CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

DECISION

Application no. 34851/04
by James SAMBA
against the Netherlands

The European Court of Human Rights (Third Section), sitting on 28 April 2005 as a Chamber composed of:

Mr B.M. ZUPANČIČ, *President*,
Mr J. HEDIGAN,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mrs M. TSATSA-NIKOLOVSKA,
Mr E. MYJER,
Mr DAVID THÓR BJÖRGVINSSON, *judges,*

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 29 September 2004,

Having regard to the observations submitted by the respondent Government,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr James Samba, is a Sierra Leonean national, who was born in 1969 and lives in Roosendaal. He was represented before the Court by Mr J.C.A. Koen, a lawyer practising in Roosendaal. The respondent Government were represented by their Agent, Mr R.A.A. Böcker, of the Ministry of Foreign Affairs.

The facts of the case, as submitted by the parties, may be summarised as follows.

The applicant arrived in the Netherlands in 1999 and applied for asylum. On 28 March 2002 he was informed that he had been granted a temporary residence permit for the purposes of asylum as of 1 June 1999. The applicant obtained an indefinite residence permit on 1 June 2002.

Meanwhile, in 2001, the applicant's wife had also fled to the Netherlands. She had initially stayed behind in Sierra Leone with the couple's son, Sylvester, who had been born in 1992. However, mother and son had become separated during the war. The applicant's wife was granted a temporary residence permit for the purposes of asylum on 22 November 2001.

On 5 November 2002 a daughter, Alicia, was born to the applicant and his wife in the Netherlands.

After having succeeded in tracking down Sylvester, the applicant applied to the Visa Department of the Ministry of Foreign Affairs for a provisional residence visa (*machtiging tot voorlopig verblijf*) on behalf of Sylvester on 25 May 2004. The Visa Department considered the application as a request for advice, since the actual visa application had to be made by Sylvester himself at a representation of the Netherlands in his country of origin or, no such representation existing in Sierra Leone, at the representation situated closest to that country.

In its advice of 8 July 2004 the Visa Department held that, if a visa application were made, it would be refused. No remedies lay against this advice.

However, on 14 January 2005 the Government informed the Court that it had been decided that Sylvester would be exempted from the requirement of possessing a provisional residence visa and that a request for a residence permit for the purposes of living with his father – lodged upon Sylvester's arrival in the Netherlands – would be granted. Moreover, the Netherlands authorities would also take measures to facilitate Sylvester's entry into the Netherlands. In a letter to the Court of 15 March 2005, the applicant indicated that he now wished to withdraw the application.

COMPLAINTS

The applicant originally complained under Article 8 of the Convention that the refusal to allow his son Sylvester to reside in the Netherlands constituted an unjustified interference with the right to respect for his family life.

The applicant also invoked Article 6 of the Convention in that he was unable to obtain a judicial examination of the reasons given by the Visa Department in its advice to refuse a visa to Sylvester.

THE LAW

The applicant originally raised complaints under Articles 8 and 6 of the Convention relating to the refusal of the Netherlands authorities to allow Sylvester to reside in that country. The Court notes, however, that now that Sylvester has been exempted from the requirement of holding a temporary residence visa and that he will be granted a residence permit, the applicant wishes to withdraw the application. In these circumstances, and having regard to Article 37 § 1 a) and b) of the Convention, the Court is of the opinion that it is no longer justified to continue the examination of the case. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the examination of the application to be continued.

For these reasons, the Court unanimously

Decides to strike the application out of its list of cases.

Vincent BERGER
Registrar

Boštjan M. ZUPANČIČ
President