Upper Tribunal
(Immigration and Asylum Chamber) Appeal Number: IA/42156/2013

THE IMMIGRATION ACTS

Heard at Field House	**Decision & Reasons Promulgated**
On 23 February 2015	**On 31 March 2015**

Before

DEPUTY UPPER TRIBUNAL JUDGE RIMINGTON

Between

ELIYAN MADHAVAN
(NO ANONYMITY DIRECTION)

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Professor Rees, instructed by Ravi Solicitors
For the Respondent: Mr T Melvin, Home Office Presenting Officer

DECISION AND REASONS

1. The appellant is a citizen of India, born on 13 July 1970 and he entered the UK on 5 November 2003 having been granted entry clearance as a visitor from the British High Commission in Bombay. That visit visa was valid from 14 October 2003 until 14

April 2004. On entry to the UK the appellant proceeded to undertake the role as Minister of Religion with the Free Church England or the Reformed Episcopal Church and he made three applications for leave to remain as a Minister of Religion, all of which were refused. The appellant was finally "appeal rights exhausted in 2006". Nonetheless the appellant remained in the United Kingdom.

2. The respondent subsequently re-considered his application of 7 January 2013 on human rights grounds and refused that application on 20 September 2013.

3. In a decision dated 6 October 2014 First-tier Tribunal Judge Seifert allowed the appellant's appeal on human rights grounds but this was set aside on the basis that the judge made inadequate findings regarding the weight to be attached to the position of the Secretary of State and why this was outweighed by the appellant's private life and any findings in relation to whether it was precarious. In particular the judge did not explain why mere establishment of service to the community through the church should outweigh the fact that he was here precariously and latterly unlawfully.

4. At the hearing at the error of law stage Professor Rees had submitted that there were two previous sets of solicitors who had advised him inappropriately who had caused the appellant's applications to fail.

5. In essence the appellant stated that he was borne and brought up in the village of Mavilangal in India and then moved to Chennai when he was 25 years old and where he worked. His family still reside in India and his mother lives in Mavilangal village and his wife and daughter, who is 14 years of age, reside in Chennai. He developed a strong interest in the Christian faith community and a passion for religion although owing to financial reasons and pressure from his family he was forced to study an electrical engineering degree at university, and in 2002, he was awarded a Bachelor of Theology degree at St John's Bible College and was awarded a Certificate of Ordination in 2003.

6. In 2003 he was invited to the annual Keswick Convention by the Keswick Ministries in the UK and he decided this would strengthen his ties with the Christian community and he applied for a visit visa to attend. He arrived on 5 November 2003 and stayed with his wife's relatives with whom he still lives.

7. After attending the convention he agreed to assist an elderly minister at the Christchurch in Harlesden and then was invited by many other churches to carry out services in the Tamil language for the Tamil community.

8. His visa expired on 14 April 2004. He made applications to remain but those were refused on the basis of non-payment of fees and then because he was unable to 'switch category'.

9. He gave evidence that it was not his original intention to extend his leave after he came here but had wanted to return to India where his family lived. The situation changed when he became an active member of the church here and he became "an

essential link" to the community preaching at regular services in the Tamil language held in his local church, Christchurch. The elderly minister passed away and he became his successor and he has now worked in the community for over eleven years and feels a sense of responsibility for each member of the community.

10. In respect of other churches he has attended and provided services and had provided services all over the country preaching and providing pastoral care.

11. At the hearing before me in the Upper Tribunal the appellant confirmed that he had preached all over London and indeed in places such as Glasgow, Aberystwyth and Manchester.

12. He was financially supported by donations given by members of the congregation and churches which he regularly attends and supported the Sri Lankan community, particularly those who were asylum seekers. His Tamil community congregation were part of the Church of Southern India.

13. He had not seen his daughter or wife or mother for eleven years. When he lived in India he was a pastor for one year. He did not provide money for his wife, daughter or mother. His wife was a teacher and his mother a farmer and they were self-sufficient.

14. First-tier Tribunal Reverend Robert Wilson gave oral evidence that the appellant had become an asset to the church and had a strong congregation of followers of Tamil ethnicity who regularly visited the church to attend the appellant's services and who was growing dependent on his support. He conducted a service every Sunday from 5 p.m. to 6.30 p.m. in the Tamil language. In essence he had built up a life here and a congregation who were "passionate about his services". Reverend Wilson confirmed that he had, with the appellant's permission, and acted as part of the service delivered by Mr Madhavan, the appellant, and that what he said was interpreted into Tamil.

15. Documentation provided showed that the appellant was appointed to the office of one of the "delegates" for the year ending 28 February 2015 by the Free Church of England and that he was licensed to officiate as a priest in the diocese named by the traditional Church of England. There were photographs of the appellant with members of the congregation.

