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Heard at Field House

AR (Visaginas Church)Lithuania CG [2003] UKIAT 00024

Date: 18 June 2003

IMMIGRATION APPEAL TRIBUNAL

Date Determination notified:

09.07.03

Before :

Mr G Warr (Chairman)
Miss K Eshun
Dr H H Storey

Between

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

DETERMINATION AND REASONS

1. The appellant appeals the determination of an Adjudicator (Mr J Nicholson) who dismissed his appeal against the decision of the Secretary of State to issue removal directions to Lithuania on 21 May 2001.

2. The appellant was represented by Ms F Webber of Counsel instructed by A S Law, solicitors. The Secretary of State was represented by Mr S Wilken, of Counsel, instructed by the Treasury Solicitor.

3. The appellant is one of over a hundred members of the Church of Jesus Christ of Visaginas, Lithuania, who are in the United Kingdom. The congregation arrived in this country in a number of small groups in 2000. The Adjudicator heard this appeal together with a number of others. All were rejected. Permission to appeal was granted in this case but refused in others. There are, we understand, pending applications for judicial review of the refusal of permission to appeal to the Tribunal outstanding. Although we are only concerned with the appeal before us, it was agreed by Counsel that the decision bound all the appellants who are clients of A S Law and also bound the Home Office.

4. The Church of Jesus Christ is a small Protestant Evangelical Church founded in Lithuania in 1993 by Pastor Teimuraz Edzhibiya. He also founded a church in Latvia where he had applied for Latvian residence on the basis of his marriage to a Latvian citizen. That application was refused and when he was deported he and his wife moved to Visaginas. Unfortunately in his absence the church in Latvia fell into decline and it closed in 1994 – a circumstance on which Ms Webber places reliance. It is said that the presence of the Pastor is of extreme importance for the survival of the church.

5. Apart from these two churches it is also right to mention that the appellant had founded a Pentecostal Church in Georgia in 1989-1990. He visited that church approximately every eighteen months to two years staying for periods of about two months while he was running the church in Lithuania.

6. During the periods of his absence the church in Lithuania continued to function with services conducted by the Deacon. In 1999 the Pastor was refused re-entry to Lithuania. He went to Latvia for some months and the congregation had to meet in a forest on the border between the two countries. Eventually virtually the whole congregation travelled to Poland and sought advice on resettlement in the UK, Canada and the USA. Poland was not considered suitable as it was a predominantly Roman Catholic country. An application was made in Sweden and rejected. An application in Germany was also refused. It proved not economically practical to travel either to the USA or Canada and eventually the Pastor came to the United Kingdom at approximately the same time as the appellant in 2000.

7. The congregation is split into two groups in the United Kingdom. The appellant before us and the other appellants who are clients of A S Law live in Liverpool where the Pastor lives also. Another group is based in the north east where the Deacon lives. The Adjudicator recorded that the Pastor saw members when he could and tapes of services in Liverpool were sent to the group based in Newcastle.

8. The Pastor applied for asylum in his own right but this application was refused by an Adjudicator on 7 March 2002. His appeal remains outstanding, we understand, before the Tribunal. It was and remains the position that the congregation would leave the United Kingdom if the Pastor were to be deported. They would not wish to remain in this country without him and would use their best endeavours to join him wherever he went – see paragraph 14(xiii) of the determination. The Adjudicator set out his factual analysis as follows in paragraph 16 of the determination:

"16. My analysis of the evidence before me is as follows:

(i) I accept that pastor Edzhibiya originates from Georgia; that he founded a church in Djavare; that he studied theology from 1991 to 1992 in Latvia; that he subsequently founded the Church of Jesus Christ of Visaginas in Lithuania; and that after he was deported from Latvia he lived in Lithuania from 1993 to 1999. I accept that, during that time, the Church of Jesus Christ of Visaginas expanded to about 125 members. The evidence indicates that Pastor Edzhibiya periodically went back to Georgia to visit the Church of Djavare and in his absence services at the Church of Jesus Christ of Visaginas continued under the auspices of the Deacon. The same applied after September 1999 when the pastor was refused re-entry to Lithuania.

