AS TO THE ADMISSIBILITY OF

Application No. 28853/95
by Said AFZAL
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

Mrs. M.F. BUQUICCHIO, Secretary to the 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 16 May 1995 by Said AFZAL against the United Kingdom and registered on 5 October 1995 under file No. 28853/95;

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 1934 in Attock (Pakistan) and resident in England.

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

The applicant has been settled in the United Kingdom for many years.

On 19 January 1977 the applicant's first son, P.N., (who was at that time 13 or 15 years old), the applicant's wife, second son and daughter applied for entry clearance to join the applicant in the United Kingdom from Pakistan.

On 5 October 1978 the Entry Clearance Officer in Islamabad refused the application as he was not convinced that they were related to the applicant as claimed. This was due to misleading information given by the applicant (the sponsor of their application) as to P.N.'s date of birth and to major discrepancies in the information provided concerning the identity and make-up of the family.

The appeal was dismissed for the same reasons on 27 October 1980.

On 16 August 1984 the applicant's first son, P.N., the applicant's wife, second son and daughter filed a new joint application for entry clearance.

In April 1988 entry clearance was granted in favour of the applicant's wife and the two younger children. P.N. was refused entry clearance on 12 March 1992. Although the Secretary of State was satisfied that P.N. was the applicant's son, he pointed out that when the 1984 application was lodged P.N. was over the age of 18 and therefore did not qualify for admission as a dependent son under Paragraph 50 of the Immigration Rules then in force.

The Secretary of State's policy in such cases is that entry clearance will be granted only if, inter alia, the individual, albeit an adult, can establish significant dependency on the parent, as well as compassionate circumstances to justify an exception to the 18-year age limit.

P.N. appealed against the 1992 decision. Before the Adjudicator the applicant stated that his wife had been pregnant with P.N. when he went away to work on the ships and it was at least 6 to 7 years later that he first saw his son; that P.N. was not working, that the family had only a little land in Pakistan, which was cultivated by labourers employed by P.N., that these labourers were paid with money from the applicant and that if money was not sent by the applicant, P.N. would not be able to feed or clothe himself; that P.N. had no relatives living in the same area in Pakistan; that the applicant kept in touch with P.N. by letters, telephone calls and cassettes, and that his wife was constantly crying because "her child had been left behind in Pakistan".

The Adjudicator dismissed the appeal on 6 April 1994, as he could not find that at the date of the decision, P.N. had been without close relatives to turn to in his own country, nor that he had been wholly or mainly dependent on the applicant.

The Adjudicator found in this respect that P.N.'s family owned about 5 acres of land in Pakistan and a tractor, that P.N. was receiving a reasonable income from the family land and that his maternal uncle was living in a village nearby.

The Adjudicator nevertheless requested the Secretary of State to look at the matter once again and to take into account that 16 years had elapsed since P.N.'s original application.

In September 1994 the applicant requested the Secretary of State to review the decision of 12 March 1992, as suggested by the Adjudicator. He pointed out that P.N. had sold his tractor, that the family land was very limited, that the maternal uncle living in the neighbouring village had moved to Karachi, which was two days' train journey from the village where P.N. was living and that he had to send money to P.N. for his subsistence.

The Secretary of State gave his decision on 28 November 1994. Although he accepted that P.N. was not responsible for the incorrect and misleading information given in support of the 1977 application, he refused to review the 1992 decision, as he could not accept that P.N. had remained dependent on his father, having seemingly settled into adult life abroad supporting himself by his own efforts. The Secretary of State referred to the Adjudicator's conclusion that P.N. had not, at the date of the decision, been living alone in the most exceptional compassionate circumstances and stated that he would not feel justified in reversing the decision reached by the Adjudicator.

COMPLAINTS

1. The applicant complains that the refusal of the immigration authorities to grant entry clearance to his son P.N. constitutes a violation of his right to respect for family life and inhuman and degrading treatment. He invokes Articles 8 and 3 of the Convention.

2. The applicant considers that the discriminatory immigration policy violates Article 14 of the Convention.

THE LAW

1. The applicant complains that the refusal of entry clearance for his son was in breach of Article 8 (Art. 8) of the Convention which guarantees, inter alia, the right to respect for family life. In respect of the same facts he also invokes Article 3 (Art. 3) of the Convention.

The Commission will examine the present complaint under Article 8 (Art. 8) of the Convention.

The Commission refers to its established case-law that there is no right to enter, remain or reside in a particular country guaranteed, as such, by the Convention. However, in view of the right to respect for family life ensured by Article 8 (Art. 8) of the Convention, the exclusion of a person from a country in which his close relatives reside may raise an issue under this provision of the Convention (cf. No. 11274/84, Dec. 1.7.85, D.R. 43, p. 216).

In examining cases of the present kind the Commission's initial task is to consider whether a sufficient link exists between the relatives concerned such as to give rise to the right to protection of family life under Article 8 (Art. 8) of the Convention (cf. No. 9492/81, Dec. 14.7.82, D.R. 30, p. 232 and No. 19546/92, Dec. 31.3.93, unpublished).

The Commission recalls that relationships between adults - in the present case a father and his 29- or 31- year-old son - would not necessarily attract the protection of Article 8 (Art. 8) of the Convention without evidence of further elements of dependency, involving more than the normal emotional ties (cf. No. 10375/83, Dec. 10.12.84, D.R. 40, p. 196). The Commission does not find that such elements have been established in the present case.

The Commission understands the applicant's frustration arising from the initial refusal in 1980 to grant entry clearance before the immigration authorities were satisfied that P.N. was the applicant's son. However, no allegation of bad faith on the part of the immigration authorities has been made by the applicant. Moreover, both the applicant and his son were given a fair opportunity to present P.N.'s case and the applicant was able to submit evidence of his son's filiation.

The Commission considers therefore that its examination of the case under Article 8 (Art. 8) of the Convention must be limited to the applicant's present-day circumstances and the nature of his relationship with his son now.

The Commission notes that the applicant does not have strong links either with Pakistan, a country that he left more than 20 years ago, or with his son, whom he has not seen since he left that country. The claim that P.N. is financially completely dependent on the applicant has not been substantiated. In this respect, the Commission points out that according to the evidence before the immigration authorities, P.N. enjoys a good standard of living, he works the family

land in Pakistan and his alleged dependency on the applicant appears to be a dependency of choice rather than necessity.

In these circumstances the Commission finds that it has not been shown that there exists such a close link between the applicant and his son as could be deemed to require the protection afforded by Article 8 (Art. 8) of the Convention to family life.

It concludes therefore that the present case does not disclose any appearance of a breach of the right to respect for family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. Accordingly this part of the application must be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. Insofar as the applicant invokes Article 14 (Art. 14) of the Convention, he has failed to substantiate his complaint, which accordingly must also be rejected as being 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.

M.F. BUQUICCHIO
Secretary
to the First Chamber

J. LIDDY
President
of the First Chamber