

THE RAJ, 21 KINGS ROAD, BRENTWOOD CM14 4DJ

# APPENDIX 2

## APPLICATION FORM

### Supplementary Documentary Information

**REDACTED**

*Application to Review the Premises Licence*

*Peter Jones on behalf of Essex Police*

24 JANUARY 2019





**Premises Licence Review**

**The Raj**

**21 Kings Road, Brentwood, CM14 4DJ**

**Supplementary documentary information in support of review.**

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**Application for the review of a premises licence or club premises certificate under the Licensing Act 2003**

**PLEASE READ THE FOLLOWING INSTRUCTIONS FIRST**

Before completing this form please read the guidance notes at the end of the form. If you are completing this form by hand please write legibly in block capitals. In all cases ensure that your answers are inside the boxes and written in black ink. Use additional sheets if necessary.

You may wish to keep a copy of the completed form for your records.

I Peter JONES 7706, Licensing Officer, Essex Police

*(Insert name of applicant)*

**apply for the review of a premises licence under section 51 the Licensing Act 2003 for the premises described in Part 1 below**

**Part 1 – Premises or club premises details**

<b>Postal address of premises or, if none, ordnance survey map reference or description</b>  The Raj 21 Kings Road	
<b>Post town</b> Brentwood	<b>Post code (if known)</b> CM14 4DJ

<b>Name of premises licence holder or club holding club premises certificate (if known)</b> Badsha MIAH
------------------------------------------------------------------------------------------------------------

<b>Number of premises licence or club premises certificate (if known)</b> PRM_0196_000
-------------------------------------------------------------------------------------------

**Part 2 - Applicant details**

I am

Please tick ✓ yes

- |                                                                                                                                      |                                     |
|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|
| 1) an individual, body or business which is not a responsible authority (please read guidance note 1, and complete (A) or (B) below) | <input type="checkbox"/>            |
| 2) a responsible authority (please complete (C) below)                                                                               | <input checked="" type="checkbox"/> |
| 3) a member of the club to which this application relates (please complete (A) below)                                                | <input type="checkbox"/>            |

**(A) DETAILS OF INDIVIDUAL APPLICANT (fill in as applicable)**

Please tick ✓ yes

Mr  Mrs  Miss  Ms  Other title  
(for example, Rev)

**Surname**

**First names**

I am 18 years old or over

Please tick ✓ yes

**Current postal  
address if  
different from  
premises  
address**

**Post town**

**Post Code**

**Daytime contact telephone number**

**E-mail address  
(optional)**

**(B) DETAILS OF OTHER APPLICANT**

**Name and address**

**Telephone number (if any)**

**E-mail address (optional)**

**(C) DETAILS OF RESPONSIBLE AUTHORITY APPLICANT**

<b>Name and address</b>  Peter Jones on behalf of the Chief Officer of Police Essex Police Licensing Department Braintree Police Station Blyths Meadow Braintree CM7 3DJ
<b>Telephone number (if any)</b> 01245 452035
<b>E-mail address (optional)</b> Licensing.Applications@essex.pnn.police.uk

**This application to review relates to the following licensing objective(s)**

- Please tick one or more boxes ✓
- |                                         |                                     |
|-----------------------------------------|-------------------------------------|
| 1) the prevention of crime and disorder | <input checked="" type="checkbox"/> |
| 2) public safety                        | <input type="checkbox"/>            |
| 3) the prevention of public nuisance    | <input type="checkbox"/>            |
| 4) the protection of children from harm | <input type="checkbox"/>            |

**Please state the ground(s) for review (please read guidance note 2)**

The grounds for review are that the crime and disorder objective of the Licensing Act has been undermined in that Immigration Compliance and Enforcement officers of the Home Office discovered disqualified persons working illegally on the premises. The statutory crime prevention objective in the 2003 Act includes the prevention of immigration crime and the prevention of illegal working in licensed premises. In particular, employing a person who is disqualified from work by reason of their immigration status is a criminal activity which, according to the Home Office Guidance to the Licensing Act 2003, should be treated particularly seriously

**Please provide as much information as possible to support the application (please read guidance note 3)**

At 18:09 hours on Thursday, 20<sup>th</sup> November 2018 Immigration Compliance & Enforcement (ICE) officers attended the The Raj situated at 21 Kings Road, Brentwood. They exercised their powers under the Licensing Act 2003 (as amended) to enter the premises.

Upon entry a number of persons made off, but were detained by Immigration Officers. Five persons were found to have no right to work in the UK and no leave to remain in the UK; and subsequently detained.

An Illegal Working Civil Penalty Referral Notice was completed and served in respect of the illegal workers.

Essex Police will also produce further documentary or other information in support of this application ahead of the hearing and would ask the authority to take this into account as it may do under Regulation 18 of the Licensing Act 2003 (Hearings) Regulations 2005.

In accordance with paragraph 11.9 of the Statutory Guidance Essex Police may amplify its representation at the subsequent hearing.

Furthermore, in accordance with Regulation 8 of those Regulations; Essex Police confirms that its representatives will attend the hearing and additionally requests permission for a Chief Immigration Officer, Immigration Compliance and Enforcement Team, East of England), or his representative, to appear at the hearing so that they may, if necessary, assist the Authority on any matter of immigration policy, procedure or practice arising in relation to the circumstances of the enforcement activity which forms the basis of this review application.





Please tick ✓ yes

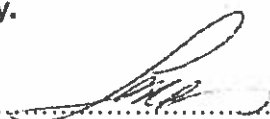
- I have sent copies of this form and enclosures to the responsible authorities and the premises licence holder or club holding the club premises certificate, as appropriate
- I understand that if I do not comply with the above requirements my application will be rejected

**IT IS AN OFFENCE, UNDER SECTION 158 OF THE LICENSING ACT 2003, TO MAKE A FALSE STATEMENT IN OR IN CONNECTION WITH THIS APPLICATION. THOSE WHO MAKE A FALSE STATEMENT MAY BE LIABLE ON SUMMARY CONVICTION TO A FINE OF ANY AMOUNT.**

**Part 3 – Signatures** (please read guidance note 4)

**Signature of applicant or applicant's solicitor or other duly authorised agent** (please read guidance note 5). If signing on behalf of the applicant please state in what capacity.

Signature



Date 05/12/2018

Capacity Licensing Officer

**Contact name (where not previously given) and postal address for correspondence associated with this application (please read guidance note 6)**

Post town

Post Code

Telephone number (if any)

If you would prefer us to correspond with you using an e-mail address your e-mail address (optional)

**Notes for Guidance**

1. A responsible authority includes the local police, fire and rescue authority and other statutory bodies which exercise specific functions in the local area.
2. The ground(s) for review must be based on one of the licensing objectives.
3. Please list any additional information or details for example dates of problems which are included in the grounds for review if available.
4. The application form must be signed.
5. An applicant's agent (for example solicitor) may sign the form on their behalf provided that they have actual authority to do so.
6. This is the address which we shall use to correspond with you about this application.

## 1.0 Outline of the Circumstances leading to the Review Application

1.1 In early October 2018, Immigration Enforcement received an allegation that 5 illegal workers were working at The Raj, 21 Kings Road, Brentwood. The allegation specified that these individuals had worked there for 2 to 3 years with 2 working front of house and 3 in the kitchen and that all lived above the restaurant.

1.2 On the 20<sup>th</sup> November 2018, Immigration Compliance and Enforcement Officers attended The Raj and entered using their powers under section 179 Licensing Act 2003.

1.3 At this location they encountered 5 persons working at the restaurant who had no leave to remain in the UK and no right to work in the UK. All 5 were subsequently detained.

Those detained were:

- Offender 1 – [REDACTED];
- Offender 2 – [REDACTED];
- Offender 3 – [REDACTED];
- Offender 4 – [REDACTED]; and
- Offender 5 – [REDACTED];

1.4 The immigration status of each of these is set out in Document 3 (Statement of Chief Immigration Officer (CIO) [REDACTED]) but in summary none has leave to remain or work in the United Kingdom:

- Offender 1 has never been granted leave to remain or work in the United Kingdom having entered the UK illegally in 2010 on a false visa and subsequently absconding in 2011 when he was served notice of impending deportation.
- Offender 2 entered the UK as a student but his visa expired in 2012, subsequently coming to notice in 2016 and absconding when he was served a notice of impending deportation. He has no leave to remain or work in the UK.
- Offender 3 entered the UK in 2008 and his leave to remain expired in 2009; since then he has been in the UK illegally and has no leave to remain or work in the UK.
- Offender 4 entered the UK on a student visa which was terminated in 2013. He was subsequently detained working illegally at The Raj on 23<sup>rd</sup> April 2014 (the same restaurant whose licence is under consideration and which at time was owned and operated by the current DPS and licence holder – Badsha MIAH). Due to be deported in 2014 he was released whilst a late application to remain was considered – he absconded. Since 2014 he has had no leave to remain or work in the UK.
- Offender 5 had entered the UK on a visa which expired in 2007. Discovered still in the UK in 2009 he was served with a notice of impending deportation and promptly absconded. He has no leave to remain or work in the UK.

