

THE FACTS

The facts of the case as submitted by the applicant may be summarised as follows:

The applicant is an Indian citizen, born in the R. District of India in 1941. He now lives in Nairobi, Kenya.

From the applicant's statements and the documents submitted by him, it appears that he was brought up in India where he qualified as a teacher. His widowed mother still lives in India. He became acquainted with Miss C. who was a British subject of Indian origin resident in Kenya. Early in 1968 Miss C. travelled to the United Kingdom apparently with the intention of settling there. On .. August 1968 the couple were formally engaged to be married at a ceremony in Bombay. Miss C. returned to England and appears to have been granted a residence visa. As a British subject who entered the United Kingdom before the entry into force of the Commonwealth Immigrants Act 1968 her right to reside in the United Kingdom seems never to have been in question. She obtained a full United Kingdom passport in June 1970.

The applicant travelled from India to Kenya in November 1968. He obtained employment there as a teacher and then arranged with Miss C. that their marriage should take place in April 1969. They wished to be married in England. On .. April the applicant applied to the British authorities for permission to enter the United Kingdom. It was refused. Miss C. then travelled to Nairobi and the couple were married there on .. April. Mrs X., as she now was, returned to England on .. May.

The applicant's wife wishes to remain in the United Kingdom. She was brought up in Kenya and considers herself a "Westerner". She has no wish to live in India. The applicant therefore applied on a number of occasions starting in May 1969 to be given permission to reside in England. All his applications have been refused. The couple have only been able to meet when Mrs. X. has journeyed to Kenya. It appears that she was to have a baby but had a miscarriage in England in October 1971.

The applicant has produced to the Commission the decision of the British authorities in Kenya dated .. December 1971 refusing him entry to the United Kingdom. It appears that the authorities have refused him permission on the ground that, although at the present time unemployed in Kenya, he has in the past been able to obtain work as a teacher and resigned his last post of his own accord. Teaching in Kenya is not a profession restricted to Kenyans. It also appears that there is no ground preventing Mrs. X. from obtaining a dependant's visa from the Kenyan authorities to join her husband. Alternatively, the couple could to Kenya. The British authorities see no special circumstances justifying the grant of a visa for the applicant to enter the United Kingdom. In reply the applicant states that he might be able to obtain work in a private school in Kenya, but apparently employment in state schools is given to Kenyans. He doubts whether his wife could obtain a dependant's visa but, in any case, she does not wish to live in Kenya so it seems that there is no question of her applying for one. Neither does she wish to live in India which would be to her a completely foreign land. The applicant wishes to be granted permission to join his wife in the United Kingdom.

Complaints

The applicant complains that the United Kingdom authorities have refused him permission to enter the United Kingdom and settle there. His wife is legally resident in England and wishes to remain there. He wishes to join her. He seeks respect for his family life and also compensation from the United Kingdom authorities. He alleges the violation of Articles 3, 5, 8 and 14 of the Convention.

THE LAW

The applicant has complained that the United Kingdom authorities have refused him permission to enter the United Kingdom and to settle there. The Commission has considered the present application in the light of application 5269/71 (Collection of Decisions, Vol. 39 at p. 104) which was declared inadmissible by the Commission on 8 February 1972. In that case a Cypriot man who had entered the United Kingdom as a student and then married a United Kingdom citizen of Cypriot origin had, when his full time studies ceased, been ordered by the authorities to leave the United Kingdom.

In Application 5269/71 the Commission first recalled that no right to enter and reside in a particular country is as such guaranteed by the Convention. The Commission went on to examine the applicant's complaints under Articles 8 (Art. 8) (right to respect for family life) and 12 (Art. 12) (right to found a family) of the Convention but was satisfied that there was no legal obstacle preventing the applicants from establishing their family life (Article 8) (Art. 8) and founding a family (Article 12) (Art. 12) in Cyprus. The Commission therefore concluded that the applicant's complaints were manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

In the present case, although the applicant disputes the assertion of the British authorities that his wife could obtain a visa to reside with him in Kenya, there does not appear to be any legal obstacle preventing the applicant and his wife from living together in India and, indeed, the applicant has not stated that any such obstacle exists. In this respect he has said only that his wife prefers the United Kingdom to India that "he too desires to belong to that civilisation to which his wife has taken a liking". The Commission would not suggest that, where a couple is refused residence in a country of which one of them is a national, there is no violation of Article 8 (Art. 8) but simply because they can find some legal residence elsewhere. If the only legal residence which they can find is in a country unconnected with either of them, the exclusion from residence in the "home" country of one of them might constitute a violation of Article 8 (Art. 8). But in the present case the applicant and his wife appear to be able to reside legally in India and India is the applicant's country of origin. Furthermore, the applicant and his wife were married in Kenya at a time when they were fully aware that the applicant might not be allowed to enter the United Kingdom.

The Commission has thus considered the present application under both Articles 8 and 12 (Art. 8, 12) of the Convention. It can find no ground on which to distinguish it from application No. 5269/71 and notes also that there is not even any suggestion in the present case (as there was in application 5269/71) that the applicant's wife has other family ties in Britain.

An examination by the Commission of this complaint as it has been submitted, including an examination made ex officio, does not therefore disclose any appearance of a violation of the rights and freedoms set forth in the Convention and in particular in the above Articles.

It follows that the application is manifestly ill-founded within the meaning of Article 27, paragraph (2) (Art. 27-2), of the Convention.

For these reasons, the Commission **DECLARES THIS APPLICATION INADMISSIBLE**