AS TO THE ADMISSIBILITY OF

Application No. 26290/95
by Asia BIBI
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 16 January 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
M.P. PELLONPÄÄ
N. BRATZA
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 7 October 1994 by Asia BIBI against the United Kingdom and registered on 25 January 1995 under file No. 26290/95;

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 Pakistani citizen born in 1954 and resident in Mirpur, Pakistan. She is represented before the Commission by Moody and Woolley, solicitors practising in Birmingham. The facts as submitted by the applicant may be summarised as follows.

The applicant's husband deserted her in or about 1979. She has one son who was granted permission permanently to settle in the United Kingdom in 1993. She also has two adult brothers who have settled permanently in the United Kingdom, and who have lived there approximately 26 years.

Prior to 1991, the applicant lived in Pakistan with her mother, Sardar Begum and her son. In July 1991, her son left to enter the United Kingdom for the purpose of marriage to a British citizen.

On 10 December 1991, the applicant entered the United Kingdom having obtained a visa as a visitor for a period of up to six months. She travelled with her mother who has also obtained a visa separately to enter as a visitor.

On 19 November 1992, the applicant's mother was granted permission to remain permanently on the basis of her being dependent on her two sons (brothers of the applicant).

On 22 May 1992, the applicant had also applied to the Home Office to be allowed to remain permanently in the United Kingdom with her son upon whom she claimed to be dependent.

Following an interview on 3 August 1993 with an immigration officer, the applicant was served with notice treating her as an illegal immigrant on the basis that she had obtained entry by deception.

Following the issuance of removal directions, the applicant's solicitor made representations to the Home Office pointing out that the applicant had no close relatives remaining in Pakistan, that her home had been destroyed in a flood and that she was supported by her two brothers who were in the United Kingdom. They submitted that though the applicant was being removed as an illegal immigrant and could still apply from Pakistan to enter as a dependent of settled relatives in the United Kingdom, it would be a waste of time and money to send her back.

By a letter dated 24 May 1994, the Home Office explained that the entry clearance officer had been misled as to the family's circumstances, in particular, that the applicant had said that she had a child who would remain in Pakistan to be looked after by her mother and had made no reference to having a son in the United Kingdom or that her mother was intending to visit the United Kingdom at the same time. Her mother had on her application for entry also made no mention of the applicant nor when questioned on arrival. Further it was noted that once in the United Kingdom, while living together, the applicant and her mother submitted their applications for permission to remain from different addresses. It was concluded that she had deliberately misrepresented the facts to obtain her entry visa with the intention of applying for permission to say once she was in the United Kingdom. There were no exceptional reasons of a compassionate nature not to expel her, since it appeared from the information submitted by the applicant's mother that the applicant had three aunts remaining in Pakistan and that the family had a house and land in Pakistan.

The applicant's application for judicial review of the decision to remove her as an illegal entrant was dismissed by the High Court on 9 June 1994 on the basis that the evidence produced by the Home Office was sufficient to establish that she had obtained entry by deception.

Further representations made on her behalf to the Home Secretary were rejected on 7 November 1994. The applicant was removed to Pakistan on 14 November 1994.

COMPLAINTS

The applicant complains that her removal breached Article 8 of the Convention in that it was an unjustifiable interference with her right to enjoyment of family life with her son and mother. She submits that the removal effectively severs her family life since it not reasonable to expect her mother or son to come to live with her in Pakistan, since her mother settled with her two sons on whom she is dependent and her son married to a British citizen who has lived in the United Kingdom for most of her life. She relies on the fact that she has lived all her life with her mother and son in Pakistan. There is, she argues, no pressing social need for her removal which was disproportionate in the circumstances.

The applicant complains that she has no effective remedy as required by Article 13 in respect of the removal since the only proceedings possible are judicial review, which require a decision to be "Wednesbury" unreasonable (eg. a decision which no reasonable Secretary of State could have reached) before they could be successful.