(ii) There is some question as to what the Deacon could or could not do in relation to the church. The evidence of Pastor Edzhibiya in June 2000 indicates that, in practice, he led prayers and gave sermons. It appears that he could have been authorised by Pastor Edzhibiya to marry, bury people or baptise them but there is no evidence that he actually carried out these functions in practice. I accept that he did not perform Holy Communion, although in the pastor's own words 'he could have done if he wished' because the pastor 'let him do everything'. I bear in mind that, according to the church's charter, the Deacon is required to be 'full of the spirit and wisdom; honoured by other people; sincere and conscientious.' He is described in that charter as a servant of the church whose job it is to help the pastor, to serve the needs of church members, to teach the church members the truth of God and to look after the economic activities of the church. I accept that, in practice, the pastor does not

perceive the Deacon to be a holy man 'touched by God' or a suitable successor and I accept the evidence of the congregation that the Deacon's services are not particularly inspirational – at least in relative terms when compared with the services conducted by the pastor himself. I accept that church services held by the Deacon in the absence of the pastor are regarded as of "secondary value" by the congregation.

(iii) I accept that the church in Visaginas was criticised by the press and TV. I do so because there are translations of various TV programmes and documents into English which bear this out. In particular, there appears to have been a concern locally that a number of church members were employed at a nuclear reactor and, (as the IAT said in the cases of Balickij and Litvinova) that 'they would be persuaded to wreak havoc. A charismatic leader whose dictates are followed to the letter could cause much trouble particularly when the church is fundamentalist in nature and expresses belief in hell and damnation and the eschatological passages in the bible.'

(iv) I accept the evidence of Aleksandr Stepaniuk that he was questioned by the Lithuanian authorities about the pastor and members of the congregation. There is a slight discrepancy in his use of words as between his interview and his written statement, in the latter, he describe this as an "interrogation". I do not think that the differences are material. He, at least, appears to have found the experience intimidating. I am not persuaded, however, that there was anything 'malicious' or unduly oppressive about this questioning. I have little doubt that, if rumours were abounding in and around Sellafield that members of a small evangelical church might seek to destroy the nuclear processing plant there, then the British Nuclear Police would undertake some sort of investigation and church members would be similarly 'interrogated'. The reality, of course, is that none of the members of this congregation were actually arrested or charged in connection with any offence.

(v) I accept that, nonetheless, the pastor was refused re-entry into Lithuania in 1999. Although I acknowledge that members of the congregation believe that the motive behind this was to close their church, this is not borne out by the evidence.

The reality is that the church was not closed. It was a registered church and in practice church services continued to be held. No action was taken by the Lithuanian authorities to prevent church members from visiting the pastor in Latvia or to prevent them from communicating with him altogether. Whilst I am not bound by the IAT decision in Balickij and Litvinova I nonetheless endorse a number of their findings. In particular I am not persuaded that the exclusion of the pastor was an act of bad faith in terms of the continuance of this church.

(vi) I accept, as I have indicated, that members of the congregation continued to meet the pastor in Latvia and that they subsequently followed him to Poland and later to this country. The evidence indicates that their motives for coming here are genuine – in as much as they have come here to be with their pastor. They are not here for economic purposes and I am perfectly satisfied that, if Pastor Edzhibiya is removed from this country, they would leave the United Kingdom and seek to follow him wherever he goes. Clearly this congregation are prepared to go to extraordinary lengths to be with him and, as Special Adjudicator Mr Frankland said in Balickij and Litvinova, this last piece of evidence revealing the 'strict adherence of members to their pastor' suggests that the church is a sect. I acknowledge that the appellants themselves genuinely fear for the future of their church in their pastor's absence although that does not, of course, necessarily mean that their church would close without him."

