AS TO THE ADMISSIBILITY OF

Application No. 26292/95
by Idris Khan Ahmed Khan PATHAN
against the United Kingdom

The European Commission of Human Rights (First Chamber) sitting in private on 16 January 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
M.P. PELLONPÄÄ
B. CONFORTI
N. BRATZA
I. BÉKÉS
E. KONSTANTINOV
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

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 13 October 1994 by Idris Khan Ahmed Khan PATHAN against the United Kingdom and registered on 26 January 1995 under file No. 26292/95;

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 an Indian citizen born in 1969 and resident in Darlington. He is represented before the Commission by Singh and Ruparell, solicitors practising in Darlington. The facts as submitted by the applicant may be summarised as follows.

The applicant was born in India. His father entered the United Kingdom from Zambia in 1987 and his mother, two brothers and two sisters entered the United Kingdom in or about 1989. They subsequently obtained leave to settle indefinitely in the United Kingdom. The applicant did not accompany them since he was pursuing a course of religious study in South Africa. On 3 March 1993, he entered the United Kingdom with limited leave to remain until 3 December 1993.

On 13 December 1993, the applicant's father who was permanently settled in the United Kingdom, applied for permission for indefinite leave for the applicant to remain.

On 27 July 1994, the application was refused. Since the application was made after expiry of leave, no appeal could be made under the relevant rules.

COMPLAINTS

The applicant complains that the refusal of leave to remain

discloses a violation of Article 8 of the Convention in that it was an unjustifiable interference with his right to enjoyment of family life with the other members of his family, with whom he always used to live. He alleges that his entire family is resident in the United Kingdom. Further his father is ill with a serious liver complaint and it is unfair and unreasonable not to allow the applicant to remain to care for him. It is alleged that he has nowhere else to go.

THE LAW

The applicant complains that the refusal of leave to remain in the United Kingdom infringes his right to respect for his family life.

Article 8 (Art. 8) of the Convention provides as relevant:

> "1. Everyone has the right to respect for his private and 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 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).

The Commission has examined whether such a degree of dependency exists between the applicant and his relatives as to give rise to the protection envisaged by Article 8 (Art. 8) of the Convention (cf. Nos. 9214/80, 9473/81 and 9474/81 Dec. 11.5.82 D.R. 29 p. 176 and No. 13564/88 dec 8.9.88 D.R. 57 p. 287). Generally, the protection of family life under Article 8 (Art. 8) involves cohabiting dependents, such as parents and their dependent, minor children. Whether it extends to other relationships depends on the circumstances of the particular case. In immigration cases, relationships between a parent and adult child would not necessarily attract the protection of Article 8 (Art. 8) without evidence of further elements of dependency, involving more than the normal, emotional ties (see eg. No. 10375/83, Dec. 10.12.84, D.R. 40 p. 196).

In this context, the Commission notes that the applicant, who is 25 years of age, has lived apart from his family for a number of years. While it appears that the applicant's father is seriously ill, there is no indication that the father is dependent on the applicant for any necessary care and support, his wife and other children also living in the United Kingdom. Nor is there is any substantiated allegation that the applicant was previously dependent for support from his family.

In these circumstances, notwithstanding the humanitarian element referred to above, the Commission finds that it has not been shown that there exists a sufficiently close link between the applicant and his relatives in United Kingdom to enable him to claim to have suffered an interference with his right to respect to family life as guaranteed by Article 8 (Art. 8) of the Convention. It concludes therefore that there is no appearance of a violation of this provision.

It follows that the application must be rejected as manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)