Neutral Citation Number: [2024] EWHC 3110 (Admin)

Case No: AC-2023-LON-002692

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday 3rd December 2024

Before :

TIM SMITH
(sitting as a Deputy High Court Judge)

- -

Between :

THE KING (ON THE APPLICATION OF ROSLYN SCOTT)	**Claimant**
- and –	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**

- -

The **Claimant** appeared in person
Matthew Howarth (instructed by **Government Legal Department**) for the **Defendant**

Hearing date: 19th November 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 3 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

MR TIM SMITH (sitting as a Deputy High Court Judge):

Introduction

1. This claim relates to two applications made by the Claimant, Ms Scott, for indefinite leave to remain in the UK. The claim focuses in particular on the effect which the second application had on the first.

2. The Secretary of State treated Ms Scott's first application as having been voided by the second application. This conclusion is based on the Secretary of State's interpretation of various aspects of the Immigration Rules, but it was not communicated to Ms Scott at the time. It was only after she made enquiry of the Secretary of State some time later that the voiding of the first application was revealed to her.

3. Ms Scott therefore takes issue with both the voiding of the application itself and of the failure of the Secretary of State to notify her of it at the time.

Background facts

4. Ms Scott's immigration and residency history has become a long story with many chapters. It involves numerous different applications for leave to remain in the UK, together with various reconsideration requests, appeals against refusals, and legal challenges before this court to the Defendant's decisions.

5. Ms Scott is a US national who first entered the UK on a post-graduate student visa in January 2010 after one previous application for a student visa had been withdrawn and another had been refused.

6. The latest chapter in her story involves the two most recent applications made by Ms Scott for leave to remain in the UK.

7. On 17th March 2021 Ms Scott made an application for indefinite leave to remain ("ILR"), relying upon her residence in the country at that time for over 10 years as the relevant ground. She paid the requisite application fee of £2,408.20 with this application. For ease I refer to this as Ms Scott's "ILR application".

8. Subsequently in June 2021, before her ILR application had been determined, Ms Scott made a separate application under the EU Settlement Scheme, relying upon her status as someone with a "Zambrano" right to reside. That is a reference to the case of Ruiz Zambrano v Office National de l'Emploie (C-34/09) [2012] QB 265, a case decided by the Grand Chamber of the European Court of Justice in March 2011. Ms Scott's contention was that she was the sole carer of her son, who was born in the US in August 2000 and who has joint US and British nationality, and that her right to reside (confirmed by the Zambrano case) derived from her son's right to reside in the UK and her derivative right to reside with him as his carer. The application was made pursuant to Appendix EU of the Immigration Rules. For ease I refer to this as Ms Scott's "EU application".

9. Ms Scott's EU application was refused by the Secretary of State on 26th July 2022. Ms Scott appealed against that refusal, unsuccessfully, to the First Tier Tribunal. In April 2023 the Upper Tribunal granted permission to appeal the First Tier Tribunal's decision. Since then Ms Scott's appeal has been stayed pending the outcome of the application in Celik v Secretary of State for the Home Department [2023] EWCA Civ 921 for permission to appeal to the Supreme Court.

10. Meanwhile Ms Scott's ILR application was deemed void by the Secretary of State on 14th February 2022. This – explained Mr Howarth who appeared for the Secretary of State - is the date on which the Secretary of State began to consider Ms Scott's

separate EU application. I consider in more detail below the basis on which the argument about voiding is advanced but, in summary, the Secretary of State's case is that by operation of the Immigration Rules the submission of a second application prior to the determination of the first application automatically resulted in the first application becoming void. This was said to be by reason of rule 34BB of the Immigration Rules.

11. Rule 34BB provides as follows:

> "34BB. (1) An applicant may only have one outstanding application for leave to remain at a time.
>
> (2) If an application for leave to remain is submitted in circumstances where a previous application for leave to remain has not been decided, it will be treated as a variation of the previous application.
>
> (3) Where more than one application for leave to remain is submitted on the same day then subject to sub-paragraph (4), each application will be invalid and will not be considered.
>
> (4) The Secretary of State may give the applicant a single opportunity to withdraw all but one of the applications within 10 working days of the date on which the notification was sent. If all but one of the applications are not withdrawn by the specified date each application will be invalid and will not be considered.
>
> (5) Notice of invalidity will be given in writing and served in accordance with Appendix SN of these Rules"

12. Ms Scott's undisputed evidence is that she did not become aware of the voiding of her ILR application until June 2023 when, during the course of the appeal proceedings against a refusal of her EU application, the Secretary of State responded to a request from Ms Scott's legal representatives for an update on the status of the separate ILR application. The Secretary of State accepts that Ms Scott was not notified of the voiding of the ILR application, either at the time or subsequently.

