

IN THE UPPER TRIBUNAL

EXTEMPORE JUDGMENT GIVEN FOLLOWING HEARING

R (on the application of Singh and another) v Secretary of State  
for the Home Department IJR [2015] UKUT 00538(IAC)

Field House  
London

18 August 2015

**THE QUEEN**  
**(ON THE APPLICATION OF)**  
**MR NAIB SINGH**  
**MR RANJIT SINGH GILL**

Applicants

and

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

Respondent

**BEFORE**

**UPPER TRIBUNAL JUDGE STOREY**

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Mr M S Gill QC of Counsel, instructed by Direct Access Solicitors  
appeared on behalf of the Applicants.

Mr M Cannings of Counsel, instructed by the Government Legal  
Department appeared on behalf of the Respondent.

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**ON AN APPLICATION FOR JUDICIAL REVIEW**

**APPROVED JUDGMENT**

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JUDGE STOREY: Both applicants are citizens of India, the first applicant being aged 27 and the second aged 26. With permission both challenge a decision refusing each of them entry clearance as a Tier 5 Temporary Worker - Religious Worker under the Points-Based System (PBS). Both have been in service in India as monks or "ragi" since 2002. Their applications had been sponsored by the Nanaksar Satsang Sabha Gurdwara which serves a significant population of the British Sikh community in Southall in West London. Following a grant of permission in both cases, their applications for judicial review are heard together with the agreement of all sides.

2. The decisions challenged in both cases were made on 6 January 2014 by an Entry Clearance Officer acting as administrative reviewer in response to an application for administrative review. However, in both cases those decisions maintained earlier decisions of the Entry Clearance Officer dated 11 November 2013.

#### The administrative review context

3. It is convenient at this point to refer briefly to the submission raised, almost as a preliminary issue, by the respondent in the detailed grounds of defence even though it was not pursued by Mr Cannings before me. It was that the applicants could not succeed because the decisions they challenged were not the underlying decisions of 11 November 2013 but the administrative review decisions of 6 January 2014. It was submitted in this context that the challenges made to the latter "refer to matters that are not within the scope of administrative review". An initial difficulty with this submission is that the grounds do on their face fall within the scope of administrative review, at least going by the description of what that covers provided by the respondent. This description identifies, inter alia, an Entry

Clearance Officer's failure to consider everything submitted and failure to give adequate reasons. The applicants challenged the January 2014 decisions on both of these grounds, if not others also within the scope of administrative review. A further difficulty is that it is sufficiently clear that the January 2014 decisions are challenged for maintaining the original Entry Clearance Officer's refusal decision and the nature of such a challenge entails that the two are therefore to be read together. For these reasons I decide (whether or not strictly it is a preliminary issue or not) that the decisions under challenge do fall within the scope of judicial review.

#### Individual applications and decisions

4. It is important to keep in mind, however, that although the two applications are being heard together and do feature overlapping documentation, each applicant submitted an individual application, each was interviewed separately and each received an individual decision and an individual administrative review decision.

#### The first applicant

5. In the case of the first applicant, the Entry Clearance Officer in the 11 November 2013 refusal decision noted that he had applied for an entry clearance in 2012 and he had said at interview that a representative of the Gurdwara in Southall had attended the Gurdwara in Delhi and observed him playing the Tabla (a musical instrument) and decided to inform the senior priest about a position in the Southall Gurdwara. The Entry Clearance Officer noted that the first applicant was unaware how much he would be paid; that he had not spoken to anyone with regards to the position himself and it was all arranged by the senior priest in the Gurdwara (he had not seen the job advertisement himself), that he was unaware of the

wages; and that he knew accommodation was provided but could not provide specific details.

6. The Entry Clearance Officer's reasons for refusal were stated as being: that he did not find it credible that someone who had applied for and secured a job in another country would not have discussed the salary, building accommodation and requirements; that although his certificate of sponsorship stated that he would be paid £6.50 an hour he said in interview his salary had not been specified; and that despite the job advertisement stating that the Gurdwara in Southall required a priest for prayers and baptising and someone to participate in Kirtan (devotional music), he had stated he only played the Tabla, that he could recite prayers but his main role was to play the Tabla and he had not read the job advertisement.
7. The Entry Clearance Officer administrative reviewer in the letter of 6 January 2014 stated that:

"I note you have stated that you only play the tabla. However, the role requests more skills and duties that you do not have. Therefore it is not accepted that in the interview you had the knowledge or responses to demonstrate that you would genuinely take up this role."