- 1.5 This is not the first occasion when illegal workers have been discovered working at The Raj. On 23<sup>rd</sup> April 2014, 3 such workers were discovered at the premises and detained; indeed one of these was offender 4. The designated premises supervisor and premises licence holder at that time of that 2014 occurrence was Badsha MIAH.
- 1.6 At the time of this latest 'raid' – Badsha MIAH was still the designated premises supervisor and premises licence holder for the premises.
- 1.7 On entry to the premises a number of persons made off but were detained by Immigration Officers (IOs) positioned to the rear of the premises. All those on the premises were moved upstairs to the main restaurant area and questioned.
- 1.8 Offender 1 was discovered by IO [REDACTED] (IO1) as he tried to escape through the rear doors of the kitchen. Offender 1 was asked a series of questions during which he stated he had been working at the premises for a year washing up and helping in the kitchen with no set hours. He told IO1 that he had been employed by Badsha MIAH and instead of being paid he was just given food (see Document 4 – Statement of IO1).
- 1.9 Offender 2 was apprehended by IO [REDACTED] (IO2), when Offender 2 (with others) attempted to escape through the kitchen and out of the rear of the premises. He was questioned by IO2 concerning his work at the premises. Offender 2 stated he had been working at the restaurant for just over a week, working as a waiter. Offender 2 stated he worked 2 days a week and had obtained employment simply by attending the premises and asking the manager, Badsha MIAH, for a job. He had not been asked for any identification and was yet to be paid. He further stated that he was due to be paid £6 an hour (see Document 5 -Statement of IO2).
- 1.10 Offender 3 was interviewed (via an interpreter) by IO [REDACTED] (IO3). Though not dressed in a uniform, offender 3 detailed that he was working as a kitchen porter in the restaurant and had been working there one month. He further disclosed that he worked Monday, Tuesday, Friday, Saturday and Sunday between 5.00 p.m. and 11.00 p.m. daily (a total of 30 hours a week) for which he was paid £100 cash in hand by Badsha MIAH (who Offender 3 described as the premises owner). Offender 3 disclosed that the premises owner had been the one to give him the job and that he had not provided any identification documents for inspection. Offender 3 confirmed he had no contract of employment and was provided with accommodation upstairs in the restaurant building (see Document 6 – statement of IO3)
- 1.11 Offender 4 was discovered by IO [REDACTED] (IO4) in the kitchen of the restaurant where he was seen to be removing his jacket and tie. During questioning offender 4 disclosed that despite no leave to remain in the UK or having recourse to public funds he was taking prescribed medication provided by a UK hospital. He stated he lived upstairs in the restaurant and claimed he had been working there for 1 week. He stated that he was supposed to be paid £150 a week (though he had yet to be paid) for working 3 days a week (see Document 7 - Statement of IO4).

- 1.12 Offender 5 was located by IO [REDACTED] (IO5) in one of the bedrooms in the upstairs area of the premises. During questioning it was established that though having no recourse to public funds etc. and being illegally in the UK he had received non-emergency treatment at a UK hospitals and was in possession of prescribed drugs. IO5 asked offender 5 a series of questions; when asked how long he had worked at the premises, offender 5 stated he had worked there for about 6 months and he was employed 1 to 2 hours a day washing up dishes. When asked how much he was paid offender 5 stated he received no pay, just food and accommodation. It was confirmed that Badsha MIAH (DPS and PLH) had originally employed him and that no identification documents had been requested (see Document 8 - Statement of IO5).
- 1.13 During subsequent searches the passport of offender 1 was discovered, this contained an expired visa. Similarly the passport of offender 4 was discovered and had an expired visa.
- 1.14 Following the identification and detention of the immigration offenders, the premises licence holder and designated premises supervisor (Badsha MIAH) was seen at the bar area by IO [REDACTED] (IO6) and questioned by him (see Document 9 – Statement of IO6).
- 1.15 During questioning the Premises Licence Holder and Designated Premises Supervisor MIAH stated that he was the manager and owner of the premises and had been for some fourteen or fifteen years. Despite various offenders having stated they lived at the premises (or had been detained in bedrooms) MIAH denied that workers lived on the premises. He further claimed that only one of those encountered working at the premises (who was not an immigration offender) worked at the premises. IO6 challenged this and referred to Offender 4 who had been detained by IO4 and who was dressed in a waiter's uniform. Upon being challenged Badsha MIAH stated "Yes, he is helping me".
- 1.16 Badsha MIAH was served a Notice of Potential Liability (NOPL) for employing illegal workers. Furthermore MIAH, when asked if he had copies of any right to work checks, he produced a copy of a passport which he claimed Offender 1 had given him. However (see Document 4 - statement of IO1) Offender 1 stated that he had been given the document by MIAH himself and that it was nothing to do with Offender 1.
- 1.17 As stated by the immigration offenders; a number have been employed without being paid other than by way of food and accommodation, others have been paid cash in hand at a wage below the minimum wage and in one case the same offender has now been employed illegally by MIAH twice in 4 years.
- 1.18 Those employed were required to be paid the national Living Wage (the highest rate of the National Minimum Wage). This is currently £7.83 an hour. MIAH has demonstrated a cynical exploitation of several workers who cannot go to the

authorities to complain about their pay and living conditions and whose employment lines the pocket of their exploiters.

- 1.19 In short, this is an example of modern day slavery. Modern slavery is an umbrella term that encompasses the offences of human trafficking and slavery, servitude, forced or compulsory labour, as set out in the different anti-slavery legislation in place in the UK.
- 1.20 This flagrant disregard of employment and revenue legislation has allowed this employer to absolve himself of liability for employer pension and National Insurance contributions; meanwhile by employing the subjects and enabling them to remain in the UK this employer contributed to a continued (and unlawful) drain on the NHS by reason of the subjects' visits to GP and hospital services. It has also denied the revenue of PAYE receipts.
- 1.21 A recent Home Office report ('The Economic and Social Costs of Modern Slavery', 30.07.18) estimates that such labour exploitation costs the UK economy £318,810 per victim (made up of expenditure on protective and preventative measures, physical and emotional harms, lost time and output, health and victim services and law enforcement costs).
- 1.22 This employer has enabled 5 persons to commit the offence of working illegally, has employed illegal workers (one twice) committed criminal offences in regards failure to pay the minimum wage, contribute to an employee's pension, make employer NI contributions and made no PAYE return as regards the subjects. All is criminal behaviour by the management of the premises licensed by the Authority. Without the prospect of work, illegal immigrants would not be attracted to the UK.
- 1.23 This is not a trivial matter and the evidence points to a sustained period of employing illegal workers, in excess of some years by reference to the allegations made to the Home Office, the admissions made by some of the offenders and that one offender was first employed in 2014 and detained (along with 2 other immigration offenders) by immigration officers on these premises in the full knowledge of Badsha MIAH.

## **2.0 Reasons for Review**

- 2.1 Whether by negligence or wilful blindness five illegal workers was engaged in activity on the premises, yet it is a simple process for an employer to ascertain what documents they should check before a person is allowed to work. It is an offence to work when a person is disqualified to do so and such an offence can only be committed with the co-operation of a premises licence holder or its agents. It is also an offence to employ an illegal worker where there is reason to believe this is the case.
- 2.2 The case of *East Lindsey District Council v Hanif* (see 8.11) determined that in such circumstances, even without a prosecution, the crime prevention objective is

engaged. The statutory Guidance issued under the Licensing Act provides that certain criminal activity (in particular employing illegal workers) should be treated particularly seriously and it is envisaged that the police will use the review procedures effectively to deter such activities and crime.

2.3 Essex Police submits that for commercial reasons those engaged in the management of the premises employed illegal workers and a warning or other activity falling short of a review is inappropriate; this is why Essex Police has proceeded straight to review.

### 3.0 Outcome Sought

3.1 Essex Police asks that the premises licence is revoked. Merely remedying the existing situation (for instance by the imposition of additional conditions or a suspension) is insufficient to act as a deterrent to the licence holder and other premises' licence holders from engaging in criminal activity by employing illegal workers and facilitating disqualified immigrants to work illegally.

3.2 This submission and appended documents provide the licensing sub-committee with background arguments and information pertinent to that contention. These provide the sub-committee with a sound and defensible rationale as to why it should revoke the licence.

3.3 It is in such circumstances as this review application that a respondent may suggest that conditions are imposed which would prevent a reoccurrence of the employment of illegal workers in the future; an argument that the sub-committee should take remedial and not punitive action.

3.4 However since 2006 (with the introduction of the Immigration, Asylum and Nationality Act 2006) employers have had a duty to conduct checks to ensure employees and potential employees are not disqualified from working. Only by completing the required checks and maintaining records of such checks can an employer demonstrate a 'statutory excuse' and evade liability for a civil penalty issued by Immigration Enforcement. In order to protect themselves, reputable employers have been conducting these checks since 1996 when it first became a criminal offence to employ illegal workers.

3.5 The 2006 Act already imposes duties and responsibilities on a company or individual seeking to employ a person – whether in the licensed trade or otherwise - to conduct right to work checks.

