

THE FACTS

The facts presented by the parties and apparently not in dispute between them may be summarised as follows:

The applicant is a Greek national, born in Athens in 1938 and at present resident in London. He is married and has one daughter, who was born in April 1965. His wife, who is English, lives with the daughter in Sunderland in the north of England.

The applicant and his wife were married in Sierra Leone in 1964. They came to the United Kingdom in October 1966, when the applicant was admitted for an initial period of twelve months. In August 1967 they left England to go and live in Greece.

The applicant was apparently tricked into allowing his wife to bring their daughter into the United Kingdom from Greece in August 1969 and since then the daughter has been living in England against his will. In order to support his child financially and morally the applicant has been forced to go and live in the United Kingdom as well. In September 1969 he was admitted for three months as a visitor. He returned again to the United Kingdom in February 1970 and was once more admitted for a period of three months, during which time he applied to the Home Office for an extension of his permitted stay. After obtaining employment approved by the Department of Employment his leave to stay was extended for twelve months until .. May 1971. In July 1971 this permission was extended for a further year, i.e. till .. May 1972.

From the time that the applicant followed his wife and daughter to England in September 1969 he had been living separate from them though contributing regularly to their maintenance. On .. October 1969 the child was made a ward of court, care and control being given to the mother. On .. January 1972, the High Court confirmed that the child should remain a ward of court and under her mother's care and control; at the same time her father was granted access to her for one weekend per month. An appeal lodged by the applicant against this order was dismissed.

In May 1972 the applicant applied for permanent residence in the United Kingdom. No decision had been taken on this application when, in July 1972, he temporarily left the country. He returned on .. August 1972 and was then admitted for one month only. He subsequently left the United Kingdom again for a short period, returning on .. August 1972, when he was given leave to stay for three months.

On .. January 1973 the Home Office informed the applicant that as he was not living with his family he could not claim to remain in the United Kingdom as a "foreign husband", i.e. merely on the ground that he was married to a British wife, and his application for permanent residence was refused. He was merely given an extension of stay until .. May 1973. On .. January 1973 the applicant was informed of his right of appeal to an adjudicator against this decision of the Home Office. No such appeal was lodged by the applicant, apparently because he did not consider that the appeal was relevant to his case.

Complaint

The applicant complains of the difficulties he has had in obtaining permission to stay in the United Kingdom. It appears from a letter dated 4 September 1972 to the Commission that he is concerned that he might lose the right to live in England and thereby be permanently deprived of access to his child.

PROCEEDINGS BEFORE THE COMMISSION

By two partial decisions, of 14 (1) and 20 December 1972 (2), the

Commission declared other parts of the present application inadmissible, but decided, in accordance with Rule 45, 3 b) of the Commission's Rules of Procedure, to give notice of the application to the Government of the United Kingdom and to invite it to submit its observations in writing on the question of admissibility of the application so far as it concerns the above complaint, which the Commission considered might give rise to a question under Article 8 of the Convention.

- (1) see page 66.
(2) see footnote page 70.

On 27 February 1973 the Government submitted its observations on admissibility. The applicant's reply was submitted on 18 March 1973 and he has subsequently written three further letters to the Commission, dated 1 June, 14 June and 16 July 1973.

SUBMISSIONS OF THE PARTIES ON ADMISSIBILITY

1. United Kingdom law and practice

The respondent Government first makes submissions on relevant aspects of the United Kingdom's law and practice concerning immigration. It states that an alien who has married a British wife does not as such acquire a right to live in the United Kingdom. However, in 1966 when the applicant came to the United Kingdom it was the practice that an alien married to a British woman could be admitted to join her in the United Kingdom if she had substantial residential and family connections there and provided that he was not personally undesirable. If an alien satisfied the immigration officer that he complied with this test he would be admitted for an initial period of twelve months without restrictions on his employment. At the end of the twelve months the time limit would normally be cancelled providing the marriage subsisted and he was living with and supporting his wife and family. If these conditions were satisfied, the alien fell within the category known as the "foreign husband" category in the policy controlling immigration.

The Government continues that under another head of United Kingdom immigration policy, when an alien has remained in the United Kingdom for four years in approved employment, and had not spent substantial periods outside the United Kingdom, consideration may be given to removing both the restrictions on his stay and on his employment, subject to the consideration of all the relevant facts such as whether in the light of his character, conduct or associations it is undesirable to permit him to stay. This category is recognised under the present, as well as previous, immigration rules, and extracts from the 1970 Rules and the 1973 Rules are attached as an annex to the submissions.

The Government also points out that a person who has a limited leave to enter or remain in the United Kingdom has a legal right of appeal to an adjudicator against any variation of the leave or against any refusal to vary it. An adjudicator may allow the appeal if the decision or action is not in accordance with the law or applicable immigration rules, or if, where a decision involves the discretion of the Secretary of State or one of his officers, the adjudicator considers that discretion should have been exercised differently.

