

Status:  Positive or Neutral Judicial Treatment

R. v Secretary of State for the Home Department Ex p. Saleem

Also known as:

R. v Immigration Appeal Tribunal Ex p. Saleem

Saleem v Secretary of State for the Home Department

Court of Appeal (Civil Division)

13 June 2000

Case Analysis

Where Reported

[\[2001\] 1 W.L.R. 443](#); [\[2000\] 4 All E.R. 814](#); [\[2000\] Imm. A.R. 529](#); [\[2000\] I.N.L.R. 413](#); Times, June 22, 2000; Independent, June 23, 2000; [Official Transcript](#)

Case Digest

Subject: Immigration

Keywords: Appeals; Asylum seekers; Notices; Time limits

Summary: The Secretary of State appealed against a decision that the Asylum Appeals (Procedure) Rules 1996 r.42(1)(a) was ultra vires the rule making power contained in the Immigration Act 1971 s.22(1) to "regulate the exercise of the rights of appeal conferred by....the Act". It was argued that r.42(1)(a) did not fundamentally interfere with an asylum seeker's right of appeal, since it had to be considered in the context of all the available alternative remedies, and that the small risk of injustice potentially arising out of r.42 had to be set against the overriding objective of the Rules, namely to ensure the "just, timely and effective" disposal of appeals. Finding that, in depriving asylum seekers of their right of appeal, the rule did more than the rule making power authorised, the court held that, insofar as receipt of notification of adjudicators' determinations was concerned, r.42(1)(a) was not within the powers granted by s.22(1) of the Act.

The Secretary of State appealed against a decision ([1999] I.N.L.R. 621) granting judicial review of the refusal to consider an appeal to the Immigration Appeal Tribunal on the ground that it was out of time. S, an asylum seeker, had been informed that her appeal against a decision of the special adjudicator would not be considered on the basis that under the [Asylum Appeals \(Procedure\) Rules 1996 r.42\(1\)\(a\)](#) she was deemed to have received the decision on the second day after it was posted and had failed to appeal within the five-day rule.

Held, dismissing the appeal, that the right to appeal against a decision of the special adjudicator under the [Immigration Act 1971 s.20\(1\)](#) was a fundamental right similar to the right to unhindered access to the courts. That right could be properly exercised only if the party wishing to appeal was aware of a determination. Any rule which provided that an asylum seeker was deemed to have received notice of a decision after the second day of posting, irrespective of when or whether it was actually received, went beyond the scope of the power to regulate the right of appeal provided under s.22 of the Act. It followed that such a rule should have no effect.

Notwithstanding that the purpose of r.42(1)(a) of the Rules was to ensure that a decision to appeal was taken speedily, in practice it had the effect of destroying the right of appeal where an asylum seeker, through no fault of their own, failed to receive notice of a decision.

Judge: Roch LJ; Mummery LJ; Hale LJ

Counsel: For S: Andrew Nicol Q.C. and Mark O'Connor. . For the Secretary of State: Ian Burnett Q.C..

Solicitor: For S: Param & Co. . For the Secretary of State: Treasury Solicitor.

Appellate History & Status

Queen's Bench Division; 01 October 1999

R. v Secretary of State for the Home Department Ex p. Saleem
[\[1999\] I.N.L.R. 621](#); [Times, November 11, 1999](#); [Official Transcript](#)

Affirmed

Court of Appeal (Civil Division); 13 June 2000

R. v Secretary of State for the Home Department Ex p. Saleem
[\[2001\] 1 W.L.R. 443](#); [\[2000\] 4 All E.R. 814](#); [\[2000\] Imm. A.R. 529](#); [\[2000\] I.N.L.R. 413](#); [Times, June 22, 2000](#); [Independent, June 23, 2000](#); [Official Transcript](#)

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[\[1998\] Imm. A.R. 252](#); [\[1998\] I.N.L.R. 168](#); [\[1998\] C.O.D. 321](#); [Times, February 25, 1998](#); QBD; 09 February 1998