13. Upon becoming aware of the voiding of her ILR application Ms Scott took steps to commence the present proceedings.

The present claim

14. Ms Scott appeared on her own account before me. She presented her case with patience and tenacity. She accepted that these proceedings challenge only the status of the ILR application. They do not take issue with her EU application, which (having been refused) is the subject of separate and ongoing appeal proceedings.

15. The claim was commenced on 13th September 2023. Initially it cited five grounds.

16. The claim was considered on the papers by Sweeting J on 21st February 2024. He ordered that the question of whether permission for judicial review should be granted be adjourned to an oral hearing. This oral hearing took place in front of Jonathan Glasson KC (sitting as a Deputy High Court Judge) on 11th April 2024. Mr Glasson granted permission for the claim to proceed on grounds 1 to 4, refusing permission on ground 5.

17. As part of his order granting permission Mr Glasson gave Ms Scott permission to amend her Statement of Facts and Grounds. Ms Scott took advantage of this opportunity. Her reformulated claim cited three grounds which Ms Scott agreed could conveniently be summarised as follows:

    A) Ground 1: whether the Secretary of State was right to treat the ILR application as being voided by the subsequent EU application,

    B) Ground 2: whether the Secretary of State had the right not to notify Ms Scott of the voiding of her application, and

C) Ground 3: whether the Secretary of State should have (and, as a matter of fact, did) refund Ms Scott's application fee for the ILR application

18. As it turns out, Ground 3 did not need to be pursued before me. The Secretary of State accepted that Ms Scott should be refunded the application fee for her voided ILR application. His position was that the fee had been refunded, although on the evidence there was some uncertainty as to whether it had been received or whether proof of payment could be shown. Nevertheless Ms Scott was able to inform me in oral argument that she has very recently been able to trace the refund payment made by the Secretary of State and that she can therefore verify it has been received. I make no criticism of either party for the fact that this was not revealed until the morning of the hearing before me, but on the strength of her investigations Ms Scott accepted that Ground 3 had now become academic.

19. I note in passing that the Secretary of State's secondary submission on Ground 3 relied upon what is said to be evidence of a litigation debt owed by Ms Scott to the Secretary of State from earlier proceedings. I record that Ms Scott took issue with both the evidence in question and with whether any debt would still be recoverable by reason of the limitation period; nevertheless Ms Scott accepted from me that with Ground 3 becoming academic the evidence introduced by the Secretary of State in resisting it also became irrelevant to the proceedings. I therefore make no comment on whether Ms Scott's complaints about this evidence and the Secretary of State's submissions related to it are well-founded or not.

20. Having agreed that Ground 3 no longer needed to be pursued, at the outset of the hearing I summarised for the benefit of the parties my understanding of the case advanced by the Secretary of State in relation to the remaining grounds as follows:

a) That the ILR application was an application based on Ms Scott's long residence in the UK. It was not based on her status as a Zambrano carer,

b) That once the EU application was submitted it automatically voided the (undetermined) ILR application by the operation of paragraph 34BB of the Immigration Rules. (Mr Howarth later clarified in answer to my question that this voiding took effect not upon the date of submission of the EU application but on the date it first came to be considered on behalf of the Secretary of State some months after its submission), and

c) That there was no requirement for the Secretary of State to notify Ms Scott of the voiding of the ILR application

Mr Howarth agreed that this accurately summarised the case for the Secretary of State. Ms Scott also agreed that this is what she understood the case against her to be.