2. Relevant facts

Commenting on the facts of the case relevant to admissibility, the respondent Government states that after the applicant's entry into the United Kingdom in February 1970, and following his application to the Home Office for an extension of his permitted stay, he was told that his marriage gave him no claim to remain as a "foreign husband",

because he was living apart from his wife. In March 1971 he was informed that if he remained in the United Kingdom for four years and did not spend substantial periods of time outside the country, consideration would be given to cancelling the conditions under which he was allowed to stay, in accordance with the policy set out above. The applicant was reminded of this policy in the letter from the Home Office mentioned above of .. January 1973.

Referring to the time in May 1972 when the applicant applied for permanent residence in the United Kingdom, the respondent Government states that enquiries were then made about the subsistence of the marriage. These revealed that he and his wife were living apart and there was little hope of a reconciliation. In the meantime the applicant left the United Kingdom in July 1972. When he returned on .. August 1972, the applicant, in answer to a question from an immigration officer about his proposed length of stay, informed the officer that depended on his marital relations and that he was considering a divorce. He was then admitted for one month and advised to contact the Home Office immediately regarding an extension of his stay.

In reply, the applicant refers first to the Government's statement above that in 1970 he was told he had no claim to remain in the United Kingdom as a "foreign husband" and makes the following observation: "However at that time the Home Office did not have any evidence that I was not living constantly with my wife. I was never informed that I might have fallen into another category, on the contrary many a time I tried for a personal interview with a senior Home Office official but was never granted access to one."

The applicant denies having said to an immigration officer on .. August 1971 that he was considering a divorce. Under no circumstances would he consider a divorce before his daughter's security is ensured or before she reaches the age of 16. The applicant continues that far from being advised by the immigration officers to contact the Home Office he had the greatest difficulty in entering the United Kingdom. He was able to do so only after satisfying them that in a few hours time he was due to attend a court hearing concerning his daughter.

3. Questions of admissibility

The respondent Government contends that the applicant is not the victim of a violation of the Convention and that he has not exhausted the domestic remedies which are available to him.

The respondent Government refers to the constant jurisprudence of the Commission (and in particular Applications Nos 172/56 I Y.B. page 211 and 1855/63, VIII Y.B. page 200) according to which the right of a person to enter and take up residence in a country of which he is not a national is not as such guaranteed by the Convention, although in certain circumstances the refusal to give persons access to, or allow them to take up residence in a particular country, might result in the separation of such persons from the close members of their family which could raise serious problems under Article 8 of the Convention.

In this case, however, it is submitted, it is clear that at no time up to the present has the applicant been refused entry into the United Kingdom. Moreover he has now been given an extension to stay in the country till .. May 1973 and this may be varied to allow a further extension. The Government also refers to the provision in the immigration rules whereby, subject to residence requirements and general considerations concerning a person's behaviour, an alien who has been in employment in the United Kingdom for four years may apply for consideration to be given to cancelling the conditions under which he is allowed to remain in the country.

The respondent Government therefore submits that the applicant has at no stage been prevented from exercising his right of access to his

daughter by reason of any action of the Government, since at no time has he been refused entry. It is the submission of the Government that as the applicant has at no time suffered an interference with his rights under Article 8 as a result of its actions the applicant cannot claim to be a victim of a violation within the meaning of Article 25 (1). Accordingly, the applicant's complaint is incompatible with the provisions of the Convention or, in the alternative, is manifestly ill-founded.

Without prejudice to the foregoing submission, the Government submits that the right of appeal to an adjudicator referred to above, against a refusal to vary the terms of entry into the United Kingdom, constitutes a domestic remedy within the meaning of Article 26 of the Convention which is required to be exhausted. Reference is made again to Application No. 172/56 I Y.B. page 200 and in particular to pages 217 and 218. It is accordingly submitted that the application should be rejected under Article 27 (3) of the Convention.

The applicant, in reply, refers to the Government's statement that he has at no stage been prevented from exercising his right of access to his daughter by reason of any action of the Government. He comments as follows: "(From) February 1970 to the present time I feel that not only myself but also my daughter, from the financial point of view, have been victims of indirect threats by way of 'limited time of stay', 'conditions of stay', 'restrictions of employment' which have resulted in restricted means of supporting ourselves, and for me an impossibility to see my daughter every month as many a time I cannot afford the weekend trip from London to Sunderland, which for the said period and whilst I was working represented the 30 per cent of my monthly gross pay."

The applicant considers that all domestic remedies have been exhausted. He makes no further observations on why he did not appeal against the Home Office decision communicated to him by the letter dated .. January 1973.

