

The Queen v The Secretary of State for the Home Department



Positive/Neutral Judicial Consideration

Court

Court of Appeal (Civil Division)

Judgment Date

8 November 1989

In the Supreme Court of Judicature

Court of Appeal (Civil Division)

On Appeal from the High Court of Justice

Queen's Bench Division

Divisional Court

1990 WL 755085

Lord Justice Purchas Lord Justice Glidewell and Lord Justice Russell

Wednesday, 8th November 1989

Representation

MR. O. DAVIES (instructed by Messrs Seifert Sedley Williams) appeared on behalf of the Appellant (Applicant).

MR. C. PANNICK (instructed by The Treasury Solicitor) appeared on behalf of the Respondents (Respondents).

JUDGMENT (Revised).

LORD JUSTICE GLIDEWELL:

This is an appeal against a decision of McCowan J. (as he then was) who on 9th May 1989 dismissed an application by Mr. Minton for Judicial Review of a decision of an immigration officer at Heathrow Airport who on 6th August 1988 refused Mr. Minton leave to enter the United Kingdom. In the notice of application the relief sought is

“A declaration that the applicant has indefinite leave to enter the United Kingdom”.

At the hearing before McCowan J., it was agreed that if the application succeeded the appropriate relief would be an order of certiorari quashing the decision of the immigration officer. However, there is no practical difference between the two forms of relief since the only basis for quashing the decision of the immigration officer is that Mr. Minton has been granted indefinite leave to remain in the United Kingdom.

There is no dispute about the relevant facts. Indeed at all times Mr. Minton has been entirely frank and honest, and this is very much to his credit. He was born in and is a citizen of the United States of America. He is therefore subject to immigration control in the United Kingdom.

Mr. Minton first entered the United Kingdom on 10th July 1987 on a flight to Heathrow Airport. He was granted leave to enter for six months, with a condition that he was prohibited from taking employment. A notice to this effect was stamped in his passport. On 23rd July 1987 Mr. Minton left the United Kingdom, but returned on 6th August 1987. He then sought leave to enter the country for a vacation for up to two months. He was granted leave to enter. The stamp which was placed in his passport on that occasion is immediately below the stamp dated 10th July 1987, and is similar to that stamp in general appearance and size. However, regrettably the stamp dated 6th August 1987 is not wholly legible. With difficulty, it is possible to make out the words "Leave to enter" and after a gap the word "months". Below, the words "Employment prohibited" are legible. Thus the length of the period for which he was granted leave to enter and remain in the United Kingdom is not legible in the notice in his passport. He was given no other notice containing this information.

According to a later account given by Mr. Minton to an immigration officer, although he did not in August intend to take up employment in the United Kingdom, in September 1987 he was offered and took employment. He remained in the United Kingdom until June 1988. Meanwhile, on 2nd February 1988, solicitors on his behalf wrote to the Home Office pointing out that the stamp dated 6th August 1987 was indistinct and suggesting that Mr. Minton was

"Deemed to have been granted indefinite leave to enter the U.K. on 6th August last".

The letter asked that the Home Office should endorse Mr. Minton's passport accordingly. There was no reply to this letter before June, and on 29th June 1988 the solicitors wrote again, this time to the chief immigration officer. They again made the point that Mr. Minton was deemed to have been granted indefinite leave to enter the United Kingdom on 6th August 1987. They gave advance notice that Mr. Minton was again leaving the United Kingdom, but intended to return after a short period. They claimed that he would be entitled to re-enter as he had indefinite leave to remain.

On 6th August 1988 Mr. Minton again arrived at Heathrow airport, and claimed to be a returning resident, entitled to re-enter as he had indefinite leave to remain. The immigration officer refused him leave to enter, but he was granted temporary admission to the United Kingdom pending the resolution of the problem. The present proceedings were started on 26th August 1988.

