AS TO THE ADMISSIBILITY OF

Application No. 17531/90
by D.G.
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 19 July 1990 by D.G. against the United Kingdom and registered on 5 December 1990 under file No. 17531/90;

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 1961. She resides in Leicester. She is represented in the proceedings before the Commission by Messrs. Singh and Ruparell, Solicitors practising in London.

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

The applicant was born in Uganda but left with her family to settle in India when she was around ten years old. The applicant and her family lived in India for around twelve years, then moved to settle in the United Kingdom in December 1983.

In the summer of 1986, the applicant and her mother left for a holiday in India.

On 7 August 1986 the applicant met her future husband and, one week later, married him.

The applicant's husband was born in 1958. He is an Indian citizen. He resides in India.

On 11 September 1986 the applicant's husband applied to the office of the British Deputy High Commissioner in Bombay for a visa with a view to admission to the United Kingdom for settlement to join

the applicant as her husband.

On 13 September 1986, the applicant flew back to London with her mother.

The applicant and her husband were interviewed in connection with his application. On 18 February 1988 a visa officer refused the application. He was not satisfied that the marriage was not entered into primarily to obtain admission into the United Kingdom.

On 19 April 1988 the applicant lodged an appeal against this refusal with the Adjudicator.

At the appeal hearing the applicant stated, inter alia, that she had left India shortly after the marriage on her doctors advice that the climate did not suit her. She also stated that she wished to reside in the United Kingdom. She also made it clear that she did not intend to reside with her husband except in the United Kingdom.

On 3 April 1990 the Adjudicator dismissed the appeal against the visa officer's decision. He stated, inter alia:

"I find I am not satisfied that the parties have evinced a positive intention of living together as man and wife, and arriving at this finding, I take into account the [applicant's] occasional visits [one in January 1988 for three months and one other in March 1990] to stay with her husband...

I find that [the applicant's husband] has failed to satisfy me on a balance of possibilities that his marriage to [the applicant] was not entered into primarily to obtain admission to the United Kingdom".

The Adjudicator also found no substance in the applicant's allegations that her health prevented her living in India.

On 17 April 1990 the applicant applied for leave to appeal against the Adjudicator's determination. By written decision dated 13 July 1990 the President of the Immigration Appeal Tribunal refused leave to appeal.

Subsequently, counsel advised that an application for leave to apply for judicial review would not be granted.

In about March 1990, the applicant visited her husband in India. In or about January 1991, the applicant gave birth to a child. She is now pregnant again.

COMPLAINTS

The applicant complains that she has been separated from her husband. The applicant states that although she can go to India to reside with her husband she is unable to leave the United Kingdom where she has a house, job and funds to support herself and her widowed mother and all her other relatives.

THE LAW

The applicant complains of the refusal of British immigration authorities to allow her husband to enter the United Kingdom to live with her. The Commission has examined her complaints under Article 8 (Art. 8) of the Convention, the relevant part of which provides 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 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 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" (Eur. Court H.R., Abdulaziz, Cabales and Balkandali judgment of 28 May 1985, Series A No. 94, p. 32, para. 62).

The Commission notes in the present case that the applicant and her husband have lived together for brief intervals in India and that they apparently now have a child.

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 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).

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 present case, it seemed that the primary purpose of the marriage was to effect the husband's entry into the United Kingdom.

The Commission finds that the British immigration authorities had reasonable grounds to believe that originally the main purpose of the husband's marriage to the applicant, a British citizen, was to emigrate to the United Kingdom. The Commission also observes that the applicant's husband has no strong ties with the United Kingdom, never having visited it and not having any relatives there apart from his wife. Moreover there seem to be no serious obstacles preventing the applicant returning to India, where she had previously lived for twelve years, to live with her husband. In the light of these circumstances, the Commission concludes that there has not been an interference with the applicant's right to respect for family life ensured by Article 8 para. 1 (Art. 8-1) of the Convention and that, accordingly, the case must 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 by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First ChamberPresident of the First Chamber

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