9. The Adjudicator dismissed the asylum appeal for reasons which are set out in paragraphs 17 to 19 of the determination. The application on asylum grounds is not pursued before us.

10. It was again argued before the Adjudicator but not before us that the appellant's removal would involve a breach of Article 3 of the European Convention on Human Rights. The Adjudicator concentrated on Article 9 of the European Convention which is as follows:

"Freedom of Thought, Conscience and Religion

1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to

manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest ones religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interest of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

11. In paragraph 26(ii) the Adjudicator concluded that the rights of the appellants to practice their religion with their Pastor and receive guidance from him was part and parcel of the manifestation of their religion as was their wish to manifest that religion in a community with others who shared that faith. The Adjudicator records that the Secretary of State's representative did not seek to dispute this and accordingly the Adjudicator concluded that a right under Article 9 was engaged. He further accepted that removal from the United Kingdom was a limitation on the appellant's freedom to manifest his religion because the Pastor remained in the United Kingdom and because the appellant would be removed to Lithuania where the Pastor could not go. The Adjudicator remarked that the effect of removal upon the appellant's wish to worship in a community with others who shared that faith was less stark as many other members of the congregation were likely to be removed at or about the same time as the appellant.

12. The Adjudicator sets out his conclusions on proportionality in paragraph 26(iv) and (vi) of his determination. Although Ms Webber accepts that for the most part the Adjudicator directed himself properly in all respects, she makes one criticism which we shall come to about his approach and also she criticises the inferences drawn by the Adjudicator from the facts found. The relevant extract from the determination reads as follows:

"(iv) *Proportionality:* The issues before me, therefore, are whether that limitation is one prescribed by law and whether it is one that is necessary in a democratic society for the protection of public order. The decision to remove the appellant is clearly one that is prescribed by law and it pursues a legitimate aim in the control of public order through immigration. I have to decide whether it is one that is proportionate. In this respect, I bear in mind from the outset that the European Court of Human Rights has held that freedom of thought, conscience and religion is one of the foundations of a democratic society within the meaning of the Convention. The pluralism, which is in dissociable from a democratic society (and) which has been clearly won

over centuries, depends upon it. (see **Serif v Greece no.38178/97**). I also bear in mind section 13 of the Human Rights Act which requires me to have particular regard to the affect of the decision on the Church of Jesus Christ of Visaginas and I also bear in mind that there is a positive obligation on the State to ensure the peaceful enjoyment of rights guaranteed by Article 9 (see **Otto-Preminger-Institute v Austria (1994) 19EHRR 34).** Mr Simm argued that the Secretary of State's decision was not proportionate because the Pastor's presence and guidance was so fundamental to the spiritual life of these appellants that without it that spiritual life could not be fulfilled. He argued that, if the appellants were to be removed from their Pastor, their church would come to an end. For my part, I accept that the Pastor's absence would be keenly felt by each and every member of his congregation. It will undoubtedly test their spiritual commitment. It will affect the quality of their worship and the richness of their spiritual life. However, notwithstanding the concerns of the Pastor and his congregation, i am not persuaded that it will eventually lead to the collapse of their church. the reality is that they have managed the trials and tribulations that have beset them. Mr Simm argued that the lengths to which members of the church have already gone to be with their Pastor is evidence of the fact that the church cannot survive as an entity without him. However, I draw the very opposite conclusion from that evidence. It seems to me that the lengths that the members of the congregation have gone to be with their Pastor are indicative of the strength of their bond and evidence that, in the final analysis, it is unlikely to be extinguished by mere physical separation. At a more mundane level, the evidence indicates that church services continued in Lithuania in the Pastor's absence with a deacon – albeit that those services lacked inspiration when compared with services conducted by the Pastor himself. The US State Department Report on Lithuania and the facts of this case do not suggest that any of these appellants will be prevented from worshipping together in that country or from travelling overseas from time to time to visit their Pastor. (They have been able to meet together, with their Pastor as well, in other countries such as Poland and Latvia in the past and I see no reason why that should not be possible – if not in those two countries then in others – in the future, on occasions). The nature of the church may change in the Pastor's absence but, in the end, it seems to me that removal of this appellant and indeed all these appellants and/or the Pastor – is something that affects the quality and nature of the their spiritual life, their church and the way in which their religion is manifested,