21. I then asked Ms Scott to explain the remedy she was seeking from the court if her claim succeeded. Ms Scott submitted that, primarily, she needed to be put back in the position she would have been in had the alleged unlawful activity not taken place. Clearly this requires that her ILR application be revived and be considered by the Secretary of State as a valid application, although Ms Scott added the important qualification to this submission that any determination of the ILR application should be according to the criteria in force at the date the application was submitted rather than the criteria in force now (in case the criteria differ materially). Ms Scott added that she would also ask the court to direct that the Secretary of State consider and decide the application according to a set timescale, to mitigate for the delays she has already suffered as a result of the proceedings.

22. I noted from the claim documents that Ms Scott also appeared to be seeking some form of financial redress for the wrongs she says she has suffered at the hands of the Secretary of State. These are referred to somewhat vaguely in the Amended Statement of Facts and Grounds as "an order for costs in favour of the Claimant reflecting the unnecessary hardship and financial burden imposed by the Defendant's errors". In response to my questions Ms Scott clarified that the financial redress she was seeking could be summarised as follows:

A) The legal fees she has paid to pursue the claim, for example the cost of instructing Counsel to appear on her behalf at the oral permission hearing,

B) The 'loss of opportunity' costs arising from not being a UK resident with accepted ILR status, for example an inability to access financial support during the Covid pandemic and the higher charges she must pay to access certain courses, and

C) The emotional stress caused by having an unconfirmed residency status, with the consequent uncertainty each time she travels overseas about whether she will be allowed to re-enter the UK (and, if so, how long it will take for this to be established by Border Force officers)

Ms Scott accepted from me that none of these sub-categories are quantified by any evidence in the claim.

23. The final procedural aspect to the claim is that the Secretary of State has applied for permission to file his Detailed Grounds of Resistance late. The Detailed Grounds had in fact been included in the claim bundle, although his application remained live. Ms Scott had objected to the application in earlier correspondence. In response to my question she clarified that her objection was based on two grounds: firstly that the

Secretary of State had delayed the proceedings for long enough, and secondly that she disputed some of what was said in the Grounds. In response I explained that I had read the Detailed Grounds; that the Secretary of State's skeleton argument was based on them; that it assisted the court to have regard to them as a summary of the Secretary of State's case against the reformulated Statement of Facts and Grounds; and that because the Detailed Grounds had been available for some time there was no further delay caused and I could see no prejudice to Ms Scott in my admitting them now. As to Ms Scott's second objection I assured her that she would have the opportunity to identify and make submissions to me about what she considered to be inaccurate summaries of the facts or of the law as part of her oral argument. For these reasons I granted the Secretary of State's application and admitted his Grounds into the case.

24. I turn now to consider the two remaining grounds of challenge.

Ground 1

Claimant's submissions

25. Ms Scott's primary submission was that the Secretary of State was wrong to conclude that submission of the EU application had automatically resulted in the still-undetermined ILR application being voided.

26. Ms Scott submitted specifically that the Secretary of State's reliance on rule 34BB of the Immigration Rules, as support for the proposition that submission of the second application had this effect on the first application, was misplaced.

27. In her skeleton argument Ms Scott had identified the first-instance judgment of Mostyn J in R (ota Akinsanya) v Secretary of State for the Home Department [2021]

EWHC 1535 (Admin), and especially the form of agreed Consent Order recorded at the conclusion of the reported judgment, as being pivotal to her submission.

28. By the Consent Order in Akinsanya the Secretary of State had agreed to reconsider the relevant provisions of Appendix EU to the Immigration Rules and had further agreed not to determine any applications made under Appendix EU until this reconsideration had taken place. Moreover paragraph (d) of the Consent Order addressed rule 34BB of the Immigration Rules specifically in these terms:

> "(d) To the extent that paragraph 34BB of the Immigration Rules applies to a Zambrano application, it will be disregarded where there is (i) an outstanding valid Zambrano application for leave to remain under Appendix EU and a valid application for leave to remain is subsequently made under Appendix FM based on the same circumstances; and (ii) an outstanding valid application for leave to remain under Appendix FM and a valid Zambrano application for leave to remain is subsequently made under Appendix EU based on the same circumstances as the Appendix FM application"

29. Developing this point Ms Scott's skeleton argument included the following submission:

> "[The case of Akinsanya] clarified that Paragraph 34BB [of the Immigration Rules] cannot automatically void or vary a pending [EU Settlement Scheme] application, such as one made under Zambrano rights, even where other applications … exist. The Defendant's reliance on Paragraph 34BB in this case is legally flawed because the Claimant's EUSS Zambrano application under Appendix EU [to the Immigration Rules] is expressly excluded from Paragraph 34BB's operation. This legal exemption reflects the distinct nature of EUSS applications, which are grounded in EU law principles rather than domestic immigration rules"

