FIRST CHAMBER

AS TO THE ADMISSIBILITY OF

Application No. 19476/92
by A.B.
against the United Kingdom

The European Commission of Human Rights sitting in private on 13 May 1992, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER

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 28 October 1991 by A.B. against the United Kingdom and registered on 4 February 1992 under file No. 19476/92;

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 1970 in Bangladesh. She went to the United Kingdom in 1985 to settle. She is represented before the Commission by Messrs. Hafiz & Co., 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 applicant married a Bangladeshi citizen on 30 May 1988 after hasty arrangements had been made by the couple's parents. They lived together for a short time in Bangladesh but the applicant returned to the United Kingdom as she became pregnant. She gave birth to a son on 18 January 1989. The husband has no other ties with the United Kingdom apart from a sister whom he has not seen for many years and with whom he maintained no direct contacts.

The husband applied for entry clearance, which was refused because he was deemed to have entered the marriage for the primary purpose of immigrating to the United Kingdom and because the applicant, unemployed living in one rented room, did not have adequate accommodation or means to support him without recourse to public funds. The husband had no property or income either. An appeal was made to an independent Adjudicator, by which time the applicant had an offer of a job as a waitress. The appeal was rejected on 20 December 1990, a decision upheld by an Immigration Appeal Tribunal on 11 May 1991.

The Adjudicator found that there was sufficient evidence to conclude that the husband's purpose in marrying was to immigrate to the United Kingdom and that it was not even clear that the couple had any intention of living together as man and wife for the applicant had quickly left him behind in Bangladesh. He also found that neither the applicant nor her husband had adequate accommodation or the means to maintain themselves without recourse to public funds.

Documents dated January 1992 purporting to show that the applicant is now partner in a restaurant (an interest worth nearly £7000 a year), and that she is expecting a second child have been submitted to the Commission, but apparently not to British Immigration authorities in any renewed entry clearance application.

COMPLAINTS

The applicant complained that the refusal of entry clearance to her husband deprives her and her son of a normal family life.

THE LAW

The applicant complained of the refusal by British immigration authorities to grant entry clearance to her husband for him to settle with her in the United Kingdom.

The relevant part of Article 8 (Art. 8) of the Convention provides as follows :

> "1. Everyone has the right to respect for his private and 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 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 that family life has not yet been fully established.

The Commission recalls that the State's obligation to admit to its territory aliens who are relatives of persons resident there 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).

As regards the facts of the present case, the Commission notes the Adjudicator's conclusions, firstly, that the primary purpose of the marriage from the husband's point of view was to effect his entry into the United Kingdom, secondly, that it was not sure that the couple intended living together except perhaps in the United Kingdom and, thirdly, that they could not afford to do this without recourse to public funds. The Commission also notes that the applicant's husband

has few ties with the United Kingdom, that the applicant has lived most of her life in Bangladesh and that there are no serious obstacles preventing the couple establishing family life in that country.

In the circumstances of this case the Commission concludes that the decision to refuse entry to the applicant's husband did not fail to respect the applicant's right to respect for family life, ensured by Article 8 para. 1 (Art. 8-1) of the Convention. Moreover, even assuming that it did, the interference was justified in the interests of the economic well-being of the country, pursuant to the second paragraph of Article 8 (Art. 8), given the couple's inability to live in the United Kingdom without financial support from the State.

It follows that 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 by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — Acting President of the First Chamber

(M. de SALVIA) (F. ERMACORA)