AS TO THE ADMISSIBILITY OF

Application No. 32339/96
by Michael Anthony GORMAN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 9 April 1997, the following members being present:

Mrs. J. LIDDY, President
MM. M.P. PELLONPÄÄ
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs. M. HION
Mr. R. NICOLINI

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 4 April 1996 by Michael Anthony GORMAN against the United Kingdom and registered on 22 July 1996 under file No. 32339/96;

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 1951 and currently resident in Manchester. Before the Commission he is represented by Baileys Shaw & Gillett, solicitors, practising in London. The facts as submitted by the applicant may be summarised as follows.

The applicant is an engineer and designer in the oil and nuclear industries and the nature of his employment is such that he spends much time on postings outside the United Kingdom. From September 1990 to September 1992 he was posted in Nigeria, from September 1992 to March 1994 in Kuwait and from October to November 1994 in Thailand. From January to April 1995 the applicant worked in Abu Dhabi and in May of that year the applicant returned to the United Kingdom to undertake a computer course to enhance his career prospects. He returned to Nigeria to work from July to November 1995 and his current contract in Manchester began in March 1996, the estimated duration of which is four to five years.

Shortly after being posted to Nigeria in 1990 the applicant met P., a Nigerian citizen born in 1969 and resident in Lagos. They formed

an intimate relationship which has continued since then and although they are not formally engaged to be married, the couple intend to marry at some stage. Since September 1991 the applicant has provided P. with economic support amounting to approximately £1,000 per month. He has also provided her with lump sums of money at various times and accordingly she is financially dependent on him. In Lagos, P. lives with her half sister and family and she is in close contact with her own family, in particular with her mother. During the applicant's stay in Nigeria in 1990 the couple did not cohabit, but P. spent three or four nights a week at his home. Since the applicant's posting outside Nigeria the couple have endeavoured to spend as much time as practical with each other during the applicant's holiday time and to that end have spent holidays and visits together in Nigeria and elsewhere.

P. requires a visa to visit to the United Kingdom. The applicant has sponsored P. to make a visit of more than three months duration on various occasions. Her first application for a visitor's visa to the United Kingdom was rejected following an interview at the British High Commission in Lagos on 18 April 1991. P. subsequently obtained visa clearance for Portugal and she and the applicant spent a three week holiday there instead. On her return to Nigeria a ticketing error meant that she was required to travel through the United Kingdom. When the problem was realised she was granted temporary admission to Gatwick until the next flight to Lagos and she honoured the terms of her admission, leaving on the next available flight to Nigeria.

Her second application for a visitor's visa was refused on 10 July 1991. The grounds given for the rejection were that the Entry Clearance Officer (ECO) was not satisfied that she was a genuine visitor intending to remain only for the period stated.

A third application for a visitor's visa was made by P. early in 1992 but at the interview on 9 April 1992 the ECO did not open the file containing new documentation submitted in favour of her application and her request was rejected. In December 1992 the applicant and P. spent a holiday in Cyprus before the applicant took up a post in Kuwait. On two occasions in 1993 P. obtained a visit visa for France and once in Spain in 1994 where the couple spent a brief holiday. She returned to Lagos after each visit abroad.

A fourth application for a visitor's visa to the United Kingdom was made in 1994 and entry was again refused following interview on 25 November 1994 despite representations made to the High Commission in Lagos by the applicant's solicitor. A Refusal Notice was issued stating that she had been refused a visa because the ECO was not satisfied that she would leave the UK at the end of the visit. He noted that she was "not at all well established" in Nigeria, was effectively unemployed and financially dependent upon the applicant who was a British citizen living in the United Kingdom.

On 1 September 1994 the applicant made an application for leave to apply for judicial review of the decision of the ECO in Lagos of 25 April 1994 which was refused by the High Court on 11 October 1994. A renewed application was rejected by the High Court on 8 February 1995 after an oral hearing. The High Court found principally that the reasons for the refusal were sufficiently given and that the conclusion was one to which the ECO was legitimately entitled to come.

The applicant submitted a renewal of his application for leave to apply for judicial review to the Court of Appeal on 15 February 1995 and on 12 October 1995 leave to apply was refused. Before the Court of Appeal the applicant claimed that the ECO did not weigh the positive reasons for granting the visitor's visa against the negative and therefore the conclusion he reached was inadequate and flawed. The Court of Appeal did not accept this argument and found that it was not necessary for the ECO to express the weighing of evidence in the reasons given for his decision. Moreover, the Court considered that

the reasons given by the ECO were sufficient for the applicant to know the grounds upon which he had reached the decision and also that it was unarguable that the reasons were inadequate.

COMPLAINTS

1. The applicant complains of a violation of his right to respect for private and family life contrary to Article 8 of the Convention. In particular he claims that by denying P. a visitor's visa which restricts their relationship to tourist visits abroad and prevents her from meeting his family, friends and home the applicant and P. are precluded from developing those parts of their relationship which can only be developed in the United Kingdom.

2. The applicant also complains that he has no access to an effective remedy contrary to Article 13 of the Convention with respect to the arguable breach of Article 8. In particular, he claims that he has no right of appeal where the adjudicator can review the facts.

THE LAW

1. The applicant complains of a violation of his right to respect for private and family life under Article 8 (Art. 8) of the Convention. Article 8 (Art. 8) provides that

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 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 does not find it necessary to examine whether the relationship between the applicant and P. amounts to private or family life for the purposes of Article 8 (Art. 8) because the complaints made are manifestly ill-founded for the reasons set out below.

The Commission recalls according to its established case-law that 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).

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 HR, Abdulaziz, Cabales and Balkandali v. the United Kingdom 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). These factors apply equally to the relationship of the applicant and P.

In the present case, the Commission notes that the applicant and P. are not formally engaged, though it is stated that they intend to marry eventually. It observes that the applicant states that it is not their intention currently to enter into permanent cohabitation or to reside permanently in the United Kingdom. While it appears that P. has obtained visitor's visas for other European countries and has always complied with their requirements, the Commission notes that the refusal of the Entry Clearance Officer was based on his finding that he was not satisfied that P. was genuinely intending to return to Nigeria after her visit. He noted that she was "not at all well established" there, was effectively unemployed and financially dependent upon the applicant who was a British citizen living in the United Kingdom.

It appears that the refusal of a visitor's visa affects only a limited aspect of the applicant's relationship with P., namely that which relates to meeting his family. Although the Commission recognises that this may not be without significance to the further development of their relationship, it notes that the couple have nonetheless had the opportunity to spend considerable time together in Nigeria and elsewhere and that their relationship has developed as a result. Consequently, having regard to the nature of their relationship and the degree of interference disclosed by the refusal of a visitor's visa the Commission is not satisfied that there are any elements concerning respect for private or family life which in this case outweigh the valid considerations relating to the proper enforcement of immigration controls. It concludes that the decisions of the authorities do not disclose any lack of respect for the applicant's private or family life.

Accordingly, the Commission finds that this complaint must be declared inadmissible as manifestly ill-founded pursuant to 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 HR, Boyle and Rice v. the United Kingdom judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). The Commission finds that in the light of its findings above, the applicant cannot be said to have an "arguable claim" of a violation of his 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, by a majority,

DECLARES THE APPLICATION INADMISSIBLE.

M.F. BUQUICCHIO	J. LIDDY
Secretary	President
to the First Chamber	of the First Chamber