AS TO THE ADMISSIBILITY OF

Application No. 17504/90
by Nelufa BABUL
against the United Kingdom

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

MM.J.A. FROWEIN, President of the First Chamber
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
SirBasil HALL
Mr.C.L. ROZAKIS
Mrs.J. LIDDY
Mr.M. 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 16 November 1990 by Nelufa Babul against the United Kingdom and registered on 29 November 1990 under file No. 17504/90;

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 1968 and resident in Enfield. She is represented in the proceedings before the Commission by Mr. M. Hafiz of Messrs. Hafiz and Co., solicitors practising in London.

The facts, as submitted by the applicant and as may be determined from the documents submitted with the application, may be summarised as follows.

The applicant was born in the United Kingdom and was brought up and educated there. Her parents, brothers and sisters are all British citizens and are settled in the United Kingdom.

The applicant's husband ("B.") is a citizen of Bangladesh. He was born in 1964. On 4 June 1985 B.applied to the Office of the British High Commission, Dhaka for an entry clearance to enable him to visit the United Kingdom, and in particular his brother. His application was refused by an Entry Clearance Officer on the same day. He was not satisfied that B. was a genuine visitor who would return at the conclusion of any period granted.

On 13 July 1985 B. travelled to the United Kingdom without entry clearance. On arrival he was refused entry but following the intervention of a Member of Parliament he was granted temporary admission. Leave to remain was later refused by the Secretary of State

on 26 November 1985.

Shortly after his arrival B. met the applicant at her parents house where he stayed for two days. The applicant had lived in Bangladesh between October 1978 and November 1980 and she and B. had previously met on a number of occasions. B. visited the applicant on two further occasions. On the second occasion the applicant asked him to marry her.

On 8 August 1985 the applicant and B. were married. On 11 August 1985 they went through a Muslim religious ceremony of marriage. After the marriage the applicant and B.went to live at the home of B.'s brother in North Yorkshire. They later moved to London to live with the applicant's parents so that B. could study.

On 20 February 1987 B. applied for judicial review of the decision to refuse him entry. This application was dismissed on 9 June 1987 and removal directions were given to return B. to Bangladesh. B. left of his own accord on 3 July 1987.

On 27 July 1987 B. applied to the British High Commission, Dhaka, for an entry certificate to enable him to settle in the United Kingdom as the applicant's husband.

On 12 June 1988, the applicant and B. were interviewed. At this time the applicant was visibly pregnant and she subsequently gave birth to a daughter on 20 October 1988 in the United Kingdom.

On 11 July 1988 B.'s application for entry clearance was refused by an Entry Clearance Officer who was not satisfied that the marriage was not entered into primarily to obtain admission into the United Kingdom. B. appealed against this decision to an adjudicator. The Adjudicator referred to "the evidence of intervening devotion". However he had no doubts - and found - that the marriage was entered into primarily for B.to obtain admission into the United Kingdom. Accordingly he dismissed the appeal on 26 October 1989.

On 3 July 1990 the Immigration Appeal Tribunal granted B.leave to appeal against the Adjudicator's determination.

During the course of the hearing before the Tribunal an affidavit sworn by the applicant was submitted wherein the applicant stated that she had lived with B. in Bangladesh from 4 July 1987 to August 1987, from 5 October 1987 to 24 July 1988 and from 28 February 1989 to 27 August 1989. The applicant also stated that she did not keep in good health during her stays in Bangladesh and that during the last visit her child was constantly sick.

The Tribunal reached the following conclusion:

"It may be that as time has gone by devotion has grown between [B.] and [the applicant] but we are left in no doubt that admittance to this country was, at the time of the refusal appealed against the primary purpose of the marriage. The appeal is dismissed..."

The applicant was notified of this decision on 24 May 1990.

COMPLAINTS

The applicant complains that her rights under Articles 8 and 12 of the Convention have been violated. She also invokes Article 5 of the Convention.

THE LAW

The applicant complains of the refusal of entry of her husband

to the United Kingdom and invokes Articles 5, 8 and 12 (Art. 5, 8, 12) of the Convention.

The Commission recalls that Article 5 (Art. 5) guarantees the right to liberty and security of person. It finds that the applicant's reference to this provision is misconceived and has examined the applicant's complaints under Articles 8 and 12 (Art. 8, 12) of the Convention.

1.Article 8 para. 1 (Art. 8-1) of the Convention provides:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

The present case raises an issue under Article 8 (Art. 8) 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 this provision (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. The Commission notes that the applicant and B. have lived together for short periods in Bangladesh since B.left the United Kingdom and that they now have a child.

The Commission recalls, however, 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 marriedcouple 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).

The Commission has had regard to the findings of fact by the Adjudicator, upheld by the Immigration Appeal Tribunal, and their conclusion that, in the circumstances of the instant case, it seemed that the primary purpose of the marriage was to effect the husband's entry into the United Kingdom.

The Commission also notes that at the time of the marriage the applicant knew that her husband had already been refused permission to settle in the United Kingdom. His acceptance for settlement could not, therefore, be expected in view of the relevant Immigration Rules. Furthermore the applicant has not shown that there were obstacles to establishing family life in her husband's home country where she had already lived for a short period before her marriage.

In these circumstances the Commission concludes that the decision to refuse the applicant's husband entry to the United Kingdom has not failed to respect the applicant's right to respect for family life, ensured by Article 8 para. 1 (Art. 8-1) of the Convention. Accordingly this aspect of the case is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2.Article 12 (Art. 12) of the Convention provides as follows:

"Men and women of marriageable age have the right to marry and to found a family, according to the national law governing the exercise of this right."

The Commission notes that the applicant married her husband

unhindered. Furthermore, for the same reasons given above in respect of Article 8 (Art. 8) of the Convention, the Commission finds that Article 12 (Art. 12) of the Convention also does not impose a general obligation upon Contracting States to respect a married couple's choice of the place where they wish to found a family or to accept non-national spouses for settlement to facilitate that choice. It follows that this aspect of the case is also 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 ChamberPresident of the First Chamber

(M. de SALVIA)(J.A. FROWEIN)