When Mr. Minton was interviewed by an immigration officer, Gail Howard, on 6th August 1988, he told her that on his second arrival, i.e. on 6th August 1987, he was aware that the leave to enter he had been given was for six months, as it was a similar endorsement to that immediately above it of 10th July 1987. Ms. Howard asked him why he was claiming indefinite leave to remain on the basis of an indistinct endorsement, and he said that he was acting on the advice of his solicitor. It is clear that the indistinctness of the notice of 6th August 1987 is the result of the failure of the immigration officer on that occasion to ensure that the stamp recorded all the necessary information legibly. If as a matter of law this means that the notice is of no effect, then indeed Mr. Minton is entitled to take advantage of this error.

I turn to consider the relevant law. It is mostly to be found in the Immigration Act 1971. Section 3(1) provides:

"Except as otherwise provided by or under this Act, where a person is not [a British citizen] -

- (a) he shall not enter the United Kingdom unless given leave to do so in accordance with this Act;
- (b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;
- (c) if he is given a limited leave to enter or remain in the United Kingdom, it may be given subject to conditions restricting his employment or occupation in the United Kingdom, or requiring him to register with the police, or both".

By section 33 of the Act, the phrase “limited leave” is defined as meaning leave to enter or remain in the United Kingdom which is limited as to duration.

It is apparent that a condition that the immigrant may not take employment while in the United Kingdom can only legally be attached to a leave to enter for a limited period. In other words, a person who is given leave to enter for an indefinite period is free to take up employment.

Section 4 of the Act contains the following material provisions:

“4(1) The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, ... and, unless otherwise allowed by this Act, those powers shall be exercised by notice in writing given to the person affected

4(2) The provisions of Schedule 2 to this Act shall have effect with respect to - ...

(c) the exercise by immigration officers of their powers in relation to entry into the United Kingdom, ...”

By section 33 of the Act, the phrase “limited leave” is defined as meaning leave to enter or remain in the United Kingdom which is limited as to duration.

The provision on which Mr. Minton, on the advice of his solicitors, relies is contained in paragraph 6 of Schedule 2 of the Act. So far as is material this reads:

“6(1) Subject to sub-paragraph (3) below, here a person examined by an immigration officer under paragraph 2 above is to be given a limited leave to enter the United Kingdom or is to be refused leave, the notice giving or refusing leave shall be given not later than twelve hours after the conclusion of his examination ... in pursuance of that paragraph; and if notice giving or refusing leave is not given to him before the end of those twelve hours he shall (if not [a British citizen]) be deemed to have been given indefinite leave to enter the United Kingdom and the immigration officer shall as soon as may be give him written notice of that leave”.

Two other provisions of the Act were referred to during the course of argument put before us, namely section 3(5) , which provides that a person who has limited leave to enter who does not observe a condition attached to the leave or overstays the time limited by the leave shall be liable to deportation from the United Kingdom. Further, section 24(1)(b) makes it an offence for a person with limited leave knowingly to remain in the United Kingdom beyond the time limited by the leave or knowingly to fail to observe a condition of the leave.

The final reference is to the Immigration Rules contained in H.C. 169. Paragraph 56 provides that if a person subject to immigration control who is not a Commonwealth citizen satisfies the immigration officer that he had indefinite leave to enter or remain in the United Kingdom when he left and that he has not been away for longer than two years, he is to be admitted as a returning resident.

On behalf of Mr. Minton, Mr. Owen Davies puts forward, most clearly and persuasively, the following submissions.

- (i) The “notice in writing” required by section 4(1) of the 1971 Act is not merely evidence of the grant or refusal of leave, but is itself the means by which the function of the immigration officer in granting or refusing leave is exercised. Mr. Davies refers us to a short passage to this effect in the judgment of Kennedy J. in *Reg. v. Home Secretary, Ex parte Tolba and Others* [1988] Imm. A.R. 78 at 82 to this effect. I respectfully agree with Kennedy J. on this point.
- (ii) Limited leave means leave limited as to its duration. Clearly it is vital for the person given leave to know for how long he is permitted to remain in the United Kingdom. It follows therefore that the section 4(1) notice must specify clearly the duration.
- (iii) Thus the matters about which the section 4(1) notice must give information are:
 - (a) whether the applicant is or is not granted leave to enter the United Kingdom;
 - (b) whether any such leave is for an indefinite or a limited period;
 - (c) if it is for a limited period, the duration of that period;
 - (d) if it is for a limited period, any conditions to which the leave is subject.
- (iv) The section 4(1) notice must be sufficiently clear to give information on all these matters to a reasonable person. The notice of 6th August 1987 failed in this respect because no person, however reasonable, would be able to ascertain from it the duration of the leave to enter which was being given. Since the notice failed to contain this vital information, it was of no effect.
- (v) Thus it follows that no valid notice had been given within 12 hours as required by paragraph 6 of Schedule 2 of the Act, and accordingly Mr. Minton is deemed to have been given indefinite leave to enter the United Kingdom.