3.6 In seeking revocation, Essex Police has considered and rejected conditions as an alternative, in part because this is specifically addressed paragraph 1.16 of the Guidance, viz:

*"(...) Licence conditions should not duplicate other statutory requirements or other duties or responsibilities placed on the employer (my emphasis) by other legislation".*

- 3.7 Conditions requiring an employer (or its agent) to undertake checks that are already mandated and where advice is readily available and clearly set out for employers, keep copies of documentation and to restrict employment until these checks are made etc. replicate the requirements of the 2006 Act and should be discounted.
- 3.8 Essex Police contends that a licence holder who has himself or through his agents negligently or deliberately failed to conduct right to work checks which have been a requirement since 2006 should not be afforded an opportunity to do so until caught and then merely be asked to do what they should have been doing already. Deterrence and not mere remedy is appropriate and is supported by case law (as set out within section 8 of this submission).
- 3.9 Respondents who fail to convince a sub-committee that the imposition of conditions to undertake proper right to work checks is a suitable alternative to a deterrent outcome often point to the option of suspension of a licence; pointing out that this may be a suitable punitive response instead which will deter others.
- 3.10 Often this will include claims that the business has 'learnt its lesson' and that since its criminal activity has been discovered it has reconsidered its position, brought in new procedures, 'parachuted in' consultants and new managers etc. On occasion it is hinted that the respondent will 'accept' a suspension as an alternative to revocation, assuaging an authority's concern that an appeal may otherwise be launched. This is not a deterrent - a suspension merely warns other potential perpetrators that they may trade illegally until caught and then suffer only a brief hiatus in carrying out licensable activity before continuing with it. The risk of being caught is low so the consequence of being caught must be stiff in order to qualify as deterrence.
- 3.11 Essex Police would counter such claims and point to the continuing changes made to both immigration law and the Guidance (paragraphs 11.26 – 11.28) which point to a requirement to send a clear message to potential illegal immigrants that UK authorities will do all they can to prevent them finding illegal employment and a similar message to employers that those employing illegal workers will face severe disruption and penalties. There are simple processes (set out in section 5 of this submission) to avoid the hire of illegal workers and the legislative thrust is in avoiding the occurrence in the first place – not remedying the situation once discovered.
- 3.12 If it were not for criminally minded or complicit employers; illegal workers would not be able to obtain a settled lifestyle and deprive legitimate workers of employment. The use of illegal labour provides an unfair competitive edge and deprives the UK economy of tax revenue. Illegal workers are often paid below the minimum wage (itself an offence) and National Insurance payments are not paid. The main draw for illegal immigration is work and low-skilled migrants are increasingly vulnerable to exploitation by criminal enterprises; finding themselves in appalling accommodation and toiling in poor working conditions for long hours for little remuneration.



3.13 A firm response to this criminal behaviour is required to ensure that the licence holder and/or its agents are not allowed to repeat the exercise and in particular, in the interests of the wider community to support responsible businesses and the jobs of both UK citizens and lawful migrants. It is also required to act as a deterrent to others who would otherwise seek to seek an unfair competitive advantage, exploit workers and deny work to the local community, evade the payment of income tax and (unlawfully) inflate their profits to the expense of others.

#### 4.0 Immigration Offences

4.1 Illegal workers are those subject to immigration control who either do not have leave to enter or remain in the UK, or who are in breach of a condition preventing them taking up the work in question. It is an employer's responsibility to be aware of their obligations and ensure they understand the immigration landscape to avoid the risk of prosecution, the imposition of a civil penalty or the revocation/suspension of their premises licence.

4.2 Since 1996 it has been unlawful to employ a person who is disqualified from employment because of their immigration status. A statutory excuse exists where the employer can demonstrate they correctly carried out document checks, i.e. that they were duped by fake or forged documents.

4.3 The Immigration Act 2016 came into force in July 2016 and its explanatory notes state that "*these offences were broadened to capture, in particular, employers who deliberately did not undertake right to work checks in order that they could not have the specific intent required to 'knowingly' employ an illegal worker*".

4.4 Since 2016 an employer may be prosecuted not only if they knew their employee was disqualified from working but also if they had reasonable cause to believe that an employee did not have the right to work: what might be described as *wilful ignorance*, where either no documents are requested or none are presented despite a request. This means an offence is committed when an employer 'ought to have known' the person did not have the right to work.

4.5 Since 2016 it has also been an offence to work when disqualified from doing so. It is obvious that without a negligent or wilfully ignorant employer, an illegal worker cannot work. Such an employer facilitates a criminal offence and Essex Police highlights this as relevant irrespective of whether a civil penalty is imposed or a prosecution launched for employing an illegal worker.

4.6 In this context, under section 3(1)(C)(i) Immigration Act 1971 (as amended by the 2016 Act) restrictions are not limited simply to employment (i.e. paid work) but now includes all work.

4.7 Thus an individual with no right to work in the UK commits offences if they undertake paid or unpaid work, paid or unpaid work placements undertaken as part of a course etc. are self-employed or engage in business or professional activity. For instance, undertaking an unpaid work trial or working in exchange for a non-

monetary reward (such as board and lodging) is working illegally and is a criminal offence committed by the worker and facilitated by the 'employer'.

## **5.0 Steps to Avoid the Employment of an Illegal Worker**

- 5.1 It is a straightforward process for any employer, no matter how small, to prevent themselves employing an illegal worker. If an employer has failed to take even the most basic steps then Essex Police contends they have chosen to remain ignorant of the immigration status of their workforce and no amount of potential imposed conditions is sufficient, in our opinion, to avoid the legitimacy of revocation in proving a deterrent to others to the employment of illegal workers.
- 5.2 The Home Office has made checklists widely available which set out what a responsible employer should ask for ahead of employing any person in order to demonstrate 'due diligence' and avoid liability for inadvertently employing an illegal worker.
- 5.3 Since April 2017 these checklists have been embedded in the statutory applications for personal licences and premises licences, the transfer of premises licences and designated premises supervisor variations.
- 5.4 The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.
- 5.5 The first link (<https://www.gov.uk/check-job-applicant-right-to-work>) details general advice, checking the documents, taking a copy of the documents, what if the job applicant can't show their documents and provides details of an employers' telephone helpline. This page has a direct link to what documents are acceptable proofs of a right to work in the UK and also allows an employer to fill out an online enquiry about a named individual they are considering offering employment to.
- 5.6 Appendix A sets the above out in some detail.

## **6.0 Relevance/Irrelevance of a Civil Penalty or Prosecution**

- 6.1 An employer found to have 'employed' an illegal worker may, dependent on culpability and the evidence available, be issued with a civil penalty or prosecuted or indeed neither.
- 6.2 Where an illegal worker is detected a civil penalty may be issued against the employer in accordance with the Home Office Code of Practice on Preventing Illegal Working (May 2014). In the case of a civil penalty the balance of probabilities test applies whereas a prosecution requires a higher burden of proof.
- 6.3 However, to issue a civil penalty under section 15 Immigration, Asylum and Nationality Act 2006 the Home Office Code of Practice requires some proof that not only was an illegal worker working at the premises but they were 'employed'. Usually this is taken as meaning the illegal worker was under a contract of service or apprenticeship, whether express or implied and whether oral or written.

- 6.4 But where an employer has not bothered with the basics of return to work checks, placed an employee on 'the books', paid the minimum wage or paid employer national insurance contributions – it becomes difficult to 'prove' the employment statement where the only evidence may be the word of an illegal worker who has since been detained or who has 'moved on'.
- 6.5 In such cases where paid employment cannot be demonstrated, a civil penalty may not be issued even where the premises licence holder or his agent has facilitated a disqualified person committing an offence under section 24B Immigration Act 1971 (as amended by Immigration Act 2016) of working illegally.
- 6.6 This does not however prevent the crime prevention objective being engaged with as the premises licence holder has nonetheless facilitated a criminal offence taking place and the lack of checks suggests that in the past (and is likely in the future) has employed illegal workers. In drawing its conclusion the sub-committee is entitled to exercise common sense and its own judgment based on the life experiences of its members. The *East Lindsey* case (see section 8) provides that action (revocation) to prevent what is likely to happen in the future is legitimate.