rather than it existence. This has to be balanced against the undoubted importance of maintaining a sound immigration policy. Mr Simm argued that this case was a 'one off' and, to that extent, the need to maintain a sound immigration policy was not 'threatened' by it. In fact that is not entirely the case. I note that in **Omkranada and the Divine Light Zendrum v Switzerland 91981) 25 d 105** the European Commission had to consider the effect of a decision to refuse an extension of stay to Mr Omkrananda, a monk and philosopher of Indian nationality upon the Divine Light Zendrum a religious and philosophical institution, which he had established in Switzerland. I was not referred to that case at the hearing and so I simply mention it in passing. The facts of that case were essentially different to those in this appeal, but there are similarities which negate Mr Simm's argument that this appeal is inevitably a 'one off'. In any event the need to maintain a sound immigration policy is not predicated on the facts of an individual appeal.

(v) In my opinion, although removal of these appellants will undoubtedly have an effect on the quality of their worship, that is outweighed by the public interest and the needs of a sound immigration policy. The effect of removal upon these appellants has to be kept in perspective. In practice they will be able to continue their Christian religion in Lithuania. The Deacon will be able to take services. They will be able to receive tapes, videos and literature from their pastor. Of course, the richness of their worship will, as I have indicated, suffer, but I am not persuaded that it will be extinguished. The fact is that the State in this country does have the right to control the entry of non-nationals. I bear in mind that the evidence indicates that the movement of this church to the UK was, to some extent, part of a planned exercise. The majority of church members had already been to Poland and enquiries had been made of a number of countries to ascertain whether the church members could gain admission en block. I do not accept that their arrival here was the result of chance or that the Pastor came to this country without any thought as to whether his flock would follow. To that extent, although most of the appellants are not illegal entrants, they must have known that their rights to remain here were precarious. In all the circumstances, it seems to that the decision of the Secretary of State to remove them was proportionate.

(vi) I would also add that Lithuania has ratified the European Convention on Human Rights (pre decision). It is

> therefore open to members of this church to take the Pastor's exclusion from that country to the European Court of Human Rights and argue that the refusal of Lithuania to admit the Pastor breaches their human rights. When this was raised at the hearing, Mr Simm pointed out that the mere fact that an appellant had the ability in practice to take a case against his own country to the European Court of Human Rights did not automatically entitle the United Kingdom government to remove him to that country. An analogy was drawn to Article 3 of the ECHR and, in particular, the plight of some Turkish 'refugees' of Kurdish origin, who face persecution or a breach of their Article 3 rights on return to Turkey. It seems to me, however, that there is a distinction to be drawn between Article 3 and Article 9 on this point. Article 3 is absolute. There can be no justification for its breach. Article 9, on the other hand is not absolute. In the case of Article 9, the availability of a remedy in an appellant's own country goes to the issue of proportionality. It needs to be remembered that I am concerned with the decision of the Secretary of State to remove this appellant and, as the IAT said in **Kacaj**, the extent to which that decision will expose "the individual to whatever violation of his human rights is in issue". Clearly, if that is a violation of an appellant's rights under Article 3, then, because an Article 3 right is absolute, removal should not take place. However, in the case of Article 9, if in fact the Lithuanian government has acted in breach of the appellant's human rights by refusing entry to the Pastor then there is a remedy for this. it may take time to effect that remedy but, since the remedy is available, it means that the effect of removal upon the appellant's human rights need only be of a temporary nature. Conversely, if the Lithuanian government has not acted in breach of the appellant's human rights by refusing re-entry to the Pastor, it would be perverse to find that the United Kingdom government was in breach of the appellant's human rights by returning the appellant to Lithuania at this time."

