AS TO THE ADMISSIBILITY OF

Application No. 14742/89
by Manjula ODEDRA
against the United Kingdom

The European Commission of Human Rights sitting in private on 4 April 1990, the following members being present:

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

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 26 January 1989 by Manjula ODEDRA against the United Kingdom and registered on 7 March 1989 under file No. 14742/89;

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 British citizen, born in 1966 in Uganda, and resident in Heston, Middlesex. She is represented before the Commission by Messrs. Singh & Ruparell, Solicitors, London.

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

Mr. Nagaji Odedra, an Indian, was refused leave to enter the United Kingdom (reasons unspecified) on 16 September 1984, but he was granted temporary admission whilst a Member of Parliament made representations to the Secretary of State on his behalf. A few weeks later, on 12 November 1984, he married the applicant. She had met her husband at a festival 3 or 4 nights in a row and liked him. They married three days later in a registry office. There was no religious ceremony and her father made no inquiries about the husband. The

applicant had no intention of going to India to live with her husband. All this the immigration authorities found suspect and contrary to Sikh custom normally followed by the applicant's family. There is some dispute as to how long the couple lived together before the husband returned to India on 12 December 1984. Accordingly the immigration authorities refused the husband's subsequent application for entry clearance as the applicant's husband because they were not satisfied that the marriage had not been contracted by the husband for the primary purpose of gaining admission to the United Kingdom. This is a ground for exclusion under the Statement of Changes in Immigration Rules HC 169 paragraph 46(a).

The refusal of entry clearance was upheld by an adjudicator on 19 May 1987. He found the testimonies of the applicant and her father "totally unreliable" and the circumstances of the marriage "strange". He also found that the couple had spent little time together after their marriage, the husband having been most of the time preceding his departure from the United Kingdom with his friends in another town. He concluded that it was the fact of the applicant's settlement "in the United Kingdom that was the overriding and compelling motive for the marriage, outweighing all other factors, the matrimonial relationship being of subsidiary importance". The applicant refutes the adjudicator's findings.

The adjudicator's decision was confirmed by an Immigration Appeal Tribunal on 9 September 1987. The applicant later requested the Secretary of State to reconsider the decision. On 17 January 1989 the applicant was informed that, in view of the findings of the independent immigration appeal authorities, the Secretary of State was "not prepared to reverse his earlier decision", although it would be open to the husband to make a new application for entry clearance which would "receive careful consideration in the light of the circumstances that prevail at that time".

COMPLAINTS

The applicant complains of the continuing refusal of the British immigration authorities to allow her husband to join her in the United Kingdom. She is unable to join her husband in India because her parents are settled in the United Kingdom and she does not wish to leave them. She invokes 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 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 ... 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" (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 although the applicant and her husband only lived together for a few weeks in the United Kingdom 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. 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. 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 immigrate to the United Kingdom. The Commission also observes that the applicant's husband apparently has no strong ties with the United Kingdom, not having lived there for a reasonable period of time and not having any relatives there apart from the applicant. Moreover there seem to be no serious obstacles preventing the applicant following her husband to India. 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)