R. v Immigration Appeal Tribunal Ex p. Bellache (No.2)

[\[1997\] C.L.Y. 2845](#); CA (Civ Div); 24 April 1997

R. v Lord Chancellor Ex p. Witham

[\[1998\] Q.B. 575](#); [\[1998\] 2 W.L.R. 849](#); [\[1997\] 2 All E.R. 779](#); [\[1997\] C.O.D. 291](#); [\(1997\) 147 N.L.J. 378](#); [\(1997\) 141 S.J.L.B. 82](#); [Times, March 13, 1997](#); [Independent, March 21, 1997](#); QBD; 07 March 1997

R. v Secretary of State for the Home Department Ex p. Sasiskath

[\[1997\] Imm. A.R. 83](#); QBD; 07 October 1996

Tolstoy Miloslavsky v United Kingdom (A/323)

[\[1996\] E.M.L.R. 152](#); [\(1995\) 20 E.H.R.R. 442](#); [Times, July 19, 1995](#); [Independent, September 22, 1995](#); ECHR; 13 July 1995

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[\[1995\] Imm. A.R. 52](#); QBD; 30 August 1994

R. v Secretary of State for the Home Department Ex p. Leech (No.2)

[\[1994\] Q.B. 198](#); [\[1993\] 3 W.L.R. 1125](#); [\[1993\] 4 All E.R. 539](#); [\(1993\) 137 S.J.L.B. 173](#); [Times, May 20, 1993](#); [Independent, May 20, 1993](#);

CA (Civ Div); 19 May 1993

Raymond v Honey

[\[1983\] 1 A.C. 1](#); [\[1982\] 2 W.L.R. 465](#); [\[1982\] 1 All E.R. 756](#); (1982) [75 Cr. App. R. 16](#); HL; 04 March 1982

Tarr v Tarr

[\[1973\] A.C. 254](#); [\[1972\] 2 W.L.R. 1068](#); [\[1972\] 2 All E.R. 295](#); (1972) [116 S.J. 353](#); HL; 26 April 1972

Kruse v Johnson

[\[1898\] 2 Q.B. 91](#); QBD; 14 May 1898

Key Cases Citing

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[\[2000\] Imm. A.R. 551](#); [\[2000\] I.N.L.R. 686](#); IAT; 20 June 2000

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[\[2004\] EWHC 588 \(Admin\)](#); [\[2004\] 1 W.L.R. 2953](#); [\[2004\] 3 All E.R. 286](#); [\[2004\] A.C.D. 85](#); [Times, May 13, 2004](#); [Official Transcript](#); QBD (Admin); 25 March 2004

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[\[2016\] EWHC 218 \(Admin\)](#); QBD (Admin); 15 February 2016

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Mentioned by

R. (on the application of W) v Secretary of State for Health

[\[2015\] EWCA Civ 1034](#); [Official Transcript](#); CA (Civ Div); 14 October 2015

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[\[2015\] EWCA Civ 840](#); [\[2015\] 1 W.L.R. 5341](#); [\[2015\] Imm. A.R. 1349](#); [Times, September 9, 2015](#); [Official Transcript](#); CA (Civ Div); 29 July 2015

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[\[2015\] EWHC 1268 \(Admin\)](#); [\[2015\] A.C.D. 111](#); [Official Transcript](#); QBD (Admin); 11 May 2015

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[\[2015\] EWCA Civ 445](#); [\[2015\] 3 W.L.R. 1031](#); [Official Transcript](#); CA (Civ Div); 06 May 2015

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[\[2015\] EWHC 35 \(Admin\)](#); [\[2015\] 2 F.L.R. 823](#); [\[2015\] 3 F.C.R. 409](#); [\[2015\] Fam. Law 277](#); [Official Transcript](#); QBD (Admin); 22 January 2015

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[\[2014\] EWHC 4298 \(Admin\)](#); QBD (Admin); 19 December 2014