Mr. Davies stresses the importance of the person given a limited leave knowing the duration of that leave by pointing out that if he overstays the leave, or breaches its conditions by taking employment, he is guilty of an offence. It would be quite wrong that a person should be at risk of committing an offence unwittingly because he did not know the duration of his leave.

To this Mr. Pannick, for the Home Secretary, replies that the offence in section 24 requires proof by the prosecution that the immigrant overstayed his leave or breached a condition of the leave “knowingly”. If the prosecution could not prove that the duration of the leave was clearly brought to the immigrant's attention, Mr. Pannick submits, correctly, in my view, that a prosecution would fail.

But a second submission to the same effect by Mr. Davies, that a person who overstays his leave or breaches its conditions is liable to be deported under section 3(5)(a), has more validity since the liability to deportation does not depend upon knowledge.

The issue thus is, is a notice which does not in its terms give all the information required by section 3(1) of the Act of no effect at all? McCowan J. dealt with this question in his judgment, at page 6 of the transcript when he said:

... I ask myself the question: viewed objectively, could the stamp of 6th August 1987 reasonably be expected to convey the relevant information to the mind of an average intending immigrant of the class to which the applicant belonged? Of course he has to be an immigrant who has already received the stamp of 10th July 1987 and there it is above the stamp of 6th August 1987 on the same page. In my judgment anyone looking at the page would say: ‘It is the same stamp’ ”.

It was for this reason that the learned judge dismissed the application.

Mr. Pannick puts the same point in a slightly different way when he submits that the notice required by section 4(1) is a notice which gives the necessary information to an applicant for entry who has the knowledge, or who has already received the information, which this particular applicant has or had received. In this case, as Mr. Minton made clear to Ms. Howard in her interview with him, when he sought entry on 6th August 1987 he intended it only to be for a limited period of time. He expected that he would be given leave for a limited period, and he recognised that the stamp of 6th August 1987 was, albeit not wholly legible in appearance, similar to the stamp of 10th July 1987 which made it clear that he was given leave to enter for six months. Accordingly the stamp of 6th August 1987, albeit not wholly legible, did convey to Mr. Minton that he was being

granted leave to enter for six months together with the requirement that he should not take employment. Accordingly, submits Mr. Pannick, in this case the notice was a sufficient notice for the purposes of section 4(1) .

I agree with this. I accept that by some means or other it must be made clear to the intending immigrant that the leave he is being granted is for a limited duration, and the length of the period must be made clear to him. On the other hand, the provisions in paragraph 6 of Schedule 2 of the Act seem to me to be envisaging a situation in which no notice of any kind is given to the applicant for entry within the 12 hour period. The Act itself contains no clue as to what is the proper approach to a notice which contains some of the relevant information but is defective in relation to one matter.

If in the present case Mr. Minton had not previously entered the United Kingdom, so that there had been no prior stamp in his passport giving him notice, then I would agree that the notice of 6th August 1987 would not have been a valid or sufficient notice. But since he had been granted an earlier leave to enter the United Kingdom for six months, and since when he re-entered the United Kingdom on 6th August 1987 he was seeking admission for a short period only, the notice which was stamped in his passport on that date, illegibly though part of it was, was in my view sufficient to make it clear to him that he was then being granted leave to enter for the limited period of six months. It follows therefore that in my view the notice was a valid notice, and the provisions of paragraph 6 of Schedule 2 of the Act did not come into play.

