AS TO THE ADMISSIBILITY OF

Application No. 19788/92
by S.S.
against the United Kingdom

The European Commission of Human Rights sitting in private on
6 July 1992, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
E. BUSUTTIL
G. JÖRUNDSSON
A.S. GÖZÜBÜYÜK
A. WEITZEL
J.-C. SOYER
H.G. SCHERMERS
H. DANELIUS
Mrs. G. H. THUNE
Sir Basil HALL
MM. F. MARTINEZ
C.L. ROZAKIS
Mrs. J. LIDDY
MM. L. LOUCAIDES
J.-C. GEUS
M.P. PELLONPÄÄ
B. MARXER

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 9 February 1992 by S.S. against the United Kingdom and registered on 31 March 1992 under file No. 19788/92;

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 a British citizen born in 1963 in Kenya and resident in Edgware. She is represented by Hafiz and Co., solicitors practising in Tooting. The facts as presented by the applicant may be summarised as follows.

The applicant settled in the United Kingdom when she was two years old.

In 1985, the applicant met S., a citizen of India on a visit to the United Kingdom. He returned to India on 5 March 1986 and applied to enter as the applicant's fiancé. Following the refusal of entry, the applicant went to India in October 1987. Before she left, she sold her car, closed her building society account and resigned from her job.

On 24 November 1987 the applicant and S. were married in

India. The applicant initially had a three month residential permit to stay in India, to which she obtained a one month extension. She alleges that when she applied for indefinite leave to stay she was told to apply from the United Kingdom.

On 26 January 1988, the applicant returned to the United Kingdom for medical treatment. As a child she had suffered from polio and in India she had developed painful swelling in the area of previous surgery. Two doctors who have treated her indicate that this "plate reaction" may be caused by a hot climate.

S. applied for entry to the United Kingdom as the applicant's husband. His application was refused by a visa officer who was not satisfied that the primary purpose of the marriage was not to obtain entry to the United Kingdom. The officer referred in particular to the fact that in interview S. had stated that he had entered into the marriage to gain entry to the United Kingdom for economic purposes.

His appeal to the Adjudicator was dismissed on 17 May 1990. While the Adjudicator accepted that the applicant was unwell in India, she found that she had never seriously intended to stay there since she only went on a three month visa. She considered that S.'s replies in interview led to the conclusion that he had married the applicant for settlement in the United Kingdom and that he had known when marrying that there was no question of them living in India.

Leave to appeal was refused by the Immigration Appeal Tribunal on 8 November 1990.

On 9 April 1991, the High Court refused leave to apply for judicial review of the decisions of the Adjudicator and the Immigration Appeal Tribunal. A renewed application to the Court of Appeal was refused on 1 October 1991.

COMPLAINTS

The applicant submits that she is prevented from living with her husband in India due to her health. She considers that the refusal of entry to her husband violates as a result her rights under Articles 8, 12 and 13 of the Convention.

THE LAW

1. The applicant complains that her husband has been refused entry to the United Kingdom contrary to Article 8 (Art. 8) of the Convention.

Article 8 para. 1 (Art. 8-1) of the Convention provides:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

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.

The Commission recalls that the State's obligation to admit to its territory aliens who are relatives of persons resident there will vary according to the circumstances of the case. The Court has 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 28 May 1985, Series A no. 94, p. 34, para. 68).

The Commission has had regard to the findings of fact by the Adjudicator and her conclusion that, in light of the interviews with S. the primary purpose of the marriage was to effect the husband's entry into the United Kingdom for economic purposes.

In these circumstances the Commission concludes that the decision to refuse entry to the applicant's husband has not failed to respect the applicant's right to respect for family life, ensured by Article 8 para. 1 (Art. 8-1) of the Convention. Accordingly this aspect of the case is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

2. The applicant complains that the refusal of entry violates Article 12 (Art. 12) of the Convention which 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 her husband 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 the Convention.

3. The applicant also complains under Article 13 (Art. 13) of the Convention which provides:

> "Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

The case-law of the Commission establishes, however, that Article 13 (Art. 13) does not require a remedy in domestic law for all claims alleging a violation of the law. The grievance must be an arguable one in terms of the Convention (Eur. Court H.R., Boyle and Rice judgment of 27 April 1988, Series A no. 131, p. 23, para. 52). In light of the conclusions that the applicant's complaints under Articles 8 and 12 (Art. 8, 12) of the Convention are manifestly ill-founded, the Commission finds that the applicant does not have an arguable claim of a breach of these provisions for the purposes of Article 13 (Art. 13) of the Convention. This part of the application must therefore 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 by a majority

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the Commission President of the Commission

(H. C. KRUGER) (C. A. NORGAARD)