AS TO THE ADMISSIBILITY OF

Application No. 14112/88
by Boshra KHANAM
against the United Kingdom

The European Commission of Human Rights sitting in private on 14 December 1988, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.C. SOYER
H.G. SCHERMERS
H. DANELIUS
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 27 June 1988 by Boshra KHANAM against the United Kingdom and registered on 16 August 1988 under file No. 14112/88;

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 British citizen, born in 1968 in Bangladesh and now resident in London, after settling in the United Kingdom in 1981 and becoming a naturalised British citizen in 1984. She is represented before the Commission by Mr. H. Rahman of the Tower Hamlets Law Centre.

The facts of the case, as submitted by the applicant and which may be deduced from documents presented with the application, may be summarised as follows:

On 3 November 1985, the applicant travelled to Bangladesh to visit her family. A marriage was arranged between her and a citizen of Bangladesh for 15 June 1986. The couple first met on the day of the marriage. They remained together in Bangladesh for 9 months until the applicant returned to the United Kingdom on 28 March 1987. She was pregnant upon her return and gave birth to a daughter on 10 October 1987.

The applicant's husband had left school in Bangladesh in 1980

and worked abroad in Singapore and Malaysia until July 1985 as a welder on contract. While in Malaysia he met an uncle of the applicant and they had discussions about the uncle finding him a wife. There was also some talk of a preference for a wife who did not live in Bangladesh. Through the applicant's aunt the husband met the applicant's family upon his return to Bangladesh in 1985 and marriage negotiations were commenced. These negotiations were apparently underway when the applicant travelled to Bangladesh, though she was apparently not aware of them.

After the marriage the applicant's husband applied for entry clearance at the British High Commission in Dhaka on 6 August 1986. He and the applicant were interviewed on 26 February 1987. In the interview the husband stated that he had married the applicant because he and his family liked her and her family. He admitted that the fact she was a British citizen was a "plus point" which would allow him to go to the United Kingdom in case he had problems in Bangladesh. He indicated he had secured a new passport upon his return to Bangladesh from Malaysia because he anticipated finding work in Saudi Arabia, but that job did not materialise. He also stated that, although he was a Muslim, he would be the first member of his family who did not bring his wife to live with him in his household, in accordance with Muslim tradition. Leave to enter the United Kingdom was refused on 3 June 1987. The Entry Clearance Officer had "no reason to doubt each of the parties had the intention of living permanently with the other were (the husband) to go to the United Kingdom". However, the husband's employment record and certain discrepancies in answers given by both the applicant and her husband at the interview, led the Officer to believe that the husband was mainly interested in working abroad. On all the evidence, therefore, he was not satisfied that the husband's primary purpose in entering the marriage was not to emigrate to the United Kingdom, contrary to paragraph 54(a) of the Statement of Changes in Immigration Rules HC 169. This Immigration Rule provided that entry clearance for a foreign husband would be refused unless the Entry Clearance Officer was satisfied "that the marriage was not entered into primarily to obtain admission to the United Kingdom".

An Adjudicator, rejecting the husband's appeal on 14 September 1987, held as follows:

> "The motives of the appellant are of course at the heart of what I have to decide and one looks for them in his revealed actions. After leaving school he went abroad for five years. Coming home in mid-1985 he quickly made plans to go abroad again, to Saudi Arabia. He then heard from his friend that there was a prospect of a British wife so he put these plans aside and worked with his brother in Bangladesh while negotiations went on. When they came to fruition he appeared before her, saw her for the first time, and they were married.
>
> I would not say that this sequence of events, attested clearly in evidence, admits to only one possible conclusion about his primary purpose. I do say however that it makes it impossible for me to conclude that he has discharged the onus on him to demonstrate that emigration was not his primary purpose. The appeal is dismissed."

Leave to appeal to the Immigration Appeal Tribunal was refused on 26 November 1987.

COMPLAINTS

The applicant wants to be able to live together with her husband and her daughter as a family in the United Kingdom. She complains that the refusal of the immigration authorities to grant her husband entry clearance to settle with her in the United Kingdom

constitutes an unjustified interference with her right to respect for her family life in breach of Article 8 of the Convention.

THE LAW

The applicant complains that the refusal of British immigration authorities to allow her husband to enter the United Kingdom to settle with her and their child constitutes 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 ... 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 25 May 1985, Series A No. 94, p. 32, para. 62).

The Commission notes in the present case that although the applicant and her husband have only lived together for 9 months in Bangladesh the British immigration authorities have never contested that a valid marriage had been contracted between them and that they intended to live together permanently if the husband were allowed to settle in the United Kingdom. The couple also have a child of their marriage. In these circumstances the Commission finds that the applicant's marriage falls within the scope of the family life provision of Article 8 para. 1 (Art. 8-1) of the Convention.

However, the question remains whether there has been an interference with the applicant's right to respect for family life. In this connection the Commission considers that distinctions must be drawn between those seeking entry into a country to pursue their newly established family life, as in the present case, those who had an established family life before one of the spouses obtained settlement in another country, and those who seek to remain in a country where they have already established close family and other ties for a reasonable period of time. In this context the Commission refers to the views of the Court in the Abdulaziz, Cabales and Balkandali judgment (loc. cit. pp. 33-34, paras. 67-68):

> "The Court recalls that, although the essential object of Article 8 (Art. 8) is to protect the individual against arbitrary interference by the public authorities, there may in addition be positive obligations inherent in an effective 'respect' for family life. However, especially as far as those positive

obligations are concerned, the notion of 'respect' is not clear-cut: having regard to the diversity of the practices followed and the situations obtaining in the Contracting States, the notion's requirements will vary considerably from case to case. Accordingly, this is an area in which the Contracting Parties enjoy a wide margin of appreciation in determining the steps to be taken to ensure compliance with the Convention with due regard to the needs and resources of the community and of individuals ... In particular, in the area now under consideration, the extent of a State's obligation to admit to its territory relatives of settled immigrants will vary according to the particular circumstances of the persons involved. Moreover, the Court cannot ignore that the present case is concerned not only with family life but also with immigration and that, as a matter of well-established international law and subject to its treaty obligations, a State has the right to control the entry of non-nationals into its territory.

The Court observes that the present proceedings do not relate to immigrants who already had a family which they left behind in another country until they had achieved settled status in the United Kingdom. It was only after becoming settled in the United Kingdom, as single persons, that the applicants contracted marriage ... The duty imposed by Article 8 (Art. 8) cannot be considered as extending to a general obligation on the part of a Contracting State to respect the choice by married couples of the country of their matrimonial residence and to accept the non-national spouses for settlement in that country.

In the present case, the applicants have not shown that there were obstacles to establishing family life in their own or their husbands' home countries or that there were special reasons why that could not be expected of them."

In the present case the Commission notes that the British immigration authorities had reasonable grounds to consider that the husband had not shown that originally the main purpose of his marriage to the applicant, a British citizen, was not 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 and child. Moreover there seem to be no serious obstacles preventing the applicant returning to Bangladesh, from where she originates, to live with her husband and child, who is of an adaptable age. There is no evidence that this family have no possibility of living together anywhere. 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

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission	President of the Commission
(H.C. KRÜGER)	(C.A. NØRGAARD)