As has been made clear to us, paragraph 6 of Schedule 2 of the 1971 Act has been amended by paragraph 8 of the Schedule to the Immigration Act 1988 , which came into force on 10th July 1988. The 1988 Act provides that the period within which an applicant for admission to the United Kingdom must be given notice is 24 hours, and if he is not given notice within that period he is deemed to be given limited leave to enter for a period of six months. It follows that in future the particular problem which has arisen in this case will not arise again. However, this is of no relevance to the present appeal.

For the reasons set out above, I would dismiss this appeal. However, both Purchas and Russell L.J.J. have reached the opposite conclusion, and for the reasons set out in their judgments this appeal will be allowed.

LORD JUSTICE RUSSELL:

For the facts, I gratefully adopt the account of them to be found in the judgment of Glidewell L.J.

This appeal is concerned with the proper construction of section 4(1) of the Immigration Act 1971 . It reads:

“The power under this Act to give or refuse leave to enter the United Kingdom shall be exercised by immigration officers, and the power to give leave to remain in the United Kingdom, or to vary any leave under section 3(3)(a) (whether as regards duration or conditions), shall be exercised by the Secretary of State; and, unless otherwise allowed by this Act, those powers shall be exercised by notice in writing given to the person affected, except that the powers under section 3(3)(a) may be exercised generally in respect of any class of person by order made by statutory instrument”.

The requirement to give notice in writing is therefore mandatory.

Section 3(1) of the Act provides:

“Except as otherwise provided by or under this Act, where a person is not [a British citizen]

- (a) he shall not enter the United Kingdom unless given leave to do so in accordance with this Act;
- (b) he may be given leave to enter the United Kingdom (or, when already there, leave to remain in the United Kingdom) either for a limited or for an indefinite period;

(c) if he is given a limited leave to enter or remain in the United Kingdom, it may be given subject to conditions restricting his employment or occupation in the United Kingdom, or requiring him to register with the police, or both”.

Paragraph 20 of H.C.169 reads:-

“The immigration officer should impose a time limit on the period of the visitor's stay and on that of any dependents accompanying him. A period of 6 months will normally be appropriate; but a longer period (not exceeding one year) may be allowed to a passenger who satisfies the immigration officer of his ability to maintain and accommodate himself and his dependants for that time as required by paragraph 17. The period should not be restricted to less than 6 months unless this is justified by special reasons - for example, in cases of restricted returnability (see paragraph 15), or if the passenger is due to leave the United Kingdom on a particular charter service, or in transit to another country, or if his case ought to be subject to early review by the Home Office. Visitors should normally be prohibited from taking employment”.

Against this background it is submitted by Mr. Pannick that the notice given to the appellant on 6th August 1987, which did not, on its face, contain words defining the duration of the limitation imposed upon the leave to enter, was effective. The circumstances were such that the appellant knew that the intention was to limit his stay to six months and the immigration officer so intended. The objective approach, therefore, was to the effect that any reasonable immigrant in the position of the appellant inevitably shared the appellant's understanding of the stamp placed on the passport. This, it is submitted, satisfies the requirements of section 4(1) which does not itself require the notice on its face to define the limitation.

For the appellant Mr. Davies submits that there is no good reason for going outside the strict requirements of section 4(1) so as to ascertain whether, objectively, the reasonable immigrant would know from all the circumstances the duration of his leave to enter. Section 4 requires the notice to be in writing. A notice which does not itself define the extent of the limitation imposed does not fulfil its function, and in the context of the Act is not a notice at all. An immigrant is entitled to look at the notice and ascertain from that the precise duration of his leave to enter. The word “months” appearing on the stamp conveyed that leave was not indefinite, but it did not give notice of the duration of leave; the surrounding circumstances could not be used in order to imply the requisite duration.

In developing his submissions Mr. Davies referred us to section 3(5)(a) of the Act. That renders an immigrant liable to deportation if he “remains beyond the time limited by the leave” . Such a consequence should not follow upon a notice which depends for its effect upon external circumstances as opposed to what appears on the face of the notice itself. Likewise, under section 24 , the overstayer is liable to criminal prosecution.