## 7.0 Statutory Guidance (s182 LA 2003) and the Authority's Licensing Policy

- 7.1 In order to avoid punitive action, respondents to review hearings sometimes refer to both the statutory guidance issued under section 182 Licensing Act 2003 and those parts of the Authority's own policy which replicate paragraph 11.10 of that Guidance, viz:

*Where authorised persons and responsible authorities have concerns about problems identified at premises, it is good practice for them to give licence holder's early warning of their concerns and the need for improvement, and where possible they should advise the licence or certificate holder of the steps they need to take to address those concerns.*

- 7.2 Essex Police submits that in the particular circumstances of cases where Immigration Compliance and Enforcement receive intelligence concerning the employment of illegal workers and act upon it; such warnings are inappropriate.
- 7.3 Not only would advance warning of enforcement activity prevent the detention of persons committing crimes and the securing of evidence; a warning after the event to comply with immigration legislation serves as no deterrent.
- 7.4 In particular; Essex Police submits that paragraph 11.10 of the Guidance must be read in conjunction with the more specific paragraphs relating to reviews arising in connection with crime (paras. 11.24 – 11.29).
- 7.5 *Paragraph 11.26*

*Where the licensing authority is conducting a review on the grounds that the premises have been used for criminal purposes, its role is solely to determine what steps should be taken in connection with the premises*

*licence, for the promotion of the crime prevention objective. (...). The licensing authority's duty is to take steps with a view to the promotion of the licensing objectives and the prevention of illegal working in the interests of the wider community and not those of the individual licence holder.*

- 7.6 Thus the financial hardship occasioned by the suspension or revocation of the premises licence should not sway the sub-committee but instead it should look at what is appropriate to promote the objective within the wider business and local community given *"illegal labour exploits workers, denies work to UK citizens and legal migrants and drives down wages"* (Rt. Hon James Brokenshine, Immigration Minister on the introduction of the 2016 Act).
- 7.7 In particular; the sub-committee are asked to consider (below) the cases of *R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350* and *East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway), [2016] EWHC 1265 (Admin)* where in both cases the High Court stated remedy of the harm or potential harm is not the only consideration and that deterrence is an appropriate consideration in dealing with reviews where there has been activity in connection with crime.

- 7.8 Paragraph 11.27 of the Guidance states:

*There is certain criminal activity that may arise in connection with licensed premises which should be treated particularly seriously. These are the use of the licensed premises (...) for employing a person who is disqualified from that work by reason of their immigration status in the UK.*

Essex Police would draw the sub-committee's attention to the change in wording of this paragraph following the April 2017 revision of the guidance, where the previous reference to 'knowingly employing' was removed.

- 7.9 Paragraph 11.28 of the Guidance states:

*It is envisaged that licensing authorities, the police, the Home Office (Immigration Enforcement) and other law enforcement agencies, which are responsible authorities, will use the review procedures effectively to deter such activities and crime. Where reviews arise and the licensing authority determines that the crime prevention objective is being undermined through the premises being used to further crimes, it is expected that revocation of the licence – even in the first instance – should be seriously considered.*

Essex Police considers this paragraph self-explanatory; where an enterprise employs illegal workers it is the duty of Essex Police to work with Immigration Enforcement to bring forward reviews and for the authority to consider revocation in the first instance.

- 7.10 In support of this statement; Essex Police would draw the sub-committee's attention to the *"Guidance for Licensing Authorities to Prevent Illegal Working in Licensed*

*Premises in England and Wales*" (Home Office)[April 2017] where at section 4.1 it states;

*"It is envisaged that licensing authorities, the police, Home Office (Immigration Enforcement) and other law enforcement agencies will use the review procedures effectively to deter illegal working".*

- 7.11 Since the main draw for illegal migration is work, and since low-skilled migrants are increasingly vulnerable to exploitation at the hand of criminal enterprises, the government has strengthened enforcement measures and the statutory Guidance to deter illegal workers and those that employ them.
- 7.12 Deterrence is a key element of the UK government's strategy to reduce illegal working and is supported by both the Guidance and Case Law.

## **8.0 Case Law**

8.1 Deterrence as a legitimate consideration by a licensing sub-committee has been considered before the High Court where remedial measures (such as the imposition of additional conditions) were distinguished from legitimate deterrent (punitive) measures such as revocation.

8.2 *R (Bassetlaw District Council) v Worksop Magistrates' Court; [2008] WLR (D) 350.*

This was a case where a premises had sold alcohol to under age persons and subsequently the licensing authority suspended the licence. This was overturned on appeal to the Magistrates' Court and subsequently appealed to the High Court by the authority. The premises licence holder argued that they had a policy in place for checking the age of customers but this was not a perfect policy and had not been adhered to and that rather than revoke the licence, instead stringent conditions on proof of age should instead be imposed on the licence.

8.3 Issues relevant to the case before today's sub-committee which were considered in the *Bassetlaw* judgement included whether a licensing authority was restricted to remedial action (as opposed to punitive action such as revocation); and the precedence of wider considerations than those relating to an individual holder of a premises licence when certain criminal activities (as specified in the Guidance) took place.

8.4 It specifically examined (and set aside in the case of 'certain activities') those parts of the Guidance now contained within paragraph 11.20 and 11.23, viz.

*In deciding which of these powers to invoke, it is expected that licensing authorities should so far as possible seek to establish the cause or causes of the concerns that the representations identify. The remedial action taken should generally be directed at these causes and should always be no more than an appropriate and proportionate response to address the causes of concern that instigated the review.*

*However, it will always be important that any detrimental financial impact that may result from a licensing authority's decision is appropriate and proportionate to the promotion of the licensing objectives and for the prevention of illegal working in licensed premises.*

8.5 In her judgement, Mrs Justice Slade stated (at 32.1 & 33.1 of the citation):

*"Where criminal activity is applicable, as here, wider considerations come into play and the furtherance of the licensing objective engaged includes the prevention of crime. In those circumstances, deterrence, in my judgment, is an appropriate objective and one contemplated by the guidance issued by the Secretary of State. (...) However, in my judgment deterrence is an appropriate consideration when the paragraphs specifically directed to dealing with reviews where there has been activity in connection with crime are applicable."*

8.6 Having confirmed the legitimacy of punitive measures (suspension/revocation) for offences listed in what is now contained within paragraph 11.27 of the Guidance, Mrs Justice Slade concerned herself with another aspect of the appeal – namely the imposition of conditions which were already present but not properly implemented (paragraph 34.1). In this case the appellant was suggesting that proof of age conditions (rather than revocation) could be imposed to ensure that the legal requirement not to sell alcohol to those under 18 years of age was met by him and his staff.

8.7 This has some similarity with any argument that may be put forward in the case before the sub-committee today that the imposition of conditions to check immigration status either directly or through an agency (*essentially a requirement since 2006 under the Immigration, Asylum and Immigration Act 2006*) would serve as sufficient remedy for the employment of illegal workers and negate a deterrent (suspension/revocation) being imposed by the sub-committee despite the wording of the Guidance at paragraph 11.28.

8.8 Mrs Justice Slade stated: *"The sixth new provision was acceptable identification to establish the age of a purchaser shall be a driving licence with photographs, passport or proof of age scheme card recognised by or acceptable by the licensing authority. I am told these provisions were already in place, but not properly implemented. No doubt those are perfectly sensible and appropriate provisions to be included on a licence. However it is said that the action taken on appeal being confined in effect to reiterating existing practice with a minimal addition was entirely inappropriate to meet the situation where there have been sales of alcohol to 14 year old girls"*.

8.9 Essex Police contends that in the case before the sub-committee the facts are similar. In the cited case straightforward sensible enquiries could have been made as to the age of the children and the imposition of additional conditions as a form of remedy was considered inappropriate by Mrs Justice Slade for 'those serious cases' set out in the Guidance.

8.10 In the case before the sub-committee, simple steps (set out at Appendix A) were available to prevent the employment of illegal workers – none were taken; the imposition of conditions to remedy this situation is inconsistent with the section 182 Guidance and this case citation. A negligent employer should expect revocation in the first instance.

8.11 *East Lindsey District Council v Abu Hanif (Trading as Zara's Restaurant and Takeaway)*, [2016] EWHC 1265 (Admin)

This is a recent High Court decision (published April 2016) which has similarities with the one before the sub-committee in that it related to the employment of an illegal worker and where a prosecution for such had not been instigated.

Amongst other matters it had been argued for the premises licence holder that the crime prevention objective was not engaged where a prosecution or conviction for the employment of an illegal worker was not in place. Whilst the initial hearing may have suggested several illegal workers being employed, the High Court appeal and decision related to the employment of one individual and is therefore, Essex Police would argue, indistinguishable from the matter before the sub-committee today.

8.12 The case reaffirms the principle that responsible authorities need not wait for the licensing objectives to actually be undermined; that crucially in considering whether the crime prevention objective has been engaged a prospective consideration (i.e. what is likely to happen in the future) of what is warranted is a key factor. It also reaffirmed the case of *Bassetlaw* in concluding that deterrence is a legitimate consideration of a sub-committee.

*Mr Justice Jay stated: "The question was not whether the respondent had been found guilty of criminal offences before a relevant tribunal, but whether revocation of his licence was appropriate and proportionate in the light of the salient licensing objectives, namely the prevention of crime and disorder. This requires a much broader approach to the issue than the mere identification of criminal convictions. It is in part retrospective, in as much as antecedent facts will usually impact on the statutory question, but importantly the prevention of crime and disorder requires a prospective consideration of what is warranted in the public interest, having regard to the twin considerations of prevention and deterrence. In any event, I agree with Mr Kolvin that criminal convictions are not required." (Paragraph 18)*

*Mr Justice Jay added: "Having regard in particular to the twin requirements of prevention and deterrence, there was in my judgment only one answer to this case. The respondent exploited a vulnerable individual from his community by acting in plain, albeit covert, breach of the criminal law. In my view his licence should be revoked." (Paragraph 23)*

## APPENDIX A

The first 4 'hits' on a Google search for "right to work" are links to employer checklists and information on the GOV.UK website.

The second link is to the Home Office document; "An Employer's Guide to Right to Work Checks" (published 16 May 2014 last updated 16 August 2017).