13. It is also right to add that the Adjudicator considered other Articles that might be engaged and found that the appellant could not succeed under any of them, whether taken separately or collectively.

14. In the grounds of appeal complaint was made that the Adjudicator had referred to Omkaranda v Switzerland as that had not been referred to at the hearing. The case had no bearing on the matter in issue since no national security arguments had been deployed by the Secretary of State to support his decision and it was not relevant to cite it to rebut

the appellant's contention that the congregation's situation was unique in terms of UK immigration control.

15. Complaint was also made about the last sentence in paragraph 26(iv): "In any event the need to maintain a sound immigration policy is not predicated on the facts of an individual appeal." The Adjudicator had erred in confusing the legitimacy of the aim pursued with the weight to be accorded to policy considerations in the individual case.

16. The fourth ground of appeal was that the Adjudicator had drawn an inference about the church surviving which was wholly against the weight of the evidence and was impermissible.

17. Ms Webber stated that the appellant had been on drugs and improved because of the support he had from the church. There was a dependence on the Pastor. One of the churches established by the Pastor had not survived. The Deacon was not as gifted an individual as the Pastor. The church could not survive if the congregation were separated from the Pastor. Unlike the case of R (Farrakhan) v Secretary of State [2002] 3WLR 481 expulsion could destroy the exercise of the right. Reference was made to paragraphs 53 and 54 of the judgment and Ms Webber stressed the words in paragraph 54 that in exceptional circumstances the obligation to protect Convention rights could override the right of a state to control the entry into its territory or the presence within its territory of aliens.

18. The congregation were able to meet every other Sunday it appeared from the evidence of the Pastor. Miss Webber referred to her skeleton argument. She reminded us that the Commonwealth Courts had emphasised the importance of the communal aspects of religious worship: see Wang v Minister for Immigration and Multicultural Affairs [2000] FCA 1599, a decision of the Federal Court of Appeal of Australia. There was Section 13 of the Human Rights Act 1988 to consider. Ms Webber also relied on Hasan and Chaush v Bulgaria 34EHRR55 p1339 at para 62. The autonomous existence of religious communities was indispensable for pluralism in a democratic society and was at the very heart of the protection afforded by Article 9.

19. Counsel accepted that the Adjudicator had properly directed himself on his approach it was the inferences he had drawn where she submitted he had erred. He was wrong to draw the very opposite conclusion from the evidence to which the appellant's representative had drawn his attention – i.e. the length to which members of the church had gone to be with their Pastor being, it was submitted, evidence of the fact that the church could not survive as an entity without him. The

relationship was like a family relationship. The case was unusual if not unique. The Adjudicator had failed to have regard to a relevant matter, namely that one of the churches established by the Pastor had collapsed. The Adjudicator's error had affected the balancing exercise. Reference was made to paragraph 15 of Counsel's skeleton argument. The Adjudicator had given inappropriate weight to the requirements of immigration control. The interference with religious rights must be justified by the prevention of disorder and crime and the protection of the rights and freedoms of others rather than the economic wellbeing of society. The weight to be accorded to the legitimate aims pursued varied from case to case depending on whether the individual had been in flagrant breach of immigration controls or had committed criminal offences in the UK or whether the only considerations were general ones. Counsel referred us to R v Immigration Officer ex parte Quaquah [2000] INLR 196. The individual had a reason for entry which was unique or nearly so in that case – he needed to sue agents of the Secretary of State. The decision was calculated to interfere with the appellant's minimum right. It was not obvious to see how a decision to grant exceptional leave to remain would imperil immigration policy.

20. There was no danger in the instant appeal of thousands of adherents coming forward. The Adjudicator had erred in stating that immigration policy was not predicated on the facts of an individual appeal. The importance of policy would vary. Although on its own the point would not be determinative, it was argued that the Adjudicator's optimism about the future of the church was misplaced. The Adjudicator's approach to other Articles was not impeachable once it was accepted that Article 9 was engaged. The issue was a simple one.

