AS TO THE ADMISSIBILITY OF

Application No. 25936/94
by Karim and Shohid ALI
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 18 October 1995, the following members being present:

MM. C.L. ROZAKIS, President
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 25 July 1994 by Karim and Shohid ALI against the United Kingdom and registered on 14 December 1994 under file No. 25936/94;

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 facts of the case as submitted by the applicants may be summarised as follows.

The applicants are brothers born in 1954 and 1956 respectively in Bangladesh and residing there. Before the Commission the applicants are represented by Mr. Omar Faruque, a solicitor practising in Birmingham, the United Kingdom.

In 1957 the applicants' father left Bangladesh and settled in the United Kingdom. He has lived there ever since, whereas his wife and three children (the applicants and their younger brother) remained in Bangladesh.

In 1969 the applicants' mother died. In 1970 the applicants' father remarried in Bangladesh.

In October 1970 the three brothers (the applicants and their younger brother), and their stepmother applied for permission to enter the United Kingdom to join the applicants' father. The application was refused on 4 April 1972 as there were discrepancies in the information submitted and the immigration officials were not satisfied that the applicants were the sons of the person who had invited them to the United Kingdom. Some time between 1972 and 1975 the application of the second wife of the applicants' father was reconsidered and she was

allowed to enter the United Kingdom.

On 5 November 1975 the three brothers submitted a second application. The application was refused on similar grounds. As regards the oldest applicant an additional reason was that he had been over 18 years of age. The ensuing appeal was dismissed in 1977.

In the 1980s the applicants and their father lost contact with the youngest brother, who left Bangladesh.

The applicants' father became ill and was unable to work following a heart surgery in 1984. He has lived on social payments ever since.

In 1989, after the introduction of the DNA tests, the United Kingdom authorities announced that they would reconsider applications previously refused for lack of satisfactory evidence as to relationship, where it could be shown by means of DNA evidence that relationship existed. However, persons over 18 had to establish the existence of dependency upon the "sponsor" in the United Kingdom and of compassionate circumstances.

In September 1990 the applicants requested permission to join their father in the United Kingdom and submitted DNA evidence. On 6 July 1992 the application was refused by the Secretary of State on grounds that the applicants were not dependent upon their father and were "not living alone in most compassionate circumstances", being adult men of 37 and 36 years of age respectively, settled in Bangladesh. They worked on their own land and were not dependent upon their father. One of them was married and had three children. They had last seen their father in 1982.

On 16 August 1993 the Immigration Appeals Adjudicator, after a hearing with the participation of the applicants' father, confirmed the refusal. The decision stated inter alia that the alleged sporadic money transfers of small amounts from the father did not constitute dependency; that in 1993 both applicants were married with children; that the applicants' father lived on social payments and would be able to support his sons only from public funds, which was contrary to the requirement that entry permission be given only if the applicant would have adequate means without recourse to public funds; and that their father had not visited Bangladesh between 1982 and 1991.

On 22 September 1993 the Immigration Appeal Tribunal dismissed the applicants' appeal against this decision.

Thereupon they submitted an application for leave to apply for judicial review before the High Court. It was submitted out of time, but the applicants' father, who was representing his sons, maintained that this was due to his deteriorating health as he had a heart condition and lung cancer.

This application was dismissed on 12 May 1994.

COMPLAINTS

The applicants complain that the refusals of the United Kingdom authorities on three occasions between 1970 and 1994 to allow them to enter the United Kingdom to join their father constituted a breach of their right to respect for their family life contrary to Article 8 of the Convention.

Thus, they were in fact victims of the immigration practices in the United Kingdom as these practices, by imposing an unreasonable burden in proving the existence of relationship, had deprived them of the opportunity to reunite with their father in 1970 and 1975 and had led to the third refusal in 1992-94.

THE LAW

The applicants complain under Article 8 (Art. 8) of the Convention that the refusals of the United Kingdom authorities to allow them to join their father in the United Kingdom constituted an interference with their right to respect for their family life.

Article 8 (Art. 8) of the Convention, insofar as relevant, reads as follows:

> "1. Everyone has the right to respect for his ... family life ....
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of ... the economic well-being of the country ...."

The Commission recalls that the Convention does not guarantee a right to enter or to reside in a particular country. However, in view of the right to respect for family life as guaranteed 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). Relationships between adults and, as in the present case, between a father and his adult sons do not necessarily enjoy 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 considers that it is not necessary to examine in the present case whether the applicants have complied with the requirement under Article 26 (Art. 26) of the Convention as to the exhaustion of domestic remedies as the application is in any event inadmissible for the following reasons.

The Commission notes that the applicants have been refused entry permission on three separate occasions, and that the last decisions on each application were from 1972, 1977 and 12 May 1994 respectively. As regards the authorities' refusals to grant entry permission in 1972 and 1977 the Commission considers that the applicants have not complied with the six months' time limit under Article 26 (Art. 26) of the Convention.

It follows that the application in this respect has to be rejected under Article 27 para. 3 (Art. 27-3) of the Convention.

As regards the authorities' refusal to grant the 1990 application for entry in the United Kingdom the Commission does not find that the applicants have established the existence of family life within the meaning of Article 8 (Art. 8) of the Convention between them and their father. Thus, the applicants have always lived in Bangladesh and have spouses and children there. They have seen their father only a few times since he left Bangladesh more than 35 years ago. The applicants can support themselves, the alleged sporadic money transfers from their father not being sufficient to amount to dependency.

It follows that the remainder of 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 to the First Chamber President of the First Chamber

(M.F. BUQUICCHIO) (C.L. ROZAKIS)