Another link provides a site (<https://www.gov.uk/employee-immigration-employment-status>) which guides an employer through the process AND allows an employer to make an online submission to the Home Office to check if the proposed employee is prohibited from working as well as providing a telephone helpline.

Specifically, the first link (<https://www.gov.uk/check-job-applicant-right-to-work>) provides as follows:

### General Advice

- You must see the applicant's original documents;
- You must check that the documents are valid with the applicant present; and
- You must make and keep copies of the documents and record the date you made the check.

### Checking the Documents

In relation to checking the documents it also adds that an employer needs to check that:

- the documents are genuine, original and unchanged and belong to the person who has given them to you;
- the dates for the applicant's right to work in the UK haven't expired;
- photos are the same across all documents and look like the applicant;
- dates of birth are the same across all documents;
- the applicant has permission to do the type of work you're offering (including any limit on the number of hours they can work);
- for students you see evidence of their study and vacation times; and
- if 2 documents give different names, the applicant has supporting documents showing why they're different, e.g. a marriage certificate or divorce decree

### Taking a copy of the documents

When you copy the documents:

- make a copy that can't be changed, e.g. a photocopy
- for passports, copy any page with the expiry date and applicant's details (e.g. nationality, date of birth and photograph) including endorsements, e.g. a work visa
- for biometric residence permits and residence cards (biometric format), copy both sides
- for all other documents you must make a complete copy



- keep copies during the applicant's employment and for 2 years after they stop working for you
- record the date the check was made

### **If the job applicant can't show their documents**

You must ask the Home Office to check your employee or potential employee's immigration employment status if one of the following applies:

- you're reasonably satisfied that they can't show you their documents because of an outstanding appeal, administrative review or application with the Home Office;
- they have an Application Registration Card; or
- they have a Certificate of Application that is less than 6 months old

Application registration cards and certificates of application must state that the work the employer is offering is permitted. Many of these documents don't allow the person to work.

The Home Office will send you a 'Positive Verification Notice' to confirm that the applicant has the right to work. You must keep this document.

### **ACCEPTABLE DOCUMENTS**

A list of acceptable documents can be found via the link to

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/441957/employers\\_guide\\_to\\_acceptable\\_right\\_to\\_work\\_documents\\_v5.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/441957/employers_guide_to_acceptable_right_to_work_documents_v5.pdf)

**RESTRICTED (when complete)**

**WITNESS STATEMENT**

(CJ Act 1967, s.9 MC Act 1980, ss.5A(3) (a) and 5B; MC Rules 1981, r.70)

URN 

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Statement of:                       .....

Age if under 18: **OVER 18** (If over 18 insert "over 18") Occupation: **CHIEF IMMIGRATION OFFICER**

This statement (consisting of 4 pages signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature ..... Date: 26 November 2018

Tick if witness evidence is visually recorded  (supply witness details on rear)

I am a Chief Immigration Officer of the Home Office Immigration Enforcement Immigration Compliance & Engagement Team East of England, based at Custom House, Viewpoint Road, Felixstowe, Suffolk IP11 3RF. I have been an Immigration Officer since April 1991 and have worked at a number of ports of entry to the UK, although my main work has been in the areas of enforcement and crime investigation. My current role is as the senior officer of the Immigration Enforcement arrest team, operating in the counties of Norfolk, Suffolk and Essex, responding to intelligence relating to alleged immigration offences in this area, liaising with local police and other law enforcement agencies and supporting other government departments, local authorities and relevant other organisations in enquiries or investigations relating to non-British nationals. As part of my duties I have responsibility for the compilation and custody of Home Office records in both written and electronic form. These records are compiled by officers and members of staff during their duties, from information which they have particular and specific knowledge of at the time of compiling, in light of the volume of records compiled and the length of time that has elapsed, they cannot reasonably be expected to have any recollection of the matters dealt with in relation to a specific record.

At the request of Essex Police Licensing Team, I have examined Home Office records relating to immigration offenders encountered during an enforcement visit conducted to the premises of "The Raj" located at 21 Kings Road, Brentwood, Essex CM14 4DJ.

Home Office records show that on 20 November 2018 Immigration Officers from this team conducted an enforcement visit to these premises to locate and arrest persons subject to immigration control who

Signature:..... Signature Witnessed by: .....

**RESTRICTED (when complete)**

Continuation of Statement of: [REDACTED] [REDACTED] .....

Page 2

were suspected of working illegally in the United Kingdom.

Home Office records show that a total of five immigration offenders were recorded as being encountered by the officers during the execution of the search warrant. They are recorded as:

**Offender 1**

[REDACTED] a Bangladeshi national born [REDACTED] who was first encountered by Immigration Officers following his arrest in Wiltshire on 04.11.2011. He stated that he'd entered the United Kingdom with a false visa valid in January 2010. He was served notification that he was an illegal entrant to the UK and was released pending documentation to remove him. He subsequently absconded from his reporting conditions and was not encountered until he was arrested on 20.11.2018 at "The Raj" when on being seen by officers, he attempted to escape. Following his arrest he stated that he was not working, merely helping out in exchange for food and accommodation. He was detained and transferred into Immigration detention facilities on the same night. He has never been granted any permission to remain or to work in the United Kingdom.

**Offender 2**

[REDACTED] a Bangladeshi national born [REDACTED] originally entered the United Kingdom on 08.04.2010 when he held a visa to study, valid until 31.12.2012. In February 2016, he sought asylum in the United Kingdom and as an overstayer was notified of his liability to removal and placed on reporting restrictions., he last reported in October 2017, shortly before his application for asylum, which had been refused, was finally determined at an appeal hearing. Having lost his appeal, nothing more was heard from him until 20.11.2018 when he was seen by officers at "The Raj" and attempted to escape, having been arrested and detained, he told officers that he'd only been at the premises working for a week, although he was found to have in his possession the front door key to the property. He was detained and transferred to immigration detention facilities the same night.

**Offender 3**

[REDACTED] a Bangladeshi national born [REDACTED] arrived in the United Kingdom in 2008 with a visa valid until 04.05.2009 after which he made no contact whatsoever with the Home Office. On 20.11.2018 he was arrested at "The Raj" in Brentwood when immigration officers entered the premises and he was one of several staff seen to attempt to escape out of the back door through the kitchen. When interviewed, he admitted to working at the Raj for approx one month as a kitchen porter, working Monday, Tuesday, Friday, Saturday, Sunday between the hours of 1700 until 2300. He stated that he was paid £100 per week by Badsha MIAH, whom he described as the restaurant manager and that his accommodation is also included as he lives above the restaurant in a room with another two individuals. He provided no documentary evidence before being given the job by

Signature: ..... Signature Witnessed by: .....  
2004/05(1)

**RESTRICTED (when complete)**

Continuation of Statement of: [REDACTED] [REDACTED] .....

Page 3

Badsha MIAH and has been given no contract. He stated his work clothes were provided by the boss and he then signed the officer's notebook to confirm the accuracy of his statements. He was detained and transferred to immigration detention facilities the same night.

**Offender 4**

[REDACTED] a Bangladeshi national born [REDACTED] arrived in the United Kingdom with a visa valid as a student until 30.04.2012; he subsequently gained an extension of student leave until 15.05.2014. This was later curtailed until 01.09.2013 due to issues with his college and he made no further applications or contact with the Home Office until he was arrested at "The Raj" on 23.04.2014 when he claimed to be on a "work placement" however his employer stated that he was working 20 hours per week and when he produced identification, his residence permit clearly showed that he was prohibited from employment. He was detained and had a removal flight booked for early May 2014 but subsequent representation by a solicitor led to an application for him to remain and he was released pending this being concluded. On 03.06.2014 during an Employer Liaison Visit to "The Raj of India" Restaurant, 17 The Street, Rayne Essex CM77 6RW he was encountered at the premises, folding serviettes and preparing tables but denied working and stated that he was just visiting a friend; however the manager on duty stated that subject was working there as a waiter and had done so for a couple of weeks. Due to his pending application he could not be detained at that point. Following refusal of his application, he was subsequently listed as an absconder after he failed to report in line with his bail conditions. On 20.11.2018 he was again encountered by Immigration Officers, this time having returned to work at "The Raj" in Brentwood, where on seeing officers he immediately sought to remove his tie and jacket. He was detained and transferred to immigration detention facilities the same night.

**Offender 5**

[REDACTED] a Bangladeshi national who gave his date of birth initially as [REDACTED] and subsequently was recorded as [REDACTED]. He had been encountered by enforcement officer in Tyneside on 08.10.2009 when there was a dispute over his age and stats and he was subsequently found to have been issued a visa to visit the United Kingdom in 2007, this expiring on 18.04.2007. He was served with notice that he was liable to removal and released pending documentation; he was not heard from again until 20.11.2018 when he was encountered in an upstairs room at "The Raj" in Brentwood and was arrested and detained whilst in bed. He admitted that he'd been working at the restaurant for six month, washing up; and signed an officer's notebook to confirm this. He was detained and transferred to immigration detention facilities the same night.