16. It was accepted that the appellant could not qualify under the Immigration Rules as a Minster of Religion or under paragraph 276ADE. In particular the appellant was not given leave to enter as a Minister of Religion and he has not resided in the UK for 20 years or lost ties with his home country. The question is whether the matter can be considered outside the Immigration Rules. Mr Melvin referred me to **Singh v Secretary of State for the Home Department [2015] EWCA Civ 724** and I note paragraph 64 of that judgment which states

> *"What matters is there is nothing in Aiken LJ's comment which casts doubt on Sales J's basic point that there is no need to conduct a full separate examination of Article 8*

outside the Rules where, in the circumstances of the particular case, ***all the issues*** *have been addressed in the consideration under the Rules."*

17. Paragraph 66 of **Singh** essentially confirms that that "the second stage can in an appropriate case be satisfied by the decision maker concluding that any family life or private life issues raised by the claim have already been addressed at the first stage- in which case there is obviously no need to go through it all again". This, however, still accepts that there is a second stage and that all the issues need to be considered fully which, in the circumstances, I proceed to do in this decision.

18. I turn to the questions set in **Razgar v SSHD [2004] UKHL 27**. It is clear that the appellant has been in the UK since 2002 and Mr Melvin did not proceed to attempt to challenge this assumption. The appellant has spent nearly 13 years in the UK and has developed his preaching for the church as set out above.

19. I accept that the appellant will have engaged a right to a private life as the threshold to engage Article 8 is low – **AG (Eritrea) v SSHD[2007] EWCA Civ 801**. While an interference with private or family life must be real if it is to engage art. 8(1), the threshold of engagement (the "minimum level") is not a specially high one. The decision is in accordance with the law as set out by the Immigration Rules and has been set out as being necessary for the economic wellbeing of the country and the protection of rights and freedoms of others through the maintenance of immigration control, **Shahzad (Art 8: legitimate aim)** [2014] UKUT 00085 (IAC).

20. I turn to the key question of proportionality and the factors to be taken into account. Mr Melvin did submit that it was very rare that a positive contribution to the UK, such as preaching, was significant and sufficient to outweigh a public interest in immigration control. I was referred to paragraphs 38 and 39 of **R (on the application of Esther Ebun Oludoyi & Ors) v Secretary of State for the Home Department (Article 8 – MM (Lebanon) and Nagre) IJR** [2014] UKUT 00539 (IAC) which made it clear that the factor of public value would make a difference to the outcome of immigration cases only in a relatively few instances where the "positive contribution is 'very significant'". As set out in R v Immigration Appeal Tribunal ex parte Bakhtaur Singh [1986] 1 WLR 910 this included essential workers in a business or someone of public importance.

21. Upper Tribunal Judge Gill recorded at paragraph 38

> *"It is clear from UE (Nigeria) and the judgment of the House of Lords in R v Immigration Appeal Tribunal ex parte Bakhtaur Singh [1986] 1 WLR 910 that the value to the community in the United Kingdom of an individual is a relevant consideration ([21]). The fact that the community in the United Kingdom or a part of it would lose something of value if an individual is removed is relevant to an assessment of the extent of the public interest in removal ([24] and [35] of UE (Nigeria)). However, the Court of Appeal in UE (Nigeria) also made it clear at [36] that it expected that the factor of public value would make a difference to the outcome of immigration cases only in a relatively few instances where the positive contribution is "very significant", perhaps of the kind referred to by Lord Bridge of Harwich in Bakhtaur Singh. In*

> *Bakhtaur Singh, Lord Bridge (at page 917 C-E) referred to various examples of persons with such value, such as an essential worker in a company engaged in a successful export business or a social worker upon whom a local community depended or a scientific research worker engaged on research of public importance"*

22. In that case I note that the appellant was a nurse and had arrived in the UK with a work permit, her husband was a trained teacher and they had children. They also had extended family in the UK. At paragraph 39 Judge Gill was far from persuaded that the mere fact that an individual was a nurse and worked in an occupation where there were shortages of itself sufficient to make a difference to the outcome.

23. Professor Rees accepted that Section 117B of the Nationality Immigration and Asylum Act 2002 should be applied but pointed out that the appellant was not a burden on tax payers and that he spoke good English and was active in serving the Tamil community through the Free Church of England. He argued in relation to paragraph 117B(4) and (5) that the appellant had entered the UK lawfully and had some element of Section 3C leave. I cannot accept this latter submission. The appellant was appeal rights exhausted in 2006 and although he claims that the applications were refused on the basis of non-payment of fee no documentation to show that there had been a complaint made against any solicitor was produced. The appellant has not had 3C leave since he became appeal rights exhausted and the application was in fact made on 7 January 2013. In essence the appellant had known that he had been in the UK without leave from 2006 (following the exhaustion of his appeal rights) to 2013, that is some six years. I accept that he has been in the UK for nearly 13 years which is a considerable length of time and that he entered lawfully, but since the expiry of his visit visa in 2004 his status has been precarious, to say the least.