#### The second applicant

8. In respect of the second applicant, the Entry Clearance Officer's decision stated that he was unaware of how much he would be paid; he said in interview his salary had not been specified whereas his certificate of sponsorship specified £6.50 per hour; that he had said he had not seen the job advertisement; and that he knew accommodation would be provided but could not provide specific details.
9. The subsequent administrative reviewer decision stated that:

"Whilst it is noted that the officials of the management committee had provided supporting letters it is your intentions that are paramount. Given that you knew very little regarding your living arrangements and salary, that in the UK your intentions are questionable, in the round it is not accepted that in the interview you had the knowledge or responses to demonstrate that you would genuinely take up this role."

10. Both the applicants submitted with their applications supporting letters from the president of the Southall Gurdwara and the general secretary of the Nanaksar Satsang Sabha in Pune in India. In the judicial review bundles there was additional evidence including notes of interview prepared by or on behalf of the applicants. It was pointed out that the applicants had both been granted points by the Entry Clearance Officer for the certificate of sponsorship and for maintenance. The judicial review grounds pointed out that the applicants had left their family homes and lived in the Gurdwara in Delhi from a young age and did not have dealings with families or connections with economic life outside and they had been selected by the head priest.

#### Grounds in common

11. The grounds and joint skeleton argument read together raise a number of points applicable to both applicants which I will proceed to reduce to their essentials, not necessarily in the order in which they were advanced.

#### Religious worker category

12. Two points are taken in relation to the nature of the category under which the applicants applied. It is said first of all that the respondent erroneously assumed that the applicants were applying for a job, thereby failing to recognise that

they were not applying for a job in the normal sense. It is also said that the respondent wrongly equated a religious person who had a calling and who has given up a material lifestyle with a worker in the ordinary sense.

13. In relation to those two linked grounds, my conclusion is that there was no Wednesbury unreasonableness on the part of the respondent. My principal reason for so concluding has to do with the nature of the Immigration Rules under which both applicants applied. They are of course rules laid down by the Secretary of State and approved by Parliament. By these rules she has determined that since 27 November 2008 those wishing to come for the purposes of performing religious work in places of worship in the UK must now apply under Tier 5 (Temporary Workers) Migrants of the PBS within the subcategory "religious worker". By paragraph 245ZO(i) the Entry Clearance Officer must be satisfied that the applicant "genuinely intends to undertake, and is capable of undertaking, the role recorded in the Certificate of Sponsorship Checking Service". The Secretary of State has also specified that a form of application has to be completed, personally signed by the applicant, furnishing certain details.
14. It is not suggested in terms by the grounds or by Mr Gill that these Rules are ultra vires or at a general level offend public law norms and, in any event, were I asked to decide the matter I would find that they are entirely lawful.
15. Whilst it can be expected that in operating Tier 5 the respondent is sensitive to the specific context of a religious worker and understands that applicants may well include those who do not engage with the material world, the requirements they lay down are ones that all applicants can reasonably be expected to meet. Under the rules the onus is on the applicant to show he meets the relevant requirements. Thus, if

a person applies for such work he can reasonably be expected to apprise himself of those requirements and be able to demonstrate genuine intentions and capability.

16. To the extent that the argument raised by the sponsoring Gurdwara on behalf of the applicants is that the applicants are unworldly, then it is pertinent to note that under the certificate of sponsorship system the sponsor takes on a number of legal obligations (including payment of the minimum wage) and is also required under the Home Office Tier 5 (Temporary Worker-Religious Worker) visa guidance to give the applicant the information they use on their certificate about the applicant's job, "eg your working hours". A certificate of sponsorship is a unique reference number that holds information about the job the applicant will do and his personal details. The guide states that "Your sponsor will give you the certificate of sponsorship". In this context, if a sponsor of a religious worker has any reason to think that because of the restricted environment in which those they wish to sponsor have lived, that they will not know much about the job they are asking to undertake, it must be for that sponsor to take active steps to ensure that such applicants are apprised of the requirements of the rules and informed of what the sponsor has stated about the work they will undertake and their capabilities.