Further Home Office records show that the premises of "The Raj" at 21 Kings Road, Brentwood was

Signature: ..... Signature Witnessed by: .....  
2004/05(1)

**RESTRICTED (when complete)**

Continuation of Statement of: [redacted] [redacted] .....

subject of an enforcement operation on 23.04.2014 when three Bangladeshi nationals were found among the five staff and were found to be immigration offenders. The manager at that time was recorded as "Badha MIAH" a British national born [redacted]. Records in relation to the operation conducted on 20.11.2018 record the manager as "Badsha MIAH" a British national born [redacted].

I make this statement of my own free will from records that I have seen and accessed today, 26 November 2018. I am willing to attend court or any other judicial or review hearing if necessary.

Signature: ..... Signature Witnessed by: .....  
2004/05(1)

**RESTRICTED (when complete)**

**WITNESS STATEMENT**

(CJ Act 1967, s.9 MC Act 1980, ss.5A (3) (a) and 5B; MC Rules 1981, r.70)

URN 

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Statement of: [redacted] [redacted] **IO1** .....

Age if under 18 **Over 18** ... (If over 18 insert "over 18") Occupation: Immigration Officer.....

This statement (consisting of 3 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature ..... [redacted] ..... Date: 21/11/2018

Tick if witness evidence is visually recorded  (supply witness details on rear)

I am an Immigration Officer currently based at EAST OF ENGLAND ICE, CUSTOM HOUSE, VIEWPOINT ROAD, FELIXSTOWE, SUFFOLK, IP11 3RF. I am an Arrest trained Immigration Officer. On 21<sup>st</sup> NOVEMBER 2018, I was tasked to attend The RAJ, 21 KINGS ROAD, BRENTWOOD, ESSEX, CM14 4DJ.

My role on the visit was Cover officer of IO [redacted].

I attended the address with IO [redacted] and as per my tasking entered the address through the front door, I was tasked to head straight down to the basement and go to the kitchen area. As I entered IO [redacted] alerted me to a male trying to get away from us and running down the stairs, I quickly pursued.

As I got to the kitchen door, a male ran straight into me I took him to the side and arrested him as as a person liable to be detained, he was given the administrative caution and confirmed to me that he fully understood. (Arrested 17(1) of Sch 2 of the 1971 Immigration Act AA). He said to me that he has no leave in the United Kingdom.

I placed the male in handcuffs using the front stack technique, checking for tightness and double locking them.

Signature: [redacted] ..... Signature Witnessed by: .....

**RESTRICTED (when complete)**

Continuation of Statement of: [REDACTED] [REDACTED] .....

Once the situation had calmed down and the other staff that tried to make their way off were controlled I made my way up to the restaurant area with my arrested male.

Q, NAME?

A, [REDACTED]

Q, DATE OF BIRTH?

A, [REDACTED]

Q, NATIONALITY?

A, BANGLADESH

I conducted checks with IO [REDACTED] who was back at the office looking at Home Office systems.

Checks confirmed that [REDACTED] is known as [REDACTED] on Home Office systems and that he does not have any leave in the United Kingdom or right to work.

I relayed the information to [REDACTED] and he understood and agreed with what I was saying.

I then asked [REDACTED] a number of questions relating to his employment:

How long have you been working here?

*I have been helping here for a year*

What is your job role/ what are your duties?

*Washing up, helping in kitchen*

What days/ hours do you work each week?

*Not planned hours, I started a few mins before you arrived*

Do you work the same hours/ days every week?

*Not planned*

Who gave you this job (name and role in business)?

*One of my friends, he is not here now I help when they are busy*

Who tells you what days/ hours to work?

*My friend*

Who tells you what tasks/ duties to do each day?

*Guy behind the counter, badsha miah*

Who gave you this job (name and role in business)?

*I am given food,*

How are you paid (money, accommodation, food)?

Signature: [REDACTED] ..... Signature Witnessed by: .....

**RESTRICTED (when complete)**

Continuation of Statement of: [redacted] [redacted] .....

If money, how much and how do you receive it?	<i>Nothing at all</i>
Do you pay income tax or have a National Insurance number?	<i>No</i>
What name does the employer know you as?	<i>He calls me Ahmed</i>
Did you show documents before being offered the job? If so, what?	<i>Yes he did, I gave him a copy of a passport</i>
Does your employer know you're not allowed to work in the UK?	<i>I don't know</i>

IO [redacted] provided me with a copy of a passport that the manager stated [redacted] had given him, [redacted] told me that he had been given the document by the manager and it was nothing to do with him.

I suspected that [redacted] could have a passport or some kind of evidence of his identity upstairs in his living area, CIO [redacted] authorised a Para 25 Sch 2 search.

A search was conducted, nothing relating to his identity was found, he was allowed to pack a bag.

Detention was authorised by CIO [redacted].

A search of the male was conducted, under Para 25B Sch 2, this was due to the fact he had tried to evade me, he had come directly from the kitchen where I had observed big kitchen knives.

The male was escorted to the vehicle, then transferred on to Immigration custody.

I make this statement with my recollection of events and my original notes made at scene.

Signature: [redacted] ..... Signature Witnessed by: .....



### WITNESS STATEMENT

Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

Statement of [redacted] IO2 URN: [ ] [ ] [ ] [ ]

Age if under 18 Over 18 (if over 18 insert 'over 18') Occupation: Immigration Officer 16713

This statement (consisting of: 3 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: [redacted] Date: 21 November 2018

Tick if witness evidence is visually recorded  (supply witness details on rear)

I am a designated Immigration Officer based at the BEDFORD IMMIGRATION OFFICE.

On 20 NOVEMBER 2018 I was on duty at the business premises THE RAJ, 21 KINGS ROAD, BRENTWOOD, ESSEX, CM1 4DJ. I was in full arrest uniform, wearing issued Personal Protective Equipment (PPE) and other officers were present.

The entry of the premises was under Section 179 of the Licencing Act 2003. I arrived at the address along with the other officers and remained on the rear of the property at 1807hrs.

At the same time as entering I saw Mr [redacted] who when officers entered the front of the premises, three men, including [redacted], ran to the kitchen in an attempt to escape out of the rear of the restaurant. I stopped the men from escapeing and once inside I arrested Mr [redacted] as a suspected Immigration offender. I took him to the side of the restaurant and questioned Mr [redacted] and he confirms his name and that he is a BANGLADESH national whos leave to enter the United Kingdom had expired with a DOB of [redacted].

Mr [redacted] could speak English to a very good standard and I did not require an interpreter to communicate. I asked to question Mr [redacted] further on the work he performs at the premises and what his relationship is to the manager of the premises.

Signature: [redacted] Signature witnessed by: [redacted]

Continuation of Statement of [REDACTED]

LR – HOW LONG HAVE YOU BEEN WORKING HERE?

RA – JUST OVER A WEEK.

LR – WHAT ARE YOUR DUTIES?

RA – I SERVE DRINKS.

LR – HOW ARE YOU PAID?

RA – CASH.

LR - WHAT SHIFTS DO YOU WORK?

RA – MONDAYS. TUESDAYS.

LR – HOW DID YOU APPLY FOR THE JOB?

RA – I JUST CAME HERE AND SPOKE TO THE MANAGER.

LR – WHAT WAS HIS NAME?

RA – MIA.

LR – DID HE ASK TO SEE ANY RIGHT TO WORK?

RA – HE TOLD ME. I SAID I'D GIVE LATER.

LR – HOW MUCH WERE YOU PAID LAST WEEK?

RA – NOTHING.

LR – HOW MUCH WOULD THEY HAVE PAID YOU?

RA – SIX POUNDS AN HOUR.

At the end of the questioning I showed the subject my pocket notebook. I read out my

Signature: [REDACTED]

Signature witnessed by: [REDACTED]

Continuation of Statement of

questions and his answers. I asked the subject to sign my pocket notebook to say that he has read and understood what has been said. And that he agrees that it is a true account; He signed to confirm this.

When I searched subject under Schedule 2 Paragraph 25B of the Immigration Act 1971 (As Amended), subject had in his possession a key to the front door of the restaurant.

This statement is made from my recollection of events and has been produced from the information held in my pocket notebook Serial Number 013182 which I produce as LR01.

*(This area is currently blank, crossed out with a diagonal line.)*

Signature:

*(Redacted signature)*

Signature witnessed by:

*(Redacted signature)*

**WITNESS STATEMENT**

Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

Statement of [REDACTED] URN: 

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 IO3  
 Age if under 18  Over 18  (if over 18 insert 'over 18') Occupation: Assistant Immigration Enforcement Officer

This statement (consisting of 3 pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: [REDACTED] Date: 21/11/2018

Tick if witness evidence is visually recorded  (supply witness details on rear)

Job Ref – TS31CEP1091

I am Assistant Immigration Officer Cox, warrant number 17375 and part of HOME OFFICE IMMIGRATION COMPLIANCE AND ENFORCEMENT TEAM, EAST OF ENGLAND. On the 20/11/2018, I was tasked to carry out a visit to THE RAJ, 21 KINGS ROAD, BRENTWOOD CM14 4DJ. I was in attendance wearing full personal and protective equipment in line with HOME OFFICE policy and regulations. The Officer in charge was IMMIGRATION OFFICER (IO) [REDACTED] who conducted his briefing at WICKES CAR PARK, BRENTWOOD before deployment. Power of entry was through Section 179 of the Licencing Act 2003. This was authorised by HMI [REDACTED]. The power used allowed us to search the premises to locate Immigration offenders, as we were in receipt of intelligence that illegal workers and immigration offenders were present at the restaurant. My role was Arrest Two with my cover being IO [REDACTED].

