

THE FACTS

The facts of the case as submitted by the applicant may be summarised as follows: The applicant is a British subject. He was born in India in 1930 and now lives in Coventry.

From the applicant's statements and the documents submitted by him it appears that from 1952 until 1964 he lived in Kenya. He then returned to India but left for the United Kingdom in 1965. His wife and 5 children remained in India from 1965 until 1968 when they joined him in the United Kingdom. His mother, his brother and his sister, all of whom are Indian citizens, appear to have been in India at all times.

In April 1970 the applicant's mother, brother and sister applied for permission to join him in the United Kingdom. Their request for entry certificates was refused by the Entry Certificate Officer at Bombay. The applicant and his solicitor, who is a Member of Parliament concerned with immigration problems, then appealed to an Adjudicator at Birmingham, against the decision taken at Bombay. The appeal was rejected on .. September 1971.

It appears from the documents submitted by the applicant that his mother sought entry to the United Kingdom under a provision (paragraph 43 of Cmnd. 4298) which allows a widow to enter the United Kingdom to join a near relative, provided that she is wholly or mainly dependent for support on such relative and provided also that the relative can provide accommodation for her. The Entry Certificate Officer at Bombay refused to grant a certificate because the applicant's mother had told him that she was not dependent on the applicant but on her brother-in-law. During the appeal at Birmingham the applicant maintained that his mother was dependent upon him. He produced evidence to show that he had remitted various sums of money to India from 1965 onwards. The Adjudicator held that there was no evidence that any substantial sums had been paid to the applicant's mother. It seemed a reasonable inference that money paid before 1968 was mainly for the benefit of the applicant's wife and children, while there was no evidence of the payment of substantial sums after 1968 until approximately the time when the applications for entry certificates were made. The Adjudicator, therefore, confirmed the decision not to grant an entry certificate to the applicant's mother. He held that the applicant's sister, aged 17, was a dependant of his mother and that the decision in her case depended directly on the decision in the mother's case. He also refused a certificate to the applicant's 25 year old brother.

The applicant now appears to claim that the decision taken by the Adjudicator was based on an incorrect appreciation of the facts. After the Adjudicator's decision, the applicant obtained a letter from his bank showing that a sum of £225 paid to India in 1966 had been paid to his mother, not to his wife. He has also stated that he paid a sum of money to his uncle before he left India. This was paid so that his uncle could provide for his mother, brother and sister. The applicant has produced a certificate showing that his brother is a full-time student. He claims that his brother is his dependant.

Complaints

The applicant complains that the United Kingdom authorities have refused permission for his mother, his brother and his sister, all of whom are his dependants, to join him in England. In this respect he does not appear to complain of the provisions of English law, but complains that the final decision taken by the Birmingham Adjudicator on .. September 1971 was based on an incorrect understanding of the facts of the case. He does not explain clearly in what way he considers that this constitutes a violation of the Convention and makes no reference to any particular Article of the Convention.

THE LAW

The applicant has complained that the United Kingdom authorities have refused permission for his mother, his brother and his sister to join him in England. However, he has not explained clearly how he considers that this might constitute a violation of the Convention. He has presented the application as if it were a retrial of the case heard by the Birmingham Adjudicator on .. September 1971 and has stated that he can produce evidence not available to the Adjudicator.

The Commission notes that the issue facing the Birmingham Adjudicator was whether or not the applicant's mother was "dependent for support" on him. This was the relevant question according to the English immigration rules, but it is not necessarily conclusive for the case before the Commission. The Commission must examine the applicant's complaints in the light of the Convention and the Article of the Convention which it considers relevant to the facts of the case is Article 8 (1) (Art. 8-1): "Everyone has the right to respect for his family life."

The Commission will assume, in the applicant's favour, that the facts of the case are as he wished the Adjudicator to accept them. It will assume that, at various times, he has sent money from England to India in support of his mother, his brother and his sister. Nevertheless, even though the applicant's mother, brother and sister may thus have been dependent upon him it is clear that he and they have lived apart in different countries for 19 out of the past 20 years. They have lived apart from 1952-64 and from 1965 until the present time. Under these circumstances it cannot be said that the applicant has shown that such a link exists between him and his mother, brother and sister as to make the refusal by the authorities to allow them to enter the United Kingdom amount to a violation of his right to family life within the meaning of Article 8 (Art. 8).

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 Article.

It follows that this part of 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.