THE LAW

1. The applicant complains that her removal from the United Kingdom infringes her right to respect for her family life.

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

"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 national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The Commission recalls that according to its established case-law while Article 8 (Art. 8) of the Convention does not in itself guarantee a right to enter or remain in a particular country, issues may arise where a person is excluded, or removed from a country where his close relatives reside or have the right to reside (see eg. 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. 8.7.82, D.R. 29, p. 205).

The Commission has examined whether such a degree of dependency exists between the applicant and her relatives as to give rise to the protection envisaged by Article 8 (Art. 8) of the Convention (cf. Nos. 9214/80, 9473/81 and 9474/81 Dec. 11.5.82 D.R. 29 p. 176 and No. 13564/88 dec 8.9.88 DR 57 p. 287). Generally, the protection of family life under Article 8 (Art. 8) involves cohabiting parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. In immigration cases, relationships between a parent and adult child would not necessarily attract the protection of Article 8 (Art. 8) without evidence of further elements of dependency, involving more than the normal, emotional ties (see eg. No. 10375/83, Dec. 10.12.84, D.R. 40 p. 196). In this context, the Commission notes that while it is alleged that the applicant is dependent on her son the nature and extent of that dependency is not detailed in any way. Further, it is her own brothers who were stated in submissions to the Home Office to have been supporting her in Pakistan. The Commission has however had regard to the fact that the applicant prior to her arrival in the United Kingdom appears to have lived for a large part of her life with her son and her mother and accepts that there must be held to be "family life" within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention.

However, the Commission notes 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 that country (Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A no. 94, p. 94, para. 68). The Commission considers that this applies to situations where members of a family, other than spouses, are non-nationals. Whether removal or exclusion of a family member from a Contracting State is incompatible with the requirements of Article 8 (Art. 8) will depend on a number of factors: the extent to which family life is effectively ruptured, whether there are insurmountable obstacles in the way of the family living in the country of origin of one or more of them, whether there are factors of immigration control (eg. history of breaches of immigration law) or considerations of public order (eg. serious or persistent offences) weighing in favour of exclusion (see eg. Nos. 9285/81, Dec. 6.7.82, D.R. 29 p. 205 and 11970/86, Dec. 13.7.87 unpublished).

The Commission recalls that the applicant has been expelled since

the immigration authorities found that she had gained entry as the result of misrepresentations of fact and intention. It notes that the immigration authorities considered that the applicant's mother also sought to mislead them when applying for entry and then in obtaining leave to remain permanently. To some extent therefore, it would appear that the applicant is separated from her son and mother as a result of their own decisions to seek entry, on grounds of marriage and dependency respectively. While it is undoubtedly a matter of hardship for the applicant now to live apart from the members of her family to whom she was closest, it appears that the applicant does have other relatives remaining in Pakistan and it has not been alleged that her brothers will not continue to maintain her as they did before. In that regard it notes that the applicant was removed as an illegal immigrant and that it is still open her to make an application from Pakistan in the normal way for entrance as a dependent on settled relatives in the United Kingdom.

In these circumstances, notwithstanding the humanitarian element referred to above, the Commission finds that there are no elements concerning respect for family life which in this case outweigh the valid considerations relating to the proper enforcement of immigration controls. It concludes that the removal does not disclose a lack of respect for the applicant's right to respect for family life as guaranteed by Article 8 para. 1 (Art. 8-1) of the Convention.

It follows that this part of the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant also invokes Article 13 (Art. 13) of the Convention, which provides that :

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The Commission recalls however that Article 13 (Art. 13) does not require a remedy under domestic law in respect of any alleged violation of the Convention. It only applies if the individual can be said to have an "arguable claim" of a violation of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p.23, para. 52).

The Commission finds that the applicant cannot be said, in light of its findings above to have an "arguable claim" of a violation of their Convention rights.

It follows that this complaint must be dismissed as 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)