



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: IA/13328/2014

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 30<sup>th</sup> March 2015**

**Decision & Reasons Promulgated  
On 13<sup>th</sup> April 2015**

**Before**

**DEPUTY UPPER TRIBUNAL JUDGE JUSS**

**Between**

**MR PRADEEP  
(ANONYMITY ORDER NOT MADE)**

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Bhusan Kumar Sharma (LR)

For the Respondent: Ms L Kenny (HOPO)

**DECISION AND REASONS**

1. This is an appeal against the determination of First-tier Tribunal Judge Malins, promulgated on 7<sup>th</sup> November 2014, following a hearing at Hatton Cross on 6<sup>th</sup> October 2014. In the determination, the judge dismissed the appeal of Mr Pradeep. The Appellant subsequently applied for, and was granted, permission to appeal to the Upper Tribunal, and thus the matter comes before me.

**The Appellant**

2. The Appellant is a male, a citizen of India, who was born on 22<sup>nd</sup> July 1980. He appealed against a decision of the Respondent Secretary of State dated 4<sup>th</sup> March 2014, refusing him leave to remain in the UK, on the basis of his Article 8 application on grounds of a private life established by virtue of his working at The Laxmi Narayan Temple as a priest from 24<sup>th</sup> January 2012 until 22<sup>nd</sup> February 2013, as a Tier 4 Temporary Worker (Religious) Migrant under the points-based system.

### **The Judge's Findings**

3. The judge heard evidence how the Appellant provided day-to-day services in the temple for the benefit of its devotees. There was strong support from the executive committee and the president of the temple. The chairman, Mr Premchand Sondhi, also gave evidence, as did the Appellant himself. The list of duties that the Appellant performed was set out in detail by the judge at page 4 of the determination. The evidence that Mr Pradeep, the Appellant, gave was that he had been unable to apply for another visa under Tier 5 because there is a maximum period allowed which he had already completed. Prior to coming to the UK, he had been a priest in a temple in India, but also undertook private work for clients. He went on to say that, "remaining in India, are Mr Pradeep's mother, father, wife and two children. He has once visited them, since 2010" (paragraph 7). The judge also observed how the Appellant was happy to return to India. The judge quotes verbatim the evidence of the Appellant that, "when my visa expired I was happy to go back, but the temple committee were not able to find a replacement: they said as they couldn't find a replacement, should I stay otherwise the temple would have to close down" (paragraph 7). The Appellant had a wife and two children aged 7 years and 5 years in India and he missed them very much. (Paragraph 7).
4. When Mr Sondhi, the temple chairman, gave evidence, he explained that the temple had four licences for the purposes of bringing priests to the UK for services of the temple. They had used two of these licences so far. One was for the Appellant, another was for a Mr Dividi, who is also a full-time priest at the temple. The temple had now made application for a further two licences to the Entry Clearance Officer in New Delhi but these had been refused (paragraph 8). The submissions made by the respective parties were also noted by the judge. The judge observed that Mr Lumb, for the Respondent Secretary of State, submitted that the only avenue now open to the Appellant in these circumstances, had he completed the permitted Tier 5 leave, was an application under Article 8, but in relation to this, he was unable to meet the Rules as he has been in the UK for three years and not twenty, and the majority of his life is in India, where he had substantial ties.
5. Mr Sharma, appearing on behalf of the Appellant, submitted that the temple was a charitable organisation. They needed him very badly. The Appellant was providing specific services that were indispensable. If these services are not provided in accordance with the script of the book "this would bring bad luck upon the community as a whole" (see page 6, paragraph 9).

6. The judge found all the witnesses appearing before him to be credible. With respect to the Appellant he was clear that the Appellant was “a straightforward honest and credible witness and accept all his evidence”. With respect to Mr Sondhi, the judge was equally clear that he was “a witness of truth and a man anxious to serve his community to his utmost, in relation to the temple” (paragraph 11).
7. However, in applying the law, the judge held that the Appellant could not succeed under Article 8. He had only been in the UK for two and a half years. He had used up the maximum leave allowed to a Tier 5 Migrant as a temporary religious worker. The judge observed that, “the very name of the category unequivocally states that the residence is to be transitory”. The Appellant’s entire family, including his two young children are in India and that “their need for their father cannot be overstated”. The evidence by the Appellant himself was that other people could perform those functions and preside over the temple services “and he told me that he was ‘happy to go back’”. Furthermore, the temple does have a second priest also and there was no evidence of any inadequacy on his part.
8. But most critically, the judge was clear that there was no evidence that it will ultimately prove actually impossible to replace the Appellant, “given that there was another priest in place before he came and there is another there now. Furthermore, the temple has two licences remaining to enable them to make fresh appointments and more have been sought ...” (see paragraph 10(g)).
9. The judge held that the Appellant had not been able to demonstrate that there would be very significant obstacles to his integration in India. In fact the contrary was the position. His entire family was there. They would welcome him back there. He now had a new global experience and would be able to get employment. The Appellant could not come within the ambit of paragraph 276ADE(vi). Furthermore, as far as the Appellant’s private life was concerned this was developed within the temple and that  

“there was no evidence of the Appellant having private life outside the temple walls. His address is that of the temple, which appears even to supply his food. His command of English was such, that he used an interpreter at the hearing. The Appellant has unilateral private life in the UK ...”. (Paragraph 13).
10. The judge ended by saying that in this case it was the Appellant’s private life and its protection which was being considered and not the welfare of the temple community. In these circumstances it was for the Appellant to show that there were “exceptional” or “compelling” circumstances, and this the Appellant had not been able to do.
11. The appeal was dismissed.

