

The First Unitarian Congregation of Ottawa

A member of the Unitarian Universalist Association of Congregations and the Canadian Unitarian Council

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Briefing Note

Shree Kumar Rai in Sanctuary

June 10, 2008

Updated June 30, 2008

Shree Kumar Rai was accepted into sanctuary at the First Unitarian Congregation of Ottawa on February 27, 2007, on the eve of being deported to Nepal, where he was at risk of persecution both from the government and from Nepal's Maoists. He has been confined to the church and its grounds since that time. Shree has now been in Canada for 12 years awaiting permission to remain permanently.

Shree Rai was taken into sanctuary only after the Congregation's Board had made a careful review of his situation and agreed that he had been misjudged and was truly in need of being protected from deportation.

Some 140 volunteers from the Unitarian church have been involved in supporting Shree's stay in sanctuary. Some maintain 24 hour coverage to protect against any unexpected effort to remove Shree, some have helped him develop his artistic talent taught him to draw and paint and others have coordinated the work involved with obtaining a permit to remain legally in Canada. Shree is being assisted by a Sanctuary Fund and has helped support the fund through the sales of his paintings and of his sushi.

In reviewing Shree's case the following factors were considered:

1) Adaptation and Attachment to Canada:

- Shree was a teacher and then a shopkeeper in Nepal. Politically he was a non-violent activist who stood for a fairer and more equal society. Shree fled Nepal because he had become a target both for the Maoists, whose armed struggle he refused to support, and for the police and security forces who saw him as a Maoist supporter.
- Shree had been jailed first as a student activist and then on suspicion of being a rebel, was forced to go into hiding in Kathmandu, and lost his father because of injuries suffered when he was beaten in jail and forced to reveal where Shree had fled. Shree left his political party in 1995 when it chose to support the Maoists' 'People's War'. He managed to escape Nepal and come to Canada as a refugee in June 1996.

- He has worked steadily in Canada almost since his arrival from Nepal and has successfully learned and practised a new skill as an experienced and professional sushi chef, mainly in Montreal. He has received attractive and well paid offers of employment as a sushi chef both in Montreal and in Ottawa and expects to secure work again without difficulty if he is allowed to remain in Canada. His salary would be in the \$40,000.00 per year range.
- Shree is well educated, having 30 months post secondary education at college. He meets the point standard for immigration to Canada as a skilled worker. He is trilingual in English, Nepali and Hindi and has some French.
- The Canadian Unitarian Council and First Unitarian Congregation of Ottawa are prepared to sponsor Shree and his family and to provide financial support if needed for up to 10 years.
- While in sanctuary Shree has begun to draw and paint and has become recognized as a talented artist. A number of his paintings have been sold with the proceeds going to the Sanctuary Fund at First Unitarian Congregation.
- Because of his almost 13 year absence from Nepal, Shree has lost contact with former friends and acquaintances. He therefore has no network in Nepal. Canada has given him a large network of both Nepali and Canadian friends, as demonstrated by the nearly 150 letters of support received on his behalf. .
- Despite a long separation, Shree has continued to support his wife Dikchhya and his 16-year-old son Aditya in Nepal and remains in almost weekly contact with them by telephone and e-mail. His son is being taught in English and Nepali at a boarding school modeled on the British education system, and has expressed an interest in learning French if he can join his family in Canada. Shree and his son have not seen each other since Aditya was two. .
- Shree began working soon after his arrival in Canada and was steadily employed until he entered sanctuary. Once he began work he has not needed social assistance nor collected employment insurance benefits.
- Shree is skilled at making sushi in a kosher kitchen. One of his potential employers needs someone with that skill, has been unable to fill the position, and has been waiting for more than a year for Shree to be available.
- Japanese restaurants offering sushi are non-existent in Nepal because of the high cost of salmon and ingredients for this specialized cuisine and the relatively low income of most Nepalis. Ottawa now has more than two dozen sushi restaurants with new ones opening almost every month.

