AS TO THE ADMISSIBILITY OF

Application No. 16324/90
by S.
against the United Kingdom

The European Commission of Human Rights sitting in private on 6 September 1990, the following members being present:

MM. C.A. NØRGAARD, President
J.A. FROWEIN
S. TRECHSEL
F. ERMACORA
G. SPERDUTI
E. BUSUTTIL
G. JÖRUNDSSON
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
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 13 October 1989 by S. against the United Kingdom and registered on 19 March 1990 under file No. 16324/90;

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 1959, living in Leicester. She is represented before the Commission by Singh and 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.

The applicant was originally married to H.V.. On 5 December 1984 the couple divorced.

In 1986 the applicant went to India on holiday with her mother and some friends. In India the applicant met V.S., a citizen of India. On 30 March 1986, whilst still in India, the applicant married him. She then returned to the United Kingdom for medical reasons. The husband applied for an entry visa in order to settle in the United

Kingdom to join his wife. On 3 July 1987 his application was refused. His appeal to the Adjudicator was heard on 27 January 1989. The Adjudicator held, inter alia, as follows:

> "I am faced with a claim that is inherently improbable. I am asked to accept that (the applicant) went to India on the spur of the moment with nothing in mind but a holiday. Whilst there the appellant (the husband) came to visit her as he was acquainted with her friend's brother. After the shortest of acquaintances she fell in love and proposed to him. He accepted and so in a short time they were married. It had been her intention to remain in India after marriage but she became ill and had to return (to England). The marriage had not been arranged and arose entirely because love had blossomed virtually overnight. (The applicant) is a divorcee some three years older than the appellant. It was strenuously denied that the marriage had been contemplated before (the applicant) went to India and that she had gone there to meet the appellant. For a marriage to arise in this way in India, and indeed in many other places, would be rare.
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> I heard evidence from (the applicant) and found her to have little credibility ... She was asked how long before she went to India had it been planned that she would go there. She replied 'It was not planned, all of a sudden my friends told me they were going to India and I could go with them if I wanted as I had not been there before.' ... From the fact of her having obtained a visa it is clear that the visit must have been in contemplation for at least 5 or 6 weeks before leaving. This was put to her and she said 'I just guessed a week or a week and a half. I thought it would take a week and a half.' It was put to her that she applied for her visa about six weeks before she went. She replied with a patent lack of credibility 'I went there all of a sudden ...' Nothing was said about how her mother came to be included in these arrangements which were made 'all of a sudden'. I totally reject this evidence and must question why it has been fabricated. The only possible explanation is that she was trying to conceal that she was going to India to meet the appellant with the possibility of a marriage to him in mind.
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> It was put forward that the sponsor had to leave India because of extreme ill-health and for this reason finds it impossible to return there to live. A report from a doctor in India certified that the sponsor 'was suffering from acute gastroenuterits (sic) and hyperacidity. She had such type of attack off and on during her stay due to the hot temperate climate of this place. She was under my care and treatment from 3.4.86 to 15.5.86 (both days inclusive).' This report clearly carries no weight. The maladies one assumes the doctor intended cannot be laid at the door of a 'hot temperate climate' or even entirely caused by an intemperate one. I note that the report was dated 16.5.86 and cannot but wonder why it was obtained before a visa to come here was applied for ...
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> In cross-examination she was completely evasive and refused to be specific about her alleged illness in India ... With this manifestly unsatisfactory evidence I cannot possibly accept that illness impelled (the applicant) to return home. Clearly she went intending to stay for three months and came back here in approximately that period. I can well appreciate her preference for living here. But as she has advanced spurious reasons her credibility is again seen to be of the lowest ...

> The account of the courtship (which on the evidence does not deserve this appellation) leading to the marriage is riddled with inconsistency and improbability. As the visa officer remarked were there a romance, as alleged, then certain salient features should have been recalled with clarity. In particular I find the difference between the (couple) as to whether he assented to her proposal immediately or a few days later to be particularly significant. Her evidence that she proposed on the third meeting, in none of which was there any conversation beyond an exchange of conventional greetings, I found utterly unacceptable. In addition there were the discrepancies as to whether the appellant's father had been consulted, the timing of the meetings, (the applicant's) outings whilst in India and the effect of the uncle's accident ... I also note that she made no effort whatsoever to extend her permitted stay in India before the alleged illness had become so severe that she had to come back here. In addition I cannot ignore the fact that the appellant has married a divorcee older than himself and the proposed breach of custom by the sponsor not joining and becoming part of his family ... I find that the appellant has failed completely to discharge the onus of showing that the marriage was not entered into primarily to obtain (his) admission to the United Kingdom."

On 21 August 1989 the Immigration Appeal Tribunal upheld the Adjudicator's 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 her 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 with her husband since her family live in England.

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 ...
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> 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. Nevertheless, the Commission notes that the applicant and her husband have not lived together for any significant period in India despite their four year marriage.

The Commission recalls that 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 obligaton 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 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)