17. I note that in this case it is part of the submissions that both applications for entry clearance were very much at the initiative of the Southall Gurdwara. The General Secretary's letter states that "it was in fact our sister organisation in London who requested [the applicants'] presence under a permit-free voluntary contract of employment...". The sincerity of the Puna and London organisations' intentions is not in doubt; they wish to ensure for perfectly valid reasons that the London Gurdwara can perform important religious services

in their local community. However, by the same token the London sponsors must have been aware that applicants were being put forward under the Tier 5 scheme and that under that scheme they were required to fill in forms in the usual way and would likely be subject to an interview; and that therefore it was important for the sponsoring organisation to put them in a position where they would be able to address satisfactorily questions going to the degree of knowledge they had of the religious worker role that they were going to perform.

18. This observation I hope deals with the contention that the respondent unreasonably expected the applicants to demonstrate knowledge of salary, accommodation etc. Put another way round, no applicant can expect exemption from the core requirements set down in the Rules going to intention and capability.
19. Turning to the second limb of the argument relating to the nature of the work, for much the same reasons as I have just given, I do not see that the respondent equated a religious worker who has given up a material lifestyle with a worker in the ordinary sense. The respondent simply imposed requirements that all - worldly or unworldly - religious workers are required, and can reasonably be expected, to meet.
20. The respondent is also said to have erred in failing to have regard to the issue of the genuineness of the applicants as religious workers and also in failing to assess whether it was necessary to take into account the evidence and views of those who trained them as set out in the supporting letters that were sent with the application. I will treat these as in fact two separate grounds, one relating to the genuineness of intentions and the other relating to the issue of whether the respondent took into account relevant evidence.



### The genuineness requirement

21. Dealing with the genuineness of intentions, as I think is recognised in other parts of the applicants' submissions, the decision was clearly made with express reference to paragraph 245Z0(i), which (as already noted) requires the Entry Clearance Officer to be satisfied that the applicant genuinely intends to undertake and is capable of undertaking the role recorded by the certificate of sponsorship checking service.
22. The questions the applicants were asked were clearly relevant to the establishment of this requirement. Further, in the compulsory "self-assessment" Points Based System Form that both applicants had completed, in reply to the question "How much will you earn?" there had been written £11,557. Despite being able to give this specific detail in this form personally signed by each of them, the applicants at interview said they did not know how much they would be paid. It was entirely within the range of reasonable responses for the Entry Clearance Officer to attach significant weight to that discrepancy.
23. It must also be borne in mind that in relation to both applicants the sponsor had circulated a job description in the form of a job advertisement in a newspaper stating that the Gurdwara in Southall required a priest for prayers and baptising and required someone to participate in Kirtan - a job description that clearly went beyond the performance of Kirtan (and playing the Tabla as part of that).

### Taking into account relevant evidence

24. Turning to the allegation that the respondent unreasonably failed to take account of relevant evidence, both administrative reviewer letters refer to the supporting documents having been taken into account. There has been some

reference to whether post-decision evidence can properly be taken into account in this context. However, from the chronology, it is at least clear that the administrative reviewer (whose decision of 6 January 2014 is the one which is challenged in the claim form) had before him or her grounds that were submitted for administrative review. The latter reminded the Entry Clearance Officer of the contents of earlier documents that had been submitted on behalf of the applicants. There is no reason to consider that reminder went unheeded.

25. It is also clear from the chronology that the Entry Clearance Officer concerned with these two applicants sought to discuss their cases with the two relevant officials of the Gurdwara in Southall, which in itself is an indication that the Entry Clearance Officer in question was aware of the background information, certainly prior to the administrative review decision.

26. It is contended that the respondent effectively failed to take into account the contents of the two letters, one from the monastery in Pune and one from the Southall Gurdwara giving specific details of the Nanaksar Satsung Sabha organisation, its provision of places of worship, the spiritual aspects and prayer functions performed by monks and administered by local community members for religious and moral education. It is explained in these letters that monks/preachers normally receive their training from India where they serve an apprenticeship in the Nanaksar discipline and the London letter states that "Those who serve at our Gurdwara have been selected for a position from the various Nanaksar Gurdwara in India, due to their dedication, ability, experience and achievements within the Nanaksar organisation in India". It is also emphasised that the monks in India are not paid wages and are provided with accommodation, food, clothing and all

expense required to meet their needs. Medical care, to-and-fro travel, contingencies and other incidental charges and expenses are defrayed by the organisation. However, neither of these letters identified the applicants by name or individually identified the extent or nature of their capabilities. Their contents did not require the decision maker to comment specifically on them.