2.) Review, Research and Response to applications to remain in Canada:

- Undue Delay: It took 8 1/2 years from the date of Shree's arrival in Canada in June 1996 to the date of the final decision in his case before the Immigration and Refugee Board (IRB) in November 2004. Judicial reviews, his Pre-Removal Risk Assessment (PRRA) and his application for Humanitarian and Compassionate permission to stay in

Canada took another 3 years. During that time Shree retrained, settled and adapted to Canadian society.

- *Comment:* Refugees awaiting permission to stay in Canada have no alternative but to wait and become more settled in a home that feels safe. In Canada, even criminals have their charges dropped if too much time elapses before their case comes before the courts.
- Unfair Decisions: Shree's rejection at his first IRB hearing was based on his membership in the UPF political party, which he left when it joined forces with the Maoists and dropped its policy of non-violence. The Federal Court of Canada overturned this ruling while accepting that Shree was credible. He was turned down again at a second IRB hearing, this time on the grounds that none of his story was credible..
 - *Comment:* The second IRB decision was itself not credible on the basis of facts. The tribunal found that Shree could have sought refuge from the Communist Party of the Soviet Union when his flight to Canada passed through Moscow. The CPSU had been dissolved five years before he travelled through Moscow yet his failure to seek refuge in Russia was one of the reasons offered to question his credibility. This same argument was used by Canada in its formal reply on Shree's case before the UN Committee Against Torture.
- Lack of Appeal Process: There is no appeal process available to refugees on the basis of the merit of their case. The PRRA and the H&C both based their negative decisions in Shree's case on the IRB hearing and decision. Once Shree had been judged to lack credibility, the facts of his torture, beatings and the death of his father and friend were considered lacking in truth.
 - *Comment:* In the case of Shree, a letter from the mayor of the town confirming the death of his father due to injuries when he was beaten in jail was not believed. There seemed to be little understanding on the part of the IRB officer of the impunity offered police and guerrillas and army personnel. Nor was any effort made to consult the reports of human rights organizations active in Nepal apart from a reference to the files of Amnesty International.
- Risk of Return to Nepal: All of the 31 Nepali refugees who appeared before the IRB in Ottawa since 2003 have been accepted. In most of these cases, the circumstances of the individual involved closely match those of Shree.
 - Country reports indicate that Shree still has a well founded fear of persecution from either or both Maoists and government authorities should he return to Nepal. Although the recent Constituent Assembly (CA) elections were judged successful, it may still be several years before a new constitution is in place and the Maoists now in power have become reconciled to electoral politics rather than revolution.
 - Durability of peace is one of the tests used by the IRB to assess risk. Over the past 12 years, Nepal has had many peace agreements. All have failed the test of time.

- Fear of Apprehension in Nepal: Shree firmly believes that he will be apprehended at the airport and will be immediately detained by authorities should he be returned to Nepal.
- Place of safety in Nepal: Shree states emphatically that he cannot feel safe in Nepal any more. He has grieved the loss of Nepal and feels that he will never see his country again. He is sorry for this as he loved his country and wants to see the people enjoy lasting peace.
- Continuing risk of persecution: Shree's land is at the edge of the Terai region in southern Nepal where half of Nepal's population lives. There is trouble still in this area as the Madhesi, people of origin in India, are restless. For Shree, the risks of persecution from Madhesis, Maoists or government authorities should he return to this region will continue to be substantial. Although the monarchy has been deposed and Nepal is moving to establish a republic, it is not clear how soon Maoists in power will be able to bring their rural cadres under effective control or to effectively control the army and security forces.

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(This is the latest update on Shree Kumar Rai's case to be freed from sanctuary and permitted to remain in Canada, along with his family, on a permanent basis. This update was prepared by the Sanctuary Committee for submission to Hon. John Baird, MP for Ottawa Centre, and other interested MPs and may be used freely with credit to the "Sanctuary Committee, First Unitarian Congregation of Ottawa.").