24. It is under Section 117B a consideration for the judge to have regard to the fact that there should be little weight attached to the private life of an appellant established when they have been in the UK on a precarious basis. The appellant came to the UK knowing that he was only a visitor and has remained subsequently on a risky basis which has to be precarious.

25. I accept that there is no authoritative decision or specific definition regarding the status of 'precarious' and I reject the proposition that unless someone has indefinite leave to remain or is a British citizen that they have a precarious status. That implies risky status when in fact those with leave to remain do not have a 'risky status' such that they are liable to be removed at any point during the validity of their leave unless of course there is a problem with adherence to any conditions.

26. That said I accept the appellant can speak English and that he is not a burden on public funds which is to his credit.

27. It was put to me that he was irreplaceable because of the shortage of Tamil preachers and the fact that his case was unique, and indeed that he was more unique than a nurse. I cannot accept this. As indicated by the Reverend Wilson services can be interpreted and although this is not necessarily a totally effective way of

communicating with a congregation. I appreciate his contribution from the written evidence given by Bishop Paul Hunt who considered that his removal would seriously damage the Tamil community and "that the appellant was very effective integrating the Tamil community with the other local communities in an area that is renowned for difficult race relations". That said the appellant is not directly employed by the church and indeed relies on charitable donations from the community. The church has known that he only has a voluntary role. I have taken into account the letters of support for the appellant but I do not find that he has a skill which is any more elevated than a nurse and which Judge Gill in **Oludoyi** found did not contribute to one of those rare cases which would outweigh the public interest or removal.

28. I take note of **UE v Secretary of State [2010] EWCA Civ 975**

> *"36. I would, however, before concluding, emphasise that, while this factor of public value can be relevant in the way which I have described, I would expect it to make a difference to the outcome of immigration cases only in a relatively few instances where the positive contribution to this country is very significant, perhaps of the kind referred to by Lord Bridge in Bakhtaur Singh. The main element in the public interest will normally consist of the need to maintain a firm policy of immigration control, and little will go to undermine that. It will be unusual for the loss of benefit to the community to tip the scales in an applicant's favour, but of course all will depend upon the detailed facts which exist in the individual case and in particular on the extent of the interference with his private and/or family life."*

29. I can accept that the appellant has preached all over London and in various parts of the UK but during that preaching the appellant has known that he was here unlawfully and the church's reliance on him must have been during a time when it was known that he has was working as an overstayer (although I accept he was not in direct employment and he relied on donations). If that is not the case, he has not been entirely candid with the church. The requirement is that there should be a balancing exercise and that the decision should be proportionate to the legitimate aim.

30. Further to Section 117 "the public interest question" means the question of whether an interference with a person's right to respect for private and family life is justified under Article 8(2). As I have set out above, I have to consider the weight to be given to the maintenance of the effective immigration control and the weight to be given to the individual's private life. I accept that the matters relied on here by way of contribution to the community are capable in principle of affecting the weight to be given to the maintenance of effective immigration control but it is not possible to ignore that for the last six years the appellant has always known that he has developed his private life on a very risky basis.

31. Not least I note that the appellant has not claimed that he has a family life in the UK (he lives with his wife's relatives). Indeed his wife and child remain in India and that must be a factor to be taken into account. The appellant has no extended family of

his own in the UK although I accept that he has integrated into the church and assists his congregation. This appellant however formed this relationship with his congregation (described as in the region of 50 persons) and developed his congregation's reliance on him during a time, and certainly since 2006, when he knew he did not have any status or right to remain. His immigration history is not exemplary as he knew he had no further right to remain after 2006.

32. I take into account all of the above and the time that the appellant has spent in the UK and the connection with the church he has developed but overall, I attach little weight to the private life that the appellant has developed.

33. Following **Huang v SSHD [2007] UKHL 11**

> *'In an article 8 case where this question is reached, the ultimate question for the appellate immigration authority is whether the refusal of leave to enter or remain, in circumstances where the life of the family cannot reasonably be expected to be enjoyed elsewhere, taking full account of all considerations weighing in favour of the refusal, prejudices the family life of the applicant in a manner sufficiently serious to amount to a breach of the fundamental right protected by article 8'.*

34. This refers to family life but I have equally applied this to the private life of the appellant. I am not persuaded that his private life cannot reasonably be expected to be enjoyed elsewhere. His evidence confirmed that he was a preacher in Chennai before he came to the United Kingdom and that is where his family are. I find that for the reasons given above the appellant the decision to refuse his leave remain is not disproportionate. There is no doubt that the appellant retains ties with his family abroad in India and should he wish it is open to him to make an application from abroad to return as a Minister of Religion.

Decision

I dismiss the appeal.

Signed Date 29th March 2015

Judge Rimington

Judge of the First-tier Tribunal