AS TO THE ADMISSIBILITY OF

Application No. 14522/89
by Joshua GABRIEL
against the United Kingdom

The European Commission of Human Rights sitting in private on 20 January 1989, the following members being present:

MM. C.A. NØRGAARD, President
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
G. BATLINER
H. VANDENBERGHE
Mrs. G.H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY

Mr. H.C. KRÜGER, Secretary to the Commission

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 12 December 1988 by Joshua GABRIEL against the United Kingdom and registered on 9 January 1989 under file No. 14522/89;

Having regard to the report provided for in Rule 40 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a Nigerian citizen, born in 1944 and resident in Birmingham. He is represented before the Commission by Mr. S.J. Foster, Solicitor, of the Saltley Action Centre, Birmingham.

The facts of the case, as submitted by the applicant, and which may be deduced from official documents included in the application, may be summarised as follows.

Between 1962 and 1974 the applicant worked and studied in the United Kingdom. He returned to Nigeria in 1974 to look after his sick mother and his oldest child. He left behind him in the United Kingdom an estranged wife and two children. According to a statement made by the applicant's wife in 1978 to the immigration services, she had left him in 1972, taking the children with her by reason of his infidelity and ill-treatment of her. Before returning to Nigeria the applicant had also lived with another woman who gave birth to a daughter. The applicant returned to the United Kingdom on 28 June 1985 and was given leave to enter as a visitor for three months. He overstayed and worked. On 27 December 1987 he was arrested as an overstayer, as a result of which, a month later, a deportation order was issued under

Section 3(5)(a) of the Immigration Act 1971.

On 5 August 1988 an Adjudicator dismissed the applicant's appeal against the deportation order. Before the Adjudicator it was submitted that the applicant had strong family ties with his children, but the Adjudicator did not believe it. Although the applicant, his wife and their daughter gave evidence that prior to leaving the United Kingdom in 1974 the applicant had kept in close touch with his children, seeing them every day, there was evidence that the applicant's wife had stated to an immigration officer in 1978 that the applicant had ceased maintenance payments in May 1974 and that she had later heard from a friend that he had returned to Nigeria. Of the regular letters sending money and clothes that the applicant claimed to have sent to his first family, the wife, in 1978, stated that she had only received one, addressed to the children with no enclosures. In the Adjudicator's opinion the oral evidence put before him by the wife lacked persuasion in view of her aforementioned statements to the immigration services in 1978, and the daughter's evidence was inconsistent with that of her parents. The Adjudicator inferred from all this evidence that after the family's separation there had been little contact between 1972 and 1974, and that the applicant severed nearly all contact with both of his families when he left the United Kingdom in 1974.

The Adjudicator found minimal family connections between the applicant and his wife and children. The applicant claimed to have returned to assist his son who was serving a prison sentence. The son submitted a statement in support of his father's case and their close ties, which he subsequently withdrew. At the time of the statement he had not seen his father for seven months since his transfer to another prison. The Adjudicator considered that this particular claim was weak. He concluded that the applicant's submission concerning his right to family life rang "hollow in view of (his) abandonment of both his families". On reviewing the whole of the evidence the Adjudicator was not satisfied that "the compassionate circumstances, such as they are, are anywhere near weighty enough to outbalance the public interest of deportation" based on the applicant's seemingly deliberate overstaying in breach of immigration rules.

On 26 August 1988 the Immigration Appeal Tribunal upheld the Adjudicator's decision. The applicant's deportation to Nigeria is now imminent.

COMPLAINTS

The applicant complains that the refusal of the British immigration authorities to grant him indefinite leave to remain, and the deportation order, constitute a breach of his right to respect for family life, ensured by Article 8 of the Convention. His deportation would prevent him maintaining contact with his children with whom he claims to have a close relationship. He is hard working and honest, having no criminal record. There has been no criticism of his life style in the United Kingdom. He contends that the Adjudicator's decision was against the weight of evidence concerning his close family ties. The applicant wishes to see his children regularly to give them guidance and advice, especially his wayward son. Likewise the children would like the applicant to be near them.

The applicant also submits that there is an unjustified interference with his right to respect for private life ensured by Article 8 and that the deportation order is disproportionate to his overstaying. If removed to Nigeria he will find it difficult to adjust to life there.

THE LAW

The applicant has complained that the refusal of the British immigration authorities to grant him leave to remain and his pending deportation back to Nigeria constitute a breach of Article 8 (Art. 8) of the Convention, the relevant part of which 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 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."

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) of the Convention (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).

The first question which the Commission must examine is whether there exists a link between the applicant and his children sufficient to establish the family life protected by Article 8 (Art. 8) of the Convention. The Commission notes that the applicant made claims of close family ties before the Adjudicator but was not believed, neither was the evidence of the applicant's estranged wife and one of his daughters. The Commission also notes that the evidence of family commitment provided by the applicant's son was withdrawn. The Adjudicator found that the applicant had severed nearly all contact with his children when he left the United Kingdom in 1974 and that there was little evidence of any close tie being established on his return in 1985. The son, for whom the applicant had expressed the most concern, was in prison and had received no visit from the applicant for several months. The Commission finds nothing in the case file presented by the applicant to suggest that these factual findings of the Adjudicator were arbitrary or wholly without foundation. Furthermore, the Commission observes that no evidence of financial or other material dependency of the children on the applicant has been submitted in support of the application. In the circumstances of the present case the Commission concludes that the applicant does not have a sufficiently close family link with his children which falls within the protection of Article 8 para. 1 (Art. 8-1) of the Convention. Accordingly there has been no interference with the applicant's right to respect for family life ensured by this provision and this aspect of the case must be rejected as being manifestly ill-founded, within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

Insofar as the applicant has also complained of a breach of his right to respect for private life, ensured by Article 8 (Art. 8) of the Convention, the Commission notes that the applicant has made no specific submissions regarding this aspect of his application. It therefore finds the claim wholly unsubstantiated. Accordingly this part of the case must also 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

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H.C. KRÜGER) (C.A. NØRGAARD)