AS TO THE ADMISSIBILITY OF

Application No. 16382/90
by M.
against the United Kingdom

The European Commission of Human Rights sitting in private on 7 September 1990, the following members being present:

MM. C.A. NØRGAARD, President
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
H. DANELIUS
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.C. GEUS
A.V. ALMEIDA RIBEIRO

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 23 January 1990 by M. against the United Kingdom and registered on 2 April 1990 under file No. 16382/90;

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 Uganda in 1967. She went to the United Kingdom in 1974 and now lives in Leicester. She is represented before the Commission by Messrs. Singh Ruparell, Solicitors, London.

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

On 7 October 1985 the applicant visited India. Whilst there she met V.M., an Indian citizen and her first cousin. On 14 November 1985, whilst still in India, the parties married.

On 26 November 1985 V.M. applied to the British High Commission in Bombay for permission to settle in the United Kingdom. On 3 February 1986 the applicant returned to the United Kingdom.

After two interviews at the British High Commission on

17 March 1987, V.M. was refused permission to settle in the United Kingdom. On 8 March 1989 the Adjudicator refused his appeal. He found that "the claim put forward in this appeal is pathetically shopworn". The Adjudicator made the following factual analysis:

It was alleged that the applicant whilst in India on holiday met V.M. completely by chance. Although she was in the company of and staying with his sister he said that he had not previously known of her arrival or presence. After this first meeting there were two or three chance meetings following which the applicant requested his company on outings. About 25 days after her arrival, love having blossomed, she proposed marriage to him. The parties were married on 14 November 1985 and it was not until afterwards that the country of the eventual matrimonial home was discussed. He claimed that, until then, he had not known that the applicant expected to live in the United Kingdom, and had assumed that they would continue to live in India. She stayed with him in India until 3 February 1986 during which time he tried to persuade her to remain in India. However she did not like the climate and so returned to the United Kingdom. The applicant was born in Uganda in 1967 and lived there until 1972 when she went to India. She lived in India until she went to the United Kingdom in 1974. She visited India from 16 January 1977 until 3 November 1977 and again from 7 October 1985 until 3 February 1986. She said she could not stay there because of the heat and atmosphere. However it would not have been too hot when she was last there and the last month might well have been distinctly cool in Perbandar. She told the Adjudicator that she had been feverish and received various forms of treatment. However the medical certificate submitted to the Adjudicator referred to treatment for acute bronchitis from 8 December 1985 until 12 January 1986. The Adjudicator considered that bronchitis is not fever and is more likely to be exacerbated by the damp and cold climate in the United Kingdom. He could quite understand that the applicant preferred to live in England but he found the reasons she and her husband advanced to be spurious. He could not believe that a girl who wished to remain in England would marry without a word being said about the country in which the matrimonial home would be.

The Adjudicator, in looking at the whole of the evidence, found that the only reasonable inference was that there had been an agreement that the applicant went to India with a view to marrying her relative and that it had all been arranged by the two families. There was nothing derogatory in this. Indeed, if it had been admitted, there would have been every reason to suppose that the intention was that the parties would live together permanently as husband and wife. As it had been concealed, and lies told, it was reasonable to find that the husband's primary purpose was admission to the United Kingdom. Moreover the Adjudicator noted that the husband had obtained his passport before the marriage. His credibility was not enhanced when he said that he had not had any purpose in getting it. The Adjudicator found little evidence of continuing devotion and observed that the applicant had not returned to India although over 3 years had passed since the marriage. The applicant said that she could not afford to travel to India but the Adjudicator was unconvinced, given that she was willing to support her husband in the United Kingdom. The Adjudicator concluded that the primary purpose of the marriage was to effect the husband's entry into the United Kingdom.

On 3 November 1989 the Immigration Appeal Tribunal agreed with the Adjudicator's findings and upheld his decision.

The applicant was advised that there were no grounds for judicial review of the Immigration Appeal Tribunal's decision. In any event the applicant lacked funds to begin such proceedings.

COMPLAINTS

The applicant complains that there has been an interference with the right to respect for her family life, contrary to Article 8 of the Convention, by the refusal to allow her husband to settle in the United Kingdom. She complains that she is unable to settle in India since she has a job and family in the United Kingdom.

THE LAW

The applicant complains of a violation 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 ... for the prevention of disorder ..."

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. However, the State's obligation to admit to its territory relatives of settled immigrants 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 25 May 1985, Series A no. 94, p. 32 paras. 62 and 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 instant case, it seemed that the primary purpose of the marriage was to effect the husband's entry into the United Kingdom. Evidence of a different intention has not been submitted to the Commission by the applicant.

The Commission further notes the applicant's statement that she has a job and family in the United Kingdom and that she is unable to leave them to settle in India. However, the applicant has not elaborated on her family ties in the United Kingdom. She apparently has no children there. The husband has no particular ties, whether family or otherwise, with the United Kingdom other than his marriage to the applicant. Consequently the Commission considers that there are no serious obstacles preventing the applicant joining her husband in India should she wish.

The Commission finds in the circumstances of the case that there has been no interference with the applicant's right to respect for her family life within the meaning of Article 8 para. 1 (Art. 8-1) of the Convention. The case does not therefore disclose any appearance of a violation of this provision. Accordingly the application is 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)