27. The grounds appear at least in one point to assert that the respondent erred not only in failing to take account of this documentary evidence but in failing to treat it as determinative because the Gurdwara in Southall had "vetted" the applicants. That assertion bivouacs far beyond the scope of reasonable argument. If accepted it would amount to the assertion that there should be an immigration rule that permits the Southall Gurdwara to essentially pick the religious worker for itself, rather than for the Entry Clearance Officer to do so by operation of the Rules approved by Parliament.

#### Duty of inquiry

28. It is contended that the respondent failed to perform the duty of enquiry to which she is subject and it is said that the Entry Clearance Officer should have put his or her own doubts to the applicants regarding their intentions.
29. First of all, whilst I would accept (and Mr Cannings accepted on behalf of the respondent) that there is a general duty on the respondent to make enquiries relevant to the decision, the respondent in this case did make enquiries of the sponsors in London and did not confine himself (or herself) to the interview.
30. Further, the applicants had professed no knowledge of certain matters relating to the wage that was to be paid for the job

and details of accommodation; hence, in light of their answers, it would not have been pertinent to make further enquiries on those matters.

31. Secondly, in general terms, whilst there was a general duty of enquiry, that does not mean that the onus under the Rules rests on the Entry Clearance Officer to prove that the applicant does not meet the requirements. The burden of proof under the Rules remains on the applicants to show that they meet the requirements of the Rules on the balance of probabilities.
32. In regard to Mr Gill's arguments that the respondent should have undertaken further and better inquiries, I would simply make the point that public law is not a counsel of perfection and whilst there were some shortcomings in the Entry Clearance Officer's decision letters, both the original letters of November 2013 and the administrative reviewer letters, such shortcomings have not been shown to be sufficient to render the decisions Wednesbury unreasonable.

#### Taking into account irrelevant factors

33. It has been suggested by Mr Gill that there was also a taking into account of irrelevant factors, and he made reference in this regard to the requirement that the applicants show they had details of the accommodation. In my judgement the Entry Clearance Officer was entitled in order to assess intentions and capability to enquire into the applicants' state of knowledge regarding such matters as the pay that was to be paid for the job under the requirements of the Tier 5 scheme and the nature of the accommodation.
34. This links back to a point raised earlier, namely that in my judgement there is a duty on the part of the sponsor in this type of case to ensure that the applicants are properly

informed of what is expected of them by way of knowledge to be shown at an interview.

Grounds specific to the first applicant

35. I turn to consider the specific ground that relates to the first applicant. It is submitted that the respondent irrationally concluded that he had said he only played the Tabla, whereas the applicant in his interview was simply describing what he does in India. It is argued that in reply to question 44 the first applicant had confirmed that he had the skills mentioned in the advertisement and further that the evidence from the Nanaksar Satsung Sabha organisation was that the monks acquire a range of skills in the course of their training and it is not in dispute that both of these applicants had been in service as monks since 2002.
36. It is also noted that the applicant's own record of interview records him saying that he was going to do Kirtan and that his main duty is Tabla, not his sole duty. However, even assuming that the applicant was simply describing what he does, the Entry Clearance Officer was entitled to consider what light that shed on his capability and intentions to do the specific work in the UK and it is clear, as Mr Gill himself acknowledged, that the Entry Clearance Officer did at least in certain questions seek to elicit from the applicant what he thought he would be doing on arrival in Southall.
37. Secondly, leaving aside the fact that the applicant himself said that he had not read the job advertisement, the advertisement, as I have already mentioned, did refer not just to playing the Tabla or other requirements of Kirtan but other duties and the answer to question 44 cannot be read as a declaration of intention or capability to perform those other duties.

38. Further the respondent was not obliged to accept the appellant's unparticularised evidence as set out in the background letters as to what the generality of Sikh monks do. I do accept that these letters sought to describe what happened to the entire cadre of monks (ragi) who undergo training from an early age in the Gurdwara in India, but it remains that they did not identify any individual features relating to the two applicants.
39. In regard to the interview notes, the respondent originally took issue with the fact that there was no statement of truth. Although Mr Cannings has not mentioned it, I do now have the statement of truth and I do not understand the respondent to take any point about the formal state of that evidence. That said, I do not consider that the notes furnished identify any matter that the Entry Clearance Officer failed to take into account.
40. For the above reasons I refuse both these applications.
41. I refuse permission to appeal to both applicants.
42. Costs to be assessed as agreed and if not agreed written submissions to be made within seven days from the written judgment of the Tribunal.

Upper Tribunal Judge Storey

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