At approximately 18.05, I entered the premises accompanied by the Officer In Charge (OIC), IO [REDACTED], IO [REDACTED] and AIO [REDACTED]. On entry to the premises I heard an IO shout runners and saw officers move downstairs towards the kitchen area and back door. Rear cover intercepted these individuals and we moved all workers upstairs back into the seating area to start to question them. I questioned my subject, [REDACTED], a male with a Dale Of Birth of [REDACTED], Banladesh national. I arrested him for being an Immigration Offender. He was wearing no identifiable work clothes and appeared to be in normal civilian attire.

Signature: [REDACTED] Signature witnessed by: .....

Continuation of Statement of

Illegal working questions conducted at 18:38 hours on 20/11/2018 in Bengali using Big Word interpreter

P0037880.

Q. "What is your job here?"

A. "Working as a kitchen porter"

Q. "How long have you worked here?"

A. "One month"

Q. "What days do you work?"

A. "Monday, Tuesday, Friday, Saturday and Sunday"

Q. "What hours on these days?"

A. "17:00 until 23:00"

Q. "How much do you get paid?"

A. "£100 a week cash in hand"

Q. "Who pays you?"

A. "Badsha Miah"

Q. "Is that your boss?"

A. "Owner of restaurant"

Q. "Who gave you the job?"

A. "Badsha Miah"

Q. "Did you provide any documents when you started the job?"

A. "No"

Q. "Do you have an employment contract?"

A. "No"

Q. "Is your accommodation tied to the job?"

A. "Yes"

Q. "Where do you live?"

A. "Upstairs"

Q. "Have you been supplied with any work aprons, clothing, who provided these to you?"

Signature:

Signature witnessed by:

03/2015

Continuation of Statement of [REDACTED] [REDACTED] .....

A. "Work clothes provided by the boss"

Q. "What is the name of the place where you work?"

A. "The Raj?"

End of illegal working questions. Statement signed by the individual in pocket note book.

This statement is made from my recollection of events and with reference to my pocket notebook, serial numbers IE017663, pages 57-67 which I exhibit as reference SC/01.

[REDACTED]

Signature: [REDACTED] ..... Signature witnessed by: .....



**RESTRICTED** (when complete)

**WITNESS STATEMENT**

(CJ Act 1987, s. 9 MC Act 1988, ss 5A (3) (a) and 5B, MC Rules 1991, r 70)

**IO4**

URN 

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Statement of: [redacted]

Age if under 18 **Over 18** ... (if over 18 insert "over 18")      Occupator: **Immigration Officer**

This statement (consisting of 2 page(s) each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything which I know to be false or do not believe to be true.

Signature [redacted]      Date: **21/11/2018**

Tick if witness evidence is visually recorded  (supply witness details on rear)

On Tuesday 20th November 2018 I was on duty as an arrest trained Immigration Officer.

The Officer in charge of the visits to be conducted on this day was Immigration Officer

[redacted] IO [redacted] conducted a pre visit briefing for the visit along with fellow Immigration Officers from the Felixstowe and Bedford offices. The target premises for the visit was a restaurant called, The Raj, 21 Kings Road, Brentwood, Essex, CM14 4DT and entry to the premises was to be gained using Section 179 of the Licensing Act 2003. There were no named targets for the visit however there was an allegation received stating that the premises was suspected of employing five illegal workers who worked in restaurant. I was instructed during the briefing that I was to walk in through the front door to the business address and contain any staff within the main restaurant area. On entering the restaurant, I was informed along with other officers covering the rear of the premises that staff were attempting to leave the kitchen which was situated on the basement level. I went down the stairs and walked through a door in to the kitchen. I immediately met a male in the kitchen who was taking off his jacket and tie. The male stated that he spoke English and with this I

Signature:

[redacted signature]

Signature Witnessed by: .....

**RESTRICTED (when complete)**

Continuation of Statement of: [REDACTED]

Page 2

asked him to come with me upstairs in to the restaurant area. Once in this area I spoke with this male and asked him to confirm his name, date of birth and nationality. The male replied, [REDACTED], BANGALDESH'. I then asked [REDACTED] if had a visa and he replied 'NO'. At approximately 1812hrs I arrested [REDACTED] and cautioned him. [REDACTED] stated that he understood why he was being arrested and I went on to ask the following questions:

Q: When did you arrive in the United Kingdom?

A: I CAME ON A STUDENT VISA IN 2010 AND ARRIVED ON 31/03/2010. I WAS ARRESTED IN 2014.

Q: Do you have any family in the United Kingdom?

A: NO

Q: Do you take any medication?

A: YES, I TAKE MEDICATION EVERY DAY FOR UROLOGY AND BLADDER ISSUES.

Q: Where do you live?

A: UPSTAIRS, 21 KINGS ROAD.

Q: Where is your passport?

A: WITH THE HOME OFFICE.

Q: How long have you worked at this restaurant?

A: 1 WEEK.

Q: Who is the boss?

A: ULLAH.

Signature: [REDACTED]  
2004.05(1)

Signature Witnessed by: .....



RESTRICTED (when complete)

Continuation of Statement of [REDACTED]

Q: How much do you get paid?

A: £150 PER WEEK AND I GET CASH.

Q: Do you pay rent?

A: NO I HAVENT PAID YET.

With this information I conducted checks with an officer based in the Bedford Enforcement office. Checks showed that [REDACTED] was served as an immigration offender in 2017 and he was liable to be arrested and detained. I then continued my questioning of the subject.

Q: How many days do you work?

A: IT VARIES, 3 DAYS. MAINLY FRIDAY AND SATURDAY.

I then went upstairs with [REDACTED] where he showed me his medication and a letter from St Barts hospital in London. [REDACTED] provided two boxes of medication, Doxycycline 100mg and [REDACTED] stated that he takes one of these tables twice a day. I gathered the medication that [REDACTED] had which was a total of 10 tablets and allowed him to gather a small bag of belongings. At 1845hrs I referred [REDACTED]'s case to CIO [REDACTED] who was present on the visit and with the details of the case he authorised the detention of [REDACTED] and service of papers. [REDACTED] was escorted back to the restaurant area which was downstairs from the accommodation area. [REDACTED] along with four other males were escorted from the premises at 1910hrs and [REDACTED] was placed in the cell van. [REDACTED] and the other arrested males were conveyed from the address and transported directly to Brook House IRC on direction and instruction from the detention estate. I and other officers arrived at Brook House IRC at 2045hrs and at approximately 2115hrs [REDACTED] was taken in to Brook House and his fingerprints and photograph were taken. [REDACTED] was served with his immigration papers and

Signature: [REDACTED]

2004/05 (1)

Signature Witnessed by: .....

RESTRICTED (when complete)

Form 100-33 cont

Continuation of Statement of: [REDACTED]

Page 4

he completed a travel document form. I and other officers left Brook House IRC at approximately 2300hrs. This statement is taken from my recollection of events and from the notes I made at the time of the visit in my pocket note book in pages 60, 61, 62 and 63. [REDACTED]

Signature:  
2004/05(1)

Signature Witnessed by: .....



# WITNESS STATEMENT

Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s.9; Magistrates' Court Act 1980, s.59

Statement of [REDACTED] **105** URN: [REDACTED]

Age if under 18 Over 18 (if over 18 mark 'over 18') Occupation: Immigration Officer (IO)

This statement (consisting of [REDACTED] pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: [REDACTED]

Date: Tuesday 27<sup>th</sup> November 2018

Tick if witness evidence is visually recorded  (supply witness details on rear)

On TUESDAY 20<sup>th</sup> NOVEMBER 2018, whilst in full uniform and personal protective equipment I attended, along with colleagues from FELIXSTOWE IMMIGRATION ENFORCEMENT OFFICE AND BEDFORD ENFORCEMENT OFFICE, THE RAJ, 21 KINGS ROAD, BRENTWOOD, ESSEX, CM14 4DJ. The Officer in Charge (OIC) was IMMIGRATION OFFICER (IO) [REDACTED]. Officers present in the visit briefing lead by OIC [REDACTED] were IO [REDACTED], IO [REDACTED], CIO (Chief Immigration Officer) [REDACTED], IO [REDACTED], IO [REDACTED], AIO (Assistant Immigration Officer) [REDACTED], IO [REDACTED] and two Inspectors from INDEPENDENT CHIEF INSPECTORS OF BORDERS AND IMMIGRATION, [REDACTED] and [REDACTED].

Officers were to attend THE RAJ and power of entry was to be Section 179 of the Licensing Act 2003, authorised by Her Majesty's Inspector (HMI) [REDACTED]. An allegation had been received to state there were 5 illegal workers working at THE RAJ, 21 KINGS ROAD, BRENTWOOD.