In my judgment, having regard to the statutory framework and purpose of the Act, a strict construction of the provisions to which I have referred is called for, and accordingly I take the view that the partially illegible stamp in the instant case did not constitute a notice in writing within the terms of section 4(1) . Mr. Pannick concedes that his construction of section 4 could lead to difficulties in the individual case, and I agree. The construction of Mr. Davies has the virtues of both simplicity and certainty in all cases, and I prefer it, whilst acknowledging that in this case it leads to a situation not contemplated by the immigrant himself.

I am very conscious of the fact that in the result the appellant is entitled to indefinite leave pursuant to paragraph 6(1) of Schedule 2 of the Act, though by virtue of paragraph 8 of the Schedule to the 1988 Act the extent of deemed leave in consequence of the failure to give notice within 24 hours has been reduced to six months. But the consequences which paragraph 6 laid down emphasise the need for an immigrant to be properly informed of his rights and obligations in writing. Whilst acknowledging the difficulties and pressures under which they work the paragraph, whether in the 1971 Act or the 1988 Act, serves as an

incentive to immigration officers to ensure the use of a legible stamp. By that simple process the difficulties demonstrated in this case need never arise.

I would allow this appeal.

LORD JUSTICE PURCHAS:

The circumstances and the statutory context in which this appeal comes before the court have been set out in the judgments of Glidewell and Russell L.JJ. and need not be repeated here. The appeal raises a short but difficult point of construction of the meaning of the words

“shall be exercised by notice in writing given to the person affected”

in section 4(1) of the Immigration Act 1971 (“the Act”). The appellant in the admirably frank attitude which he has adopted in connection with this matter conceded that when his passport was stamped on 6th August 1987 he knew that the immigration officer intended to grant him leave to enter limited to six months with the qualification “employment prohibited” . The fact that the word “six” was illegible on the passport after it had been stamped had not affected him at the time. However, subsequently, on advice from his solicitor he took the stand that the effect of the defective endorsement was to grant him indefinite leave to enter the United Kingdom since it did not constitute a valid notice within the provisions of section 4(1) of the Act.

It is common ground that the subjective state of knowledge of the immigrant is irrelevant except as evidence to establish what a hypothetical, reasonable immigrant in the position of the appellant would have understood from the endorsement as actually made upon the passport. This is the test applied by McCowan J. (as he then was) from whose judgment this appeal has been brought. The alternative submission for which Mr. Davies contends is that the provision under which the notification of the immigration officer's decision must be given in writing must be construed strictly since it forms the basis of criminal liability (see section 24 of the Act) and also exposes the over-stayer beyond the period of leave to deportation (see section 3(5) (a) of the Act). Mr. Davies submitted that in such a construction there is no room to import the concept of the state of mind of a reasonable, hypothetical immigrant as part of an objective test. He submitted that the notice as endorsed on the passport either complies strictly with the provisions of the Act or it is no notice at all. If it is no notice at all then under the provisions of paragraph 6(1) of Schedule 2 to the Act Mr. Davies submitted that the immigrant is deemed to be granted indefinite leave to enter.

Mr. Pannick submitted, on behalf of the Secretary of State, that section 3 and section 4 of the Act must be construed together in order to determine what were the necessary ingredients of the notice in writing by which the powers to grant leave to enter must be exercised. In particular Mr. Pannick submitted that when under section 3(1) (b) Parliament provided that leave to enter the United Kingdom might be given either for a limited or for an indefinite period, and that limited leave might be given subject to conditions restricting employment or occupation in the United Kingdom, by abstaining from further definition of the word “limited” in section 3(1)(b) Parliament left it open to the court to consider the circumstances in which the notice was to be given under section 4 . Thus it was open to McCowan J. to take into account the notice which had been given when the passport was stamped on 10th July 1987 when considering the effect of the notice given when the passport was stamped on 6th August 1987. On this basis Mr. Pannick submitted that the reasonable, hypothetical immigrant would have realised that the notice he received on the latter occasion was to the same effect as the notice he had received on the former occasion, namely that he was being given leave to enter limited for six months.

