone has the right to respect for family life.

The present case raises an issue under this provision of the Convention for, whilst the Convention does not guarantee a right, as such, to enter or remain in a particular country, the Commission has constantly held that the exclusion of a person from a country where his close relatives reside may raise an issue under Article 8 (Art. 8) (e.g. No. 7816/77, Dec. 19.5.77, D.R. 9 p. 219 ; No. 9088/80, Dec. 6.3.82, D.R. 28 p. 160 and No. 9285/81, Dec. 6.7.82, D.R. 29 p. 205).

Article 8 (Art. 8) of the Convention presupposes the existence of a family life and at least includes the relationship that arises from a lawful and genuine marriage even if a family life has not yet been fully established. However, the Commission recalls that the State's obligation to admit aliens who are relatives of persons resident in its territory will vary according to the circumstances of the case. The Court has held that Article 8 (Art. 8) does not impose a general obligation on States to respect the choice of residence of a married couple or to accept the non-national spouse for settlement in the State concerned (Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, p. 34, para. 68).

Concerning the facts of the present case, the Commission has had regard to the findings of the Adjudicator and his conclusion that, in the circumstances, it seemed that the primary purpose of the marriage was to effect the husband's immigration to the United Kingdom. The Commission notes that there was no independent evidence before the Adjudicator that the applicant and her husband had ever lived together or shown any particular devotion to each other since their hastily concluded marriage. The husband, at least, knew at the time of the

marriage that his immigration status was precarious and that his acceptance for settlement could not be vouchsafed, especially after he failed to leave the United Kingdom when he should have done and was thereafter removed. Furthermore the applicant has not indicated that there are serious obstacles to establishing family life with her husband in India where she herself has lived most of her life.

In the light of these circumstances, the Commission concludes that the decision by the British immigration authorities to refuse the applicant's husband a visa for entry into the United Kingdom has not failed to respect the applicant's family life, as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention. Accordingly the application is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary	President
to the First Chamber	of the First Chamber
(M. de SALVIA)	(J.A. FROWEIN)