AS TO THE ADMISSIBILITY OF

Application No. 14069/88
by Maheshkumar Dahyabhai PATEL
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 24 May 1988 by Maheshkumar Dahyabhai PATEL against the United Kingdom and registered on 29 July 1988 under file No. 14069/88

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

Having deliberated;

Decides as follows:
.PA:14069/88
THE FACTS

The applicant is a citizen of India born in 1961 and resident in the District Bulsar State of Gujarat, India.

He is represented before the Commission by Messrs. Markand-Chimwoon, Solicitors, London.

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

The applicant is married to a British citizen of Indian origin who has been settled in the United Kingdom since 1964. The applicant's wife resides in Wolverhampton with her daughter, the issue of a previous arranged marriage to a Zambian citizen. That marriage ended in separation after 10 months in Zambia and divorce was granted in Zambia in February 1980. On 25 May 1983 she visited India with her

mother. On 30 May 1983 she met the applicant and within half an hour they were engaged to be married. The marriage, which took place according to traditional Hindu customs on 2 June 1983, had been arranged by the parents of both spouses. The applicant agreed to accept the daughter as his stepchild.

On 8 June 1983 the applicant applied for entry clearance to settle with his wife in the United Kingdom. On 25 June 1983 the wife returned to the United Kingdom with her child to continue her employment and the child's schooling. The applicant and his wife had lived together during those three weeks.

On 8 December 1983 the applicant was interviewed at the British High Commission in Bombay by an Entry Clearance Officer. According to this Officer's statement the interview was conducted in the applicant's native language, Gujarati, with the help of a fluent interpreter (bilingual Gujarati/English) and part of the questions and answers were as follows:

> "I asked the (applicant) when he and his wife were engaged and he told me that they were engaged on 30 May 1983 ... He told me that his wife had come to India to look for a husband ...
>
> I asked the (applicant) whether he had asked his wife to live with him permanently in India and he told me that he had not. I asked him why he had not so asked her bearing in mind that it was traditional for wives to join husbands after marriage. The (applicant) told me that he had not asked his wife to live with him in India because he wanted to go and live in the United Kingdom. He added that he did not want his wife to live in India. I asked the (applicant) why he had married a divorced woman who had a 7 year old child from her previous marriage and he told me that it was an arranged marriage. I asked him why a marriage was arranged to such a woman and he told me that it was arranged so that he could go to the United Kingdom for settlement. I asked the (applicant) whether his wife was prepared to live permanently with him in India and he told me that he did not know. I asked the (applicant) why his wife had gone back to the United Kingdom so soon after their marriage and he told me she went back to her job in a shop. I asked the (applicant) why they did not wish to live permanently in India after their marriage and (he) told me that it was because he wanted to live in the United Kingdom. I asked the applicant whether the main reason for marrying his wife was to enable him to go to the United Kingdom for settlement and (he) told me that this was correct."

In early 1984 the wife was interviewed in the United Kingdom and she denied her trip to India was for the purpose of finding a husband. She was sure the applicant had not married her purely to gain entry into the United Kingdom and, although she did not want to live in India, she stated that she would join her husband if all appeals failed.

On 8 May 1984 the applicant was reinterviewed by an Entry Clearance Officer in Bombay and, according to that Officer's statement, the applicant reiterated that he had married solely to gain entry to the United Kingdom and that he would otherwise not have married his wife due to her divorced status. He did not want to live in India and had earlier sought work in the Persian Gulf. This interview was also conducted with the aid of an interpreter, in the Gujarati language.

An entry certificate was refused because the Entry Clearance Officer found that, although a valid marriage had been contracted between the two parties and he had no reason to believe that they did

not intend to live together permanently if the applicant were admitted to the United Kingdom, in his opinion the primary purpose of the marriage was to gain entry into the United Kingdom, in contravention of paragraph 54(a) of the Statement of Changes in Immigration Rules HC 169. Paragraph 54 of these Rules provides as follows:

> An entry clearance for the foreign husband of a woman settled in the United Kingdom will be refused unless the Entry Clearance Officer is satisfied:
>
> "(a) that the marriage was not entered into primarily to obtain admission to the United Kingdom and
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> (b) that each of the parties has the intention of living permanently with the other as his or her spouse; and
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> (c) that the parties to the marriage have met."

The applicant appealed to an Adjudicator who dismissed his appeal on 10 April 1985. The Immigration Appeal Tribunal refused leave to appeal on 8 June 1985.