I must confess that I have had great difficulty in coming to a conclusion as to which is the correct approach. Notwithstanding the able and attractive arguments of Mr. Pannick I have eventually come to the conclusion that his submissions cannot be sustained in the context of the construction of a statutory provision which inhibits the right of an individual even if he must knowingly be in contravention of the period of leave before criminal liability under section 24 is imposed. He is still exposed to the rigours of arbitrary expulsion under a deportation order with all the hardship which such an order can cause should he be mistaken about the period during which his limited leave to enter has been given. In my judgment the introduction of extrinsic evidence to elaborate or qualify the written terms of the notice would introduce a degree of uncertainty which in many cases would be undesirable. The subjective lack of uncertainty in the present case is, in my judgment, no answer to this proposition.

The hypothesis upon which the present issue must be considered is that from the written endorsement on the passport the person affected knows specifically the following, but no more than the following:-

- (a) that he has been granted limited leave undefined in extent to enter the United Kingdom;
- (b) that that leave is subject to the condition that he shall not take employment when in the United Kingdom.

As Kennedy J. rightly pointed out in *Reg. v. Secretary of State for the Home Department, Ex parte Tolba and Others* [1988] Imm A.R. 78, section 4(1) of the Act does not merely define the way in which the effect of the immigration officer's decision is to be communicated to the person affected but it does in effect provide the manner in which the decision making process is to be exercised. Thus, in the circumstances of the present case, until the passport was physically stamped no decision had been taken by the immigration officer even if he had already decided how to make his decision. If there is a defect in the notice in writing there is a defect in the decision itself. The question which, therefore, has to be asked is whether a decision to grant limited leave without defining the period during which the leave is to be granted can be considered as leave to enter which is "limited". For this purpose one must go to section 33(1) of the Act for the definition of limited and indefinite leave:

... 'limited leave' and 'indefinite leave' mean respectively leave under this Act to enter or remain in the United Kingdom which is, and one which is not, limited as to duration; ..."

Construing this strictly in favour of the immigrant, in my judgment there is no room for a lacuna between "limited leave" and "indefinite leave" in which there could reside a category of leave which could be described as "limited leave" without any definition being given as to how limited the leave is. In other words, leave which purports to be limited but in respect of which no period of time is stated cannot be said to be "limited as to duration" and, therefore, must fall in the alternative category of "indefinite leave". If this is the position resulting from the defective notice given under section 4 of the Act then the attachment of any condition under section 3(1)(c) of the Act restricting employment would ultra vires.

Returning to Mr. Pannick's submissions the question which must be asked is: Did Parliament intend that the courts could remedy a lacuna in the exercise of the power under section 3(1)(b) in accordance with Section 4(1) by 'implying a period of time'? If the answer to this question is "yes", can this be done if it can be established that a reasonable immigrant would have realised for what period the leave was to run? Attractive as this proposition is, I, with some regret, have come to the conclusion that the real purpose of section 4(1) was to avoid any kind of uncertainty in relation to the freedom of the person affected by the decision. It is for this reason that the exercise of the power can only be achieved, apart from the particular exceptions mentioned, by a notice in writing.

On balance, therefore, a strict construction of section 4(1) must, in my judgment, demand that the exercise of the power by the notice in writing should not be defective. In other words an omission cannot be made good by extrinsic evidence. At first sight this might appear to be a startling result and to open a floodgate of undesirable results. However, Parliament, perhaps being conscious of the defect of the provisions contained in the 1971 Act has in passing the Immigration Act of 1988 remedied this position. Paragraph 10 of the 1988 Act introduced amendments specified in the Schedule to that Act. Paragraph 8(1) of the Schedule amends paragraph 6(1) of Schedule 2 of the 1971 Act so as to substitute for indefinite leave to enter where no notice has been given within the statutory time limit a provision that leave to enter for a period of six months subject to a condition prohibiting the immigrant from taking employment shall be substituted. Curiously enough, this would, in the present case, have precisely effected both the intention of the immigration officer and the knowledge of the period of limitation which has, throughout the appeal, been common ground. For these reasons I would allow this appeal.

Order: Appeal allowed with costs of appeal and below; leave to appeal to House of Lords refused.

LORD JUSTICE PURCHAS: For the reasons given in the judgments which have been handed down, this appeal will be allowed.

MR. DAVIES: I thank your Lordship for your judgments, and I ask on behalf of the appellant for his costs both here and below. He is not a legally aided person.