### **Grounds of Application**

12. Extensive Grounds of Appeal were submitted by Mr Sharma to the Upper Tribunal. These are structured in terms of a “factual summary” and a “summary Grounds of Appeal” and they draw attention to established cases on Article 8 such as **Huang [2007]**, as well as **Razgar [2004]**, and

the case of **PR (Sri Lanka) [2011]**. It is unnecessary for me to set these out in full. Suffice it to say that on 8<sup>th</sup> January 2015, permission to appeal was granted by the Tribunal on the basis that the judge had failed to apply the relevant criteria in **Razgar** and to carry out the appropriate proportionality exercise.

### **Submissions**

13. At the hearing before me on 30<sup>th</sup> March 2015, Mr Sharma, appearing once again for the Appellant, relied upon his Grounds of Appeal. He said that the judge had already found at paragraph 11 of the determination that the Appellant was a “straightforward honest and credible witness” and that he had accepted all his evidence. He had also accepted the evidence of Mr Sondhi. Once it was accepted that the Appellant provided a remarkable service to the community, which was indispensable, it was a short step to say that he had developed a “private life” with that community, because the private life can be developed both within the temple in relation to the devotees that attend upon the priest, as well as outside the temple, when the priest goes out to the devotees’ homes to perform services there. Accordingly, the judge had erred in failing to give due regard to the Appellant’s private life.
14. For her part, Ms Kenney submitted that it was not relevant that the judge had found the Appellant and Mr Sondhi to be credible. The important question was whether the decision was disproportionate to the Appellant’s Article 8 rights. None had been put forward in any meaningful sense. Accordingly, the only question was whether he had significant obstacles to his integration in India and the judge found that the contrary was the position because he had a family there and a range of contacts (see paragraph 13).
15. Secondly, the very nature of the Tier 5 points-based system stay in this country was that the Appellant was here as a temporary worker (religious) migrant. The expectation always was that he would return back to India. One could not subvert the basis of the grant of a temporary stay by claiming thereafter a right to remain here on the basis of Article 8 rights. The period since the expiry of the visa had led to the Appellant acquiring rights, such as they were, in a fashion where his status was “precarious”. This would not count in his favour.
16. Third, the public interest considerations were all against the Appellant. He did not speak English as the judge found. He was happy to return back to India, as the judge also found (see paragraph 12(e)). His rights were developed specifically in the context of working as a priest, in a temporary capacity, at the temple. In these circumstances, the **Razgar** analysis would have been of no avail to the Appellant. He was bound to have failed. Any error was not a material error.
17. In reply, Mr Sharma submitted that the Appellant was a remarkable priest providing a highly important service to the community. He had private life rights created both within the temple, as well as outside it, when he was dealing with devotees coming to the temple.

**No Error of Law**

18. I am satisfied that the making of the decision by the judge did not involve the making of an error on a point of law (see Section 12(1) of TCEA 2007) such that I should set aside the decision. My reasons are as follows.
19. First and foremost, the Appellant entered the UK on the basis of the grant of leave as a Tier 5 Temporary Worker (Religious) Migrant. He did not have an expectation to remain here beyond the duration of that visa. It was perverse ordinarily to circumvent the Immigration Rules by acquiring a right to remain which is otherwise specifically restricted under the Immigration Rules. In this case, the Appellant himself was entirely happy to return back to India (see paragraph 7 at page 5 and see paragraph 12(e)). It was the temple community that required him to stay. The case, however, is not about the temple community, it is about the Appellant's own rights. If it were about the temple community, the judge was perfectly clear in concluding that there is a second priest in situ "who is competent to share the presiding duties at the temple with the Appellant". The judge found that other licences were in place to procure the entry of other priests in a lawful manner. If it was not about the temple community but about the Appellant himself, then he had to show what Article rights he had. This cannot simply be a matter of statement. It must be demonstrated.
20. Second, there was no evidence before the judge apart from the evidence of Mr Premchand Sondhi, and he did not refer to the Appellant's Article 8 rights in any meaningful sense. The Appellant himself was content to go back, and missed his two children, and his family back in India. He was, as the judge found, unable to show why his return would violate his Article 8 rights. It is well established that ordinarily it is perfectly possible to retain such rights through the modern means of communication and this must certainly be the case here where these are not his family members, but members of the community that he has served, so that any connections that he had developed in the course of his work, could be maintained through telephone, Skype, and other internet facilities. Nor, was the Appellant able to show any "exceptional" or "compelling" circumstances that took his situation outside the normal Rules of consideration. The case of **Razgar** would have been of value provided that something had been put forward on which to graft, as a question of fact, the "**Razgar** considerations". It was not. The appeal fails.

**Notice of Decision**

21. There is no material error of law in the original judge's decision. The determination shall stand.
22. No anonymity order is made.

Signed

Date

Deputy Upper Tribunal Judge Juss

7<sup>th</sup> April 2015