At 18:12hrs, I assumed rear cover of the premises with IO [REDACTED] and CIO [REDACTED]. OIC [REDACTED] advised over the airwave radio that Officers were entering the front of the premises. A male of Asian origin ran from the rear door of the premises and ran straight into IO [REDACTED]. IO [REDACTED] arrested and handcuffed the male immediately and I assisted IO [REDACTED] in escorting the male back into the premises. I remained as cover officer for IO [REDACTED] until OIC [REDACTED] asked me to go upstairs to the linked accommodation to search for further members of staff. At 18:20hrs, I used the internal staircase in the restaurant and went upstairs with CIO [REDACTED] to the staff accommodation. At the top of the stairs, there was a large fridge and cases of alcohol. I could see approximately 4 doors within the corridor and knocked on one door and entered. I turned the light on whilst announcing that I was from Immigration. I saw a male of Asian appearance in bed and I introduced myself once again and explained that I was here to speak to all members of staff. I asked him if he could get up out of bed and sit on another bed across the other side of the room. The male was fidgety and had his hands

Signature: [REDACTED]

Signature witnessed by: N/A [REDACTED]

2018/11 (1)  
UKBA

RESTRICTED (when complete)



Continuation of Statement of [REDACTED]

concealed when I entered and I therefore wanted to take him out of his personal bed space and place him in a space where I believed he couldn't conceal anything under bedcovers.

I showed my warrant card once again to the male and asked him if he had any ID that he could show me. He stated that he didn't. The male spoke enough English for me to communicate with him and therefore an interpreter was not used. I asked him if he had a visa to be in the UK and he shook his head and said no. I asked him to confirm that he did not have a visa to be allowed to be in the UK and he confirmed he did not. At 18:21hrs, I arrested the male under Paragraph 17(1) Schedule 2 of the Immigration Act 1971 as a person liable to be detained. I explained to him that this was because he admitted to me that he has no visa and gave him the admin caution. I asked him if he understood and he stated that he did. I asked the male for his name, date of birth and nationality and he stated his details were, '[REDACTED] [REDACTED] A NATIONAL OF BANGLADESH.'

[REDACTED] stated to me that he came to the UK on a visit visa in 2007 and hasn't spoken to the home office since.

I conducted checks with IO [REDACTED] who was based in an office and he confirmed that Home Office systems show that [REDACTED] a national of Bangladesh entered the UK on a visit visa valid to 18/04/2007 and there was no further trace of him being granted of applying for any further leave in the UK.

I explained to [REDACTED] that he had checked his details with the Home Office and that he has not had any leave to be in the UK since 2007 and that he was therefore considered to be an overstayer in the UK and liable to be arrested and detained. I informed him that he was still under arrest for this reason.

I asked [REDACTED] if he had any medical conditions and he stated he gets headaches and provided me with a letter from Royal Globe Hospital. The hospital letter states that he appears to have headaches which have stemmed from previous ear infections. [REDACTED] stated that he takes Amitriptyline tablets for this. I ensured that [REDACTED] had medication with him and he provided me with 22 Amitriptyline 10mg tablets which he takes one tablet once a day. [REDACTED] stated he had no other medical conditions. [REDACTED] stated he was a single male and had no family in the UK. He stated he was unwilling to return to Bangladesh voluntarily.

At 18:26hrs, CIO [REDACTED] authorised a 25A Schedule 2 search of [REDACTED] bed space where he was located to search for any documents that may aid in his removal. CIO [REDACTED] also authorised detention and service of papers of [REDACTED] and he began conducting the search.

At approximately 18:30hrs, I began asking [REDACTED] questions about his employment at THE RAJ, 21 KINGS ROAD, BRENTWOOD. I recorded all the questions and answers within my pocket notebook.

Q. HOW LONG HAVE YOU WORKED HERE?

A. ABOUT 6 MONTHS.

Q. WHAT DO YOU DO HERE?

A. DO THE WASHING UP IN THE KITCHEN.

Q. HOW OFTEN DO YOU WORK?

A. 1 TO 2 HOURS A DAY.

Signature: [REDACTED]

Signature witnessed by: [REDACTED]

N/A

2010/11 (3)  
UKBA

RESTRICTED (when complete)

Continuation of Statement of [REDACTED]

at L210hrs with reference to my original notes made during the visit. [REDACTED]

[Empty rectangular box for text entry]

Signature: [REDACTED]

Signature witnessed by: .....

01/20/01

Continuation of Statement of [REDACTED]

JJD: What are the Companies House and VAT numbers of the business?

BM: 654105679 VAT

JJD: What is your position here?

BM: Manager and owner

JJD: How long have you been working here?

BM: 14/15 years

JJD: Have you taken any right to work evidence from them?

BM: Yes, I have some here (photographed and recorded on my phone)

JJD: Do your workers live upstairs?

BM: No

JJD: Are all the men here tonight working for you?

BM: They are working and helping here

JJD: Are they all in paid employment?

BM: Only [REDACTED] is working.

JJD: I challenge that as this man is wearing a waiter's uniform (being dealt with by IO [REDACTED])

DM: Yes, he is helping me.

MIAH was given the opportunity to sign my phone after this interview, but he refused.

I was provided information by members of my team of those who had been encountered working illegally. I added their names to an Illegal Working Civil Penalty Referral Notice which I served and explained to BADSHA MIAH at 18:3hrs. I again photographed and recorded this on my phone.

At 19:10hrs all Officers and five offenders left the premises. The offenders were transported to Brook House and booked into detention.

This statement was compiled at Custom House, Viewpoint Road, Felixstowe, IP11 3RF on Wednesday 21<sup>st</sup> November 2018

Signature: [REDACTED]

Signature witnessed by: .....

06/2018



### WITNESS STATEMENT

Criminal Procedure Rules, r 27.2; Criminal Justice Act 1967, s. 9; Magistrates' Courts Act 1980, s.5B

Statement of [redacted] **IO6** URN: [ ] [ ] [ ] [ ]

Age if under 18 Over 18 (if over 18 insert 'over 18') Occupation: Immigration Officer

This statement (consisting of: [ ] pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated anything in it which I know to be false, or do not believe to be true.

Signature: [redacted] Date: 21/11/2018

Tick if witness evidence is visually recorded  (supply witness details on rear)

I am currently employed as an Immigration Officer on the ICE East of England - Felixstowe team.

On Tuesday 20<sup>th</sup> November 2018 I led an Immigration Enforcement visit to THE RAJ, 21 KINGS ROAD, BRENTWOOD, ESSEX, CM144DJ. On my team were Immigration Officers [redacted], [redacted], [redacted], [redacted], [redacted] and Chief Immigration Officer [redacted]. Also present were ICIBI inspectors [redacted] and [redacted] who played no part in the visit other to inspect my team's performance and entered after the team under informed consent recorded by GIO [redacted] in his PNB.

I entered the premises at 1809hrs and immediately noticed members of staff running to the stairs leading to the basement kitchen of the property. At this point I called "runners" to members of my team on the radio. I then proceeded to the bar area where I encountered a male I now know to be BADSHA MIAH born [redacted] a GBR national and the Designated Premises Supervisor for the alcohol licence at the premises. I immediately explained who I was and that I was entering his premises under section 179 of the Licensing Act 2003 and served a Notice to Occupier to him. He confirmed his understanding but refused to sign my phone when offered the chance to do so. I was aware during this period that several members of staff had tried to evade my officers and had therefore been arrested. All members of staff were then brought to the restaurant area of the premises and were questioned resulting in five arrests.

I then questioned BADSHA MIAH regarding illegal working which was recorded on my phone:

JJD: What is the name of the business?

BM: The Raj

Signature: [redacted] Signature witnessed by: .....

Continuation of Statement of [REDACTED]

Q. HOW MUCH DO YOU GET PAID?

A. I DON'T GET PAID, I GET FOOD.

Q. DO YOU PAY RENT HERE?

A. NO.

Q. WHO GAVE YOU THE JOB?

A. ([REDACTED] couldn't provide me with the spelling for the male who gave him the job however I wrote down the name that he stated to me,) Babsha MIAH.

Q. DID HE ASK YOU TO SHOW ANY ID TO SHOW YOU CAN WORK HERE?

A. NO. NOTHING.

I asked [REDACTED] to read the questions and answers in my pocket notebook and sign if he agreed with what I had written and that I had recorded everything correctly. He signed my notebook.

I allowed [REDACTED] to pack a small bag of belongings and then escorted him to the awaiting cell van at 19:11hrs.

No handcuffs or restraints were used throughout as [REDACTED] was compliant.

[REDACTED] was transferred with 4 other detained males to Brook House Immigration Removal Centre (IRC) where we arrived at 20:51hrs. No incident or issues throughout journey. [REDACTED] was booked in and handed over the G4S staff at the IRC at approximately 22:40hrs.

At 23:00hrs, all officers left Brook House IRC. There were no incident or issues.

This statement was compiled with reference to my personal issued note book number IE008777, pages 31, 32, 33, 34, 35, 36, 37 and 38.

Signature: [REDACTED]

Signature witnessed by: [REDACTED]

N/A.....

2017/11 (3)  
UKBA

RESTRICTED (when complete)