The applicant reapplied for entry clearance on 17 August 1985. He was interviewed on 21 February 1986 which interview was described by the Entry Clearance Officer as follows:

> "The (applicant) ... has applied again for an entry certificate in order to join his wife, the sponsor ... There has been no material change in the circumstances of either (of them) since the (applicant's) previous application ... The (applicant) decided to marry the sponsor half an hour after meeting her. He told me that he had agreed to marry the sponsor because of her looks and her nice nature, and that he had thought his life would be good with her. He had not considered any other factors in his decision to marry her and had not thought about the fact that the sponsor came from the United Kingdom. The (applicant) told me that he could not remember what he had told the Entry Clearance Officer at the time of his previous application, but when I reminded him of the answers he had given to the Entry Clearance Officer during his interview at that time he denied that he had told the Entry Clearance Officer that his marriage had been arranged so he could go to the United Kingdom for settlement. He denied that, as he had previously told the Entry Clearance Officer, the main reason for marrying the sponsor was so that he could go to the United Kingdom for settlement, and told me that he did not remember what he had said. He told me that the statements he had made at that time were not true, but could not tell me why he had therefore made them to the Entry Clearance Officer. The (applicant) denied that the prospect of a better future in the United Kingdom was a factor which had influenced his decision to marry the sponsor, and he told me that he would have married the sponsor had she been resident in India. He made no reply however when I put it to him that during his previous interview he had told the Entry Clearance Officer that he would not have married the sponsor had she been resident in India. The (applicant) told me that he had not asked the sponsor whether she would be prepared to live with him in India because the climate in India did not suit her, but he told me that he did not remember having told the Entry Clearance Officer previously that the reason he had not asked the sponsor to live in India with him was because he did not want to live in India. The (applicant) could make no reply when I asked him why he could not now remember any details of his interview in connection

with his previous application, despite the fact that in his letters he had criticised the accuracy of the interview and the competence of the interpreter. The (applicant) last saw his wife, the sponsor, in June 1983 and she had not returned to India because her daughter was at school. The (applicant) told me that the sponsor would come to India if his application was refused a second time. The (applicant) confirmed that he had understood all the questions but made no reply when I asked him why his answers in his present interview differed so fundamentally from his answers during his previous interview."

The Entry Clearance Officer refused an entry certificate because he could not overlook the applicant's statements at the earlier interview in December 1983. He did not accept that the applicant had forgotten the previous interview or that the prejudicial remarks had not been made, given the accuracy of the applicant's memory in other respects and the absence of any dispute about other important aspects of that interview. He felt that the applicant was now attempting to redress these remarks with the knowledge of hindsight in order to satisfy the requirements of the Immigration Rules. The Officer still found that the applicant's marriage had been contracted for the primary purpose of entering the United Kingdom.

The applicant's wife, supported by representations from her Member of Parliament, twice visited India in an attempt to convince the Entry Clearance Officer to change his mind, but to no avail.

An appeal to an Adjudicator, based on the revised Rule (paragraph 46(a) of the Statement of Changes in Immigration Rules HC 503 extending the primary purpose rule to both foreign husbands and wives) was rejected on 28 April 1987. The Adjudicator found that, as far as the applicant was concerned, his primary purpose in marrying was to obtain admission to the United Kingdom, with the marriage relationship being subsidiary to that. The Adjudicator also refused to order discovery of the Entry Clearance Officer's interview notes of December 1983 and early 1984, as they were not deemed necessary to decide the present case and had not been requested at the material time in the earlier proceedings.

Leave to appeal against the Adjudicator's decisions to the Immigration Appeal Tribunal was refused on 19 June 1987. An application for judicial review of the Tribunal's decision was rejected by the High Court on 21 October 1987 and the Court of Appeal on 29 April 1988.

COMPLAINTS

The applicant complains that the refusal of entry clearance to the United Kingdom by British immigration authorities constitutes a denial of his right to respect for family life ensured by Article 8 of the Convention and of his right to marry and found a family ensured by Article 12. The applicant also complains that the decision of the Immigration Appeal Tribunal on 19 June 1987 was in breach of the rules of natural justice and Article 6 para. 1 of the Convention because it failed to order discovery of the notes of the Entry Clearance Officer made at the applicant's interview on 8 December 1983, given that the applicant denies having made any prejudicial statements about his marriage intentions at that interview. He submits that the purpose of his application to the Commission is to be allowed to join his wife in the United Kingdom and to have condemned the primary purpose rule which is allegedly discriminatory against Asians particularly in respect of arranged marriages.