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R. (on the application of MM (Lebanon)) v Secretary of State for the Home Department

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Mentioned by

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[\[2014\] EWCA Civ 438](#); CA (Civ Div); 09 April 2014

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[\[2014\] EWHC 832 \(Admin\)](#); [\[2015\] 1 W.L.R. 945](#); [\[2014\] 4 All E.R. 133](#); [\[2014\] Imm. A.R. 919](#); [\[2014\] A.C.D. 98](#); [Official Transcript](#); QBD (Admin); 26 March 2014

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[\[2014\] EWCA Civ 88](#); [\[2014\] 1 W.L.R. 3173](#); [\[2014\] 2 All E.R. 973](#); [\[2014\] Imm. A.R. 768](#); [Official Transcript](#); CA (Civ Div); 11 February 2014

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[\[2012\] EWCA Civ 1657](#); [\[2013\] 1 W.L.R. 701](#); [\[2013\] 2 All E.R. 323](#); [\[2013\] C.P. Rep. 16](#); [\[2013\] 1 E.G.L.R. 57](#); [\[2013\] 11 E.G. 82](#); [\[2013\] R.V.R. 150](#); [\[2013\] 1 E.G. 49 \(C.S.\)](#); [\[2013\] 1 P. & C.R. DG13](#); [Official Transcript](#); CA (Civ Div); 14 December 2012

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[\[2011\] EWCA Civ 1665; Official Transcript](#); CA (Civ Div); 19 December 2011

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[\[2011\] EWHC 3370 \(Admin\)](#); [\[2012\] 2 All E.R. 653; Official Transcript](#); QBD (Admin); 16 December 2011

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[\[2008\] EWHC 1024 \(Admin\)](#); [\[2008\] 1 W.L.R. 2460](#); [\[2008\] 3 All E.R. 226](#); [\[2008\] Extradition L.R. 237](#); [Times, June 2, 2008](#); [Official Transcript](#); DC; 09 May 2008

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[\[2005\] EWHC 3298 \(Admin\)](#); [Official Transcript](#); QBD (Admin); 07 November 2005

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[\[2003\] EWCA Civ 925](#); [\[2003\] I.N.L.R. 585](#); [Official Transcript](#); CA (Civ Div); 18 June 2003

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[\[2003\] EWHC 484 \(Admin\)](#); [Official Transcript](#); QBD (Admin); 27 February 2003

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[\[2003\] UKHL 9](#); [\[2003\] 2 A.C. 633](#); [\[2003\] 2 W.L.R. 518](#); [\[2003\] 1 All E.R. 1012](#); [\[2003\] 1 F.C.R. 548](#); [\[2003\] B.L.G.R. 343](#); [\[2003\] E.L.R. 309](#); [\(2003\) 100\(18\) L.S.G. 34](#); [Times, March 6, 2003](#); [Official Transcript](#); HL; 27 February 2003

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[Immigration Act 1971 \(c.77\) s.22](#)

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Journal Articles

Balancing Acts: six Acts in search of equilibrium

Appeals; Asylum policy; Immigration.

[J.I.A.N.L. 2006, 20\(3\), 197-209](#)

Balancing Acts: six Acts in search of equilibrium

Asylum policy.

J.I.A.N.L. 2006, 20(3), 197-209

The impact of judicial review on asylum

Administrative decision making; Appeals; Asylum seekers; Delay; Detention; Human rights; Judicial review; Social welfare; Third countries; Visas.

[P.L. 2003, Aut, 479-510](#)

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Appeals; Asylum.

[C.L.B. 2001, 27\(1\), 207-208](#)

Access to a court after Witham, Lightfoot and Saleem

Access to justice; Right to fair trial.

[J.R. 2001, 6\(1\), 38-43.](#)

Books

Judicial Remedies in Public Law 5th Ed.

Chapter: Chapter 7 - Declarations

Documents: [Section C. - Uses of the Declaration in Public Law](#)

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