In the conclusion, the applicant states that it is not by choice that he remains in the United Kingdom, but because of the decisions forced upon him by the British authorities. He will only accept that his daughter and consequently he himself remain there provided that from the very beginning they enjoy all the rights afforded to the rest of the United Kingdom population with no restrictions whatsoever.

4. Supplementary submissions of the applicant

After filing his submissions on admissibility the applicant wrote further letters to the Commission, dated 1 June, 14 June and 16 July 1973. He also submitted copies of recent correspondence between himself and the Home Office.

From these letters and documents it appears that the applicant wrote to the Home Office on .. May 1973 with regard to his residence in the United Kingdom. He was then apparently given leave to remain in the country until .. July 1973. After the applicant had written again to the Home Office, requesting an unconditional and unlimited stay in the United Kingdom, the Home Office replied on .. June 1973 informing him that he was still not entitled to foreign husband conditions nor was he eligible for the removal of the time limit attached to his leave to enter. He was told that, if he wished his permitted stay in the United Kingdom to be extended for a further period, he should re-submit his application with supporting documents including either a letter from his employer confirming that the employer wished to retain his services or documentary evidence of his ability to maintain himself without working. He was warned that otherwise he would be expected to leave the United Kingdom by .. July 1973. Finally, he was told that if he wished to exercise his right of appeal against this decision he should notify the Home Office and the appropriate appeal forms would be sent to him.

The applicant states that he does not accept the conditions contained in the Home Office letter of .. June and he asks the Commission to intervene.

THE LAW

The applicant has complained of the difficulties he has had in obtaining permission to remain in the United Kingdom. It appears that he is concerned that he may be permanently deprived of access to his child. The Commission recalls that in its partial decision on admissibility of 20 December 1972 it considered that this complaint might give rise to an issue under Article 8 (Art. 8) of the Convention; this Article secures to everyone the right to respect for his private and family life.

The Commission notes from the applicant's supplementary submissions (see page 7 above) that the most recent decision taken by the United Kingdom authorities affecting his permission to stay in the United Kingdom is that communicated to by the letter from the Home Office of .. June 1973. The effect of this decision was that the applicant was refused permission to stay in the United Kingdom after .. July 1973 unless he satisfied certain conditions. The applicant states that he does not accept these conditions and asks the Commission to intervene. The complaint which he has made to the Commission can therefore now be considered as being directed against the decision of the Home Office.

The respondent Government submitted in its observations of 27 February 1973 that the applicant had at that time never been prevented from exercising his right of access to his daughter by reason of any action of the Government, since he had at no time been refused entry into the United Kingdom. It was therefore submitted that the applicant could not claim to be a victim of a violation of the Convention within the meaning of Article 25 (1) (Art. 25-1) with the result that his complaint was incompatible with the provisions of the Convention or, in the alternative, manifestly ill-founded. The Government further submitted that in any event the application should be rejected under Article 27 (3) (Art. 27-3) of the Convention since the applicant had failed to appeal to an adjudicator against the Home Office decision of which he was complaining and had therefore not exhausted the domestic remedies open to him.

The applicant, on the other hand, has submitted that all domestic remedies have been exhausted. It appears that he considers that an appeal to an adjudicator was not relevant to his case.

The Commission observes that there have been developments in this case since the date on which the respondent Government submitted its observations on admissibility. At that time the most recent decision affecting the applicant's stay in the United Kingdom was that of .. January 1973, by which the applicant was refused permanent residence but was given permission to remain in the country until .. May 1973. On the other hand, the decision which the Commission is now concerned with is, as stated above, that of .. June 1973, refusing the applicant permission to remain in the United Kingdom after 31 July 1973 unless he satisfied certain conditions. The Commission does not, however, find it necessary to request the respondent Government to make further submissions in the light of these new circumstances, or even to comment on the recent factual situation as it has been presented by the applicant, since it is satisfied, for the reasons set out below, that the application is inadmissible.

The Commission recalls that under Article 26 (Art. 26) of the Convention it may only deal with a matter after all domestic remedies have been exhausted according to the generally recognised rules of international law. In the present case the applicant failed to appeal to an adjudicator against the decision communicated to him in the Home

Office letter of .. June 1973 and has therefore not exhausted the remedies available to him under English law. The Commission observes that in any event the refusal of the applicant to satisfy the conditions laid down by the Home Office, which he has not shown to be unreasonable, could in itself be considered as a failure to exhaust the remedies open to him. Moreover, an examination of the case as it has been submitted does not disclose the existence of any special circumstances which might have absolved the applicant, according to the generally recognised rules of international law, from exhausting the domestic remedies at his disposal.

It follows that the applicant has not complied with the condition as to the exhaustion of domestic remedies and his application must be rejected under Article 27 (3) (Art. 27-3) of the Convention.

For these reasons, the Commission DECLARES THIS APPLICATION INADMISSIBLE.