THE LAW

1. The applicant complains that the refusal of British

immigration authorities to allow him to enter the United Kingdom to settle with his wife constitutes a breach of Article 8 (Art. 8) of the Convention, the relevant part of which reads 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" 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 his wife have only lived together for brief intervals in India 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 applicant 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. 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 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.
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> 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 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 despite the applicant's assertions to the contrary, the immigration authorities had reasonable grounds to believe that originally the main purpose of his marriage to a British citizen was to emigrate to the United Kingdom. The Commission also observes that the applicant has no strong ties with the United Kingdom, never having visited it and not having any other relatives there apart from his wife. Moreover there seem to be no serious obstacles preventing the applicant's wife returning to India, from where she originates, to live with the applicant. 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 of the Convention and that, accordingly, this aspect of the case must be rejected as being manifestly ill-founded, in accordance with Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant has also invoked Article 12 (Art. 12) of the Convention in respect of the refusal of British immigration authorities to grant him entry clearance.

Article 12 (Art. 12) of the Convention provides as follows:

> "Men and women of marriageable age have the right to marry and to found a family, according to the national law governing the exercise of this right."

The Commission notes that the applicant married a British citizen unhindered. Furthermore, for the same reasons given above in respect of Article 8 (Art. 8) of the Convention, the Commission finds that Article 12 (Art. 12) of the Convention also does not impose a general obligation upon Contracting States to respect a married couple's choice of the place where they wish to found a family or to accept non-national spouses for settlement to facilitate that choice. It follows that this aspect of the case is also manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of theConvention.

3. The applicant has next complained of a violation of Article 6 para. 1 (Art. 6-1) of the Convention in that his request for production of the Entry Clearance Officer's notes of the interview on 8 December 1983, the contents of which were disputed by the applicant, was refused by the Immigration Appeal Tribunal.

The relevant part of Article 6 para. 1 (Art. 6-1) of the Convention provides as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ..."

The Commission refers to its constant case-law that Article 6 para. 1 (Art. 6-1) of the Convention does not apply to immigration matters, in particular the analogous question of deportation, no issue of civil rights and obligations arising:

"A decision as to whether an alien should be allowed to stay in a country is a discretionary act by a public authority. Consequently, the decisions to expel ... were of an administrative order and they were made in the exercise of the discretionary powers of the immigration authorities. They did not, therefore, involve as such the determination of civil rights within the meaning of Article 6 para. 1 (Art. 6-1) of the Convention ..." (No. 8244/78, Singh, Uppal et al v. the United Kingdom, Dec. 2.5.79, D.R. 17 p. 149; No. 9285/81, Dec. 6.7.82, D.R. 29 p. 211).

The Commission considers that, similarly, the proceedings by which the United Kingdom authorities refused the applicant permission to enter the United Kingdom were of an administrative, discretionary nature and did not involve the determination of the applicant's civil rights and obligations. It follows that the provisions of Article 6 para. 1 (Art. 6-1) of the Convention are not applicable to such proceedings and this aspect of the case must be rejected as being incompatible ratione materiae with the provisions of the Convention, pursuant to Article 27 para. 2 (Art. 27-2) of the Convention.

4. Finally, the applicant alleges a violation of Article 14 of the Convention, read in conjunction with Article 8 (Art. 14+8), insofar as he complains that the "primary purpose" restriction contained in the Statement of Changes in Immigration Rules is racially discriminatory against Asians, particularly in respect of arranged marriages.

Article 14 (Art. 14) of the Convention prohibits discrimination in the securement of Convention rights and freedoms on any ground such as race. The Commission notes, however, that paragraph 54 of HC 169, replaced by paragraph 46 of HC 503, Statement of Changes in Immigration Rules, prevented entry clearance being given to foreign spouses on three grounds:

a) if the primary purpose of the marriage was to emigrate to the United Kingdom,
b) if the parties to the marriage did not have the intention of living permanently together, and
c) if the parties had never met.

Only the first restriction was applied in the applicant's case and the Commission finds no evidence that such a restriction was aimed to discriminate against Asian arranged marriages. The Rule makes no reference to particular racial groups and applies to all persons equally who fall within its scope (cf. aforementioned Abdulaziz, Cabales and Balkandali judgment paras. 84-86). Furthermore the Commission recalls that the British immigration authorities recognised the applicant's marriage as valid and at no time based their decision on the fact that the marriage was arranged. The Commission concludes, therefore, that this aspect 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)