LORD JUSTICE PURCHAS: Can you resist that, Mr. Pannick?

MR. PANNICK: I cannot resist that, my Lord. My Lords, I have an application, and it is an application for leave to appeal.

LORD JUSTICE PURCHAS: We will first make the order and then we will hear your application. The appeal is allowed with costs here and below. Yes, Mr. Pannick?

MR. PANNICK: My Lords, it is an application for leave to appeal from your Lordships' interesting decision.

The grounds of the application are these. First, that your Lordships were divided. Secondly, the majority took a different view from Mr. Justice McCowan. Thirdly, it is, in my submission, a difficult question of construction, as my Lord, Lord Justice Purchas, said at pages 1 to 4 of his judgment. Fourthly, there are important practical consequences for Mr. Minton as to whether he has indefinite leave to remain or not. Fifthly, the general implications of your Lordships' judgments; although it is correct that Schedule 2 has now been amended, nevertheless, on the basis of the majority judgments, any person who entered the United Kingdom prior to 10th July 1988 and who has an indistinct stamp would be entitled, if they now raised the matter with the Home Office, to indefinite leave to remain. It may well be that

LORD JUSTICE PURCHAS: Help me with this, Mr. Pannick. Is there any idea that there may be a large group of people involved in that?

MR. PANNICK: There may be, my Lord. What concerns the Home Office is that there may well be persons who have indistinct stamps in their passports in relation to entries prior to 10th July 1988 who, as a result of your Lordships' judgments and the publicity that it may well receive amongst practitioners, will come to the Home Office and say that their position is the same as that of Mr. Minton and that, on the basis of your Lordships' judgments, they are entitled to indefinite leave. Whether or not they have in the meantime remained in this country or gone out, they may say that on return they should be treated as returning residents. So it is not simply in the case of Mr. Minton that your Lordships' judgments would have application. That is the basis of my application, my Lords.

LORD JUSTICE PURCHAS: If they have not come back during the past two years, then it is all right, is it, from your point of view?

MR. MINTON: If they remained here, without having travelled abroad, they can, on the basis of your Lordships judgments, now come forward and say that when they arrived in 1987 they were given an indistinct stamp and, therefore, they are entitled and have been since that time to indefinite leave to remain. The fact that they have not raised the matter until now would not, I apprehend, prevent them from raising the matter. Those who have left this country since then would be able to mount at least an argument that on return to this country they should have been treated as a returning resident, that is someone who was entitled when they left to indefinite leave to remain and they should have been treated as a returning resident when they came back, which, as your Lordships will recall, was Mr. Minton's argument. He was concerned about when he came back next time. I don't concede that any such argument would necessarily succeed on its facts, but I draw that to your Lordship's attention because it is, in my submission, a possible implication of your Lordships' judgments. That is why, in my submission, this matter is appropriate for consideration by their Lordships' House.

My Lords, those are my submissions.

LORD JUSTICE PURCHAS: Thank you. Mr. Davies, do you want to say anything?

MR. DAVIES: Only very briefly, my Lord. I normally would not want to be heard at all, but it does appear this may be a matter for their Lordships to consider in the House of Lords as to whether in reality this issue merits the consideration of their Lordships' House in view of the amendment made by Schedule 2. As a matter of fact, as far as I can at present discover, in regard to the the significance to pre-amendment cases, there will be first of all those categories of people who are undiscovered over-stayers, and of those those who had indistinct stamps when they first came, and they call came before the amendment of the law. Then there will be an argument open to those but no more, it would appear, who had an indistinct stamp at some time and came back after a visit. But, as I understand it, it would be contended in such a case that the Secretary of State would say "Well, if you did not claim on your return to be a returning resident upon the basis of your indistinct stamp, then the fact that

you were given limited leave on your return after being away with an indistinct stamp does not now permit you to assert that on that occasion you should have been given indefinite leave” . In those circumstances, I put those matters forward for your Lordships' consideration, my submission would be that if it is to be a matter properly considered by their Lordships, perhaps they ought to decide for the reasons that I give.

LORD JUSTICE PURCHAS: Thank you. No, Mr. Pannick, you must make your approach to their Lordships' House.

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