21. Mr Wilken submitted that asylum was no longer sought and Article 3 was not engaged. It was not alleged that there would be any breach of human rights in Lithuania. The appellants had come to the United Kingdom to exercise their rights. Reliance was placed on paragraph 53 of Farrakhan:

> "The right under international law of a state to control the entry of non-nationals into its territory is one that is recognised by the Strasbourg Court. Where entry is refused or an alien is expelled for reasons which are wholly independent of the exercise by the alien of Convention rights, the fact that this carries the consequence that he cannot exercise those rights in the territory from which he is excluded will not constitute a violation of the Convention."

22. Reference was made to Stedman v United Kingdom 23EHRR CD168 and Kalac v Turkey [1999] 27EHRR 522. The findings of fact made by the Adjudicator were properly open to him and he was correct to find that the removal of the appellant was proportionate to the legitimate aim pursued. On the standard of review in this area reference was made to R (Samaroo) v Secretary of State [2001] Imm A.R. 324. The case of Quaquah was unique. There was an absence of reasoning to support the Secretary of State's decision. Reference was made to Litvinova where the Tribunal had been presided over by Mr Justice Collins.

23. Ms Webber submitted that the arguments had developed since the case of Litvinova. The Adjudicator had recognised that. The case was not governed by Ullah [2002] EWCA Civ 1856 as the appellants were in the United Kingdom and enjoyed rights here. In Stedman the appellant had been penalised for observing her religious beliefs – in this case it was argued there was a prevention of the manifestation of belief. Although the congregation was dispersed in the United Kingdom, the appellant and the other appellants who were the clients of A S Law were grouped together with the Pastor in Liverpool.

24. On the standard of review and whether the approach of the High Court was applicable to the Appellate Authority on appeal, the Court of Appeal was shortly to give a definitive ruling on the matter. It was not necessary for the Tribunal to go into the question.

25. The Tribunal raised the point about the congregation returning to Lithuania as a group. Could other circumstances be taken into account in Lithuania? It was accepted that what had happened to date was not a substantial enough interference, putting aside the question of the expulsion of the Pastor from Lithuania. Neither the actions of the authorities in Lithuania nor the actions of the populace had interfered with the appellant's rights – it was the expulsion of the Pastor.

26. At the conclusion of the submissions we reserved our determination. We are very grateful as we observed at the hearing to both Counsel for their helpful narrowing of the issues.

27. It does appear to have been accepted below that Article 9 was engaged – see paragraph 26(ii). We intend to proceed on the footing that the Adjudicator correctly directed himself in paragraph 26(i) to (iii). The key issue is the one of proportionality. On that issue too Ms Webber accepts that for the most part the Adjudicator did not misdirect himself. Although she argued in the grounds of appeal that the Adjudicator erred in making reference to Omkrananda we do

not believe that the criticism is a fair one – the Adjudicator made it clear he was just referring to the case in passing to rebut the suggestion that the case was a one-off. Miss Webber focuses on the final sentence of sub-paragraph (iv), "In any event the need to maintain a sound immigration policy is not predicated on the facts of an individual appeal."

28. We would like to make it clear that the determination as a whole is extremely thorough, clear and comprehensive. The Adjudicator's approach is throughout logical and thoughtful. It is extremely hard to find fault with it and Ms Webber conceded that for the most part she cannot. The point that the Adjudicator was trying to make was that the appeal was not necessarily a unique one. It may be that the particular sentence could have been more aptly phrased but we consider that it does not arguably undermine the otherwise sound approach of the Adjudicator to the issues before him.

29. The Adjudicator is criticised for not having taken into account a relevant consideration, namely that one of the Pastor's churches had collapsed in his absence. The Adjudicator refers to the decline and closure of the church in 1994 in paragraph 14 of his determination and we do not accept that he did not have the whole picture well in mind when he expressed his conclusions on proportionality in paragraph 26.

30. In our view, the Adjudicator was entitled to draw the conclusion from the evidence that the bond between the congregation and the Pastor was unlikely to be extinguished by mere physical separation and further that church services continued in Lithuania in the Pastor's absence albeit that those services lacked, it was said, the inspiration that the Pastor provided.

31. The Adjudicator acknowledged that the nature of the church might change in the Pastor's absence but this had to be balanced against the importance of maintaining a sound immigration policy.

32. Ms Webber submits that the Adjudicator placed too much emphasis on immigration control. In our view the Adjudicator did not err in weighing up the relevant considerations. He found that the effect on the quality of the worship of the congregation was outweighed by the public interest and the need for a sound immigration policy. The congregation would be removed, effectively, as a group and the Deacon would be able to take services. In effect, the church would be removed, without the Pastor – depending on the success or otherwise of his outstanding appeal. The Adjudicator in our view gave appropriate weight to the importance of the freedom of thought, conscience and religion in the opening part of paragraph 26(iv). He took into account section 13 of the

Human Rights Act. He took full account of the existence within the United Kingdom of a vigorous religious life. He accepted that the richness of the congregation's worship would suffer but the right would not be extinguished. He noted that the movement of the church to the United Kingdom was part of a planned exercise and he did not accept that the arrival of the congregation was the result of chance or that the Pastor had come to this country without any thought as to whether the congregation would follow. Although the appellants were not illegal entrants they must have been conscious that their rights to remain in the United Kingdom were precarious.

33. It appears to us that the Adjudicator weighed up properly all relevant considerations when he concluded that the decision of the Secretary of State to remove the appellants was proportionate. We do not believe that it can be argued that the fact that there are a small amount of individuals involved means that the requirements of immigration control can be brushed aside. The case of Quaquah was one where it was said that an agent of the state – Group 4 custodians – had breached duties that were owed to those in a detention centre. It was argued that the Secretary of State was liable for the torts committed by the Group 4 guards. In those circumstances we can understand why the High Court felt that the applicant's reasons for entry were unique or nearly so. Strong reasons were required to justify the Secretary of State's decision. There was no indication within the papers before the Court that when the discretion was being exercised the appellant's rights were recognised or taken into account. The instant appeal is in our view clearly distinguishable.

34. In Litvinova the Tribunal had not had the human rights claim before it. However, it made it clear in its conclusion that it was obvious from what had been said that the human rights claim would prima facie have no chance of success. At paragraph 11 the Tribunal had referred to information technology and video links. Presence, albeit not physical presence, could be achieved through information technology. If the church really had life a new Pastor could be groomed under the tutelage of the present Pastor. The members could continue to worship together and to put their beliefs into practise. Furthermore, there was no evidence to justify a finding even on the low standard applicable that the decision to exclude the Pastor was not justified.

35. The Adjudicator noted the Tribunal's decision but made his own decision in the light of all the material before him. He did not regard himself as bound by the remarks of the Tribunal which were, as he recognised, obiter.

36. Having heard all the arguments we are not persuaded that the Tribunal in Litvinova erred in forecasting the difficulties that

lay ahead for appellants and their advisers in a human rights appeal.

37. The Adjudicator did not underestimate the effect of the absence of the Pastor on the congregation. His absence would be keenly felt by each and every one of them. It would test their spiritual commitment. The Adjudicator cannot be criticised for giving too little weight to the serious issues at stake for the future of the church. Nor can he be criticised for giving too much weight to the question of immigration control. Neither side was avid for us to go into the question of whether the approach of the High Court to proportionality issues as set out in Samaroo was the appropriate course for the appellate authority. That matter, Ms Webber told us, was shortly to be resolved by the Court of Appeal. We agree that it is not necessary to go into the issue for the purposes of this appeal.

38. The adjudicator balanced all relevant issues correctly and did not misdirect himself on any material point in our view. Every argument that could be deployed on the appellant's behalf has been deployed. This appeal must fail.

39. The appeal is dismissed and the decision of the Adjudicator is affirmed.

G Warr
Vice President