30. Elsewhere in her skeleton argument Ms Scott made the following submission with respect specifically to the Consent Order in Akinsanya:

> "The Defendant conflates the ILR application with the subsequent Zambrano application. The consent order in Akinsanya clarified that such applications are distinct and should be assessed independently"

31. In oral argument Ms Scott clarified that, whilst her submission relating to the Consent Order in Akinsanya was important, the more important point was that under the Immigration Rules all applications under the EU Settlement Scheme ("EUSS") were exempted from the effects of negation by rule 34BB. She cited paragraph EU10(2) of Appendix EU to the Immigration Rules as authority for this proposition.

Defendant's submissions

32. In responding to Ms Scott's skeleton argument and her oral submissions to me, Mr Howarth submitted that the case now being put appeared to be different from that put in the Amended Statement of Facts and Grounds. He had understood Ground 1 to be anchored firmly to the Consent Order endorsed by Mostyn J at first instance in Akinsanya, which the affirming judgment of the Court of Appeal did not disturb even though it modified the terms of the separate declaration made by Mostyn J. Mr Howarth said that he now understood that a separate and over-arching point was being made, relying on paragraph EU10(2), namely that – irrespective of the terms of the Consent Order – rule 34BB had no effect on any application made under the EUSS.

33. Mr Howarth submitted that the Secretary of State's answer to the submissions based on the Consent Order in Akinsanya highlighted the particular terms of paragraph (d) of the Order (which I have set out above). Both of limbs (i) and (ii) are confined to subsequent applications "based on the same circumstances". That was not the case here, he submitted. The ILR application was based solely on Ms Scott's period of residence in the UK. This fact is reinforced by reading Ms Scott's answer to the question on the ILR application form "Do you have any other reasons for wanting to stay in the UK?". Ms Scott had answered "I do not have any other reasons for wanting to stay in the UK". Mr Howarth emphasised the fact that Ms Scott had not,

for example, additionally asserted any rights as a Zambrano carer for her son in her ILR application. By contrast her EU application was based firmly on her asserted Zambrano rights. As such it could not be said to be "based on the same circumstances" as the earlier ILR application, and by reason of this paragraph (d) of the Consent Order in Akinsanya did not apply.

34. Having reflected on what he saw to be an enlargement of the case presented in oral argument, Mr Howarth nevertheless rejected Ms Scott's overarching point that applications under the EUSS were exempt from the effects of rule 34BB. Mr Howarth cited the same authority for this point as did Ms Scott – paragraph EU10(2) of Appendix EU – but he submitted that, properly construed, it led to the opposite conclusion to the one urged by Ms Scott.

Discussion and conclusions

35. Ms Scott was understandably mystified to hear that the Secretary of State's defence to the wider Ground 1 complaint rested on the same authority that she relied upon in support of her claim, namely paragraph EU10(2). After some discussion with the parties I concluded that the fairest way of proceeding was to adjourn briefly to give Ms Scott and Mr Howarth the opportunity to discuss the point amongst themselves.

36. When the hearing resumed the source of the confusion became apparent.

37. The Immigration Rules are very fluid. In framing her submissions Ms Scott had accessed and relied upon Appendix EU to the Rules as it exists today. By contrast Mr Howarth's submissions were based on the archived version of Appendix EU that existed at the date the deemed voiding was said to apply. That is the version that was

in force between 1st January 2022 and 14th February 2022, and it is clearly the correct version for the purposes of this claim.

38. The correct version of paragraph EU10(2) provided at the relevant time as follows:

> "(2) In paragraph 34BB of these Rules, sub-paragraphs (3) to (5) do not apply to applications made under this Appendix"

39. By contrast the wording of paragraph EU10(2) as it appears today states as follows:

> "(2) Paragraph 34BB of these Rules does not apply to applications made under this Appendix. Where a further valid application is made under this Appendix before a previous such application has been decided, the further application will be treated as an application to vary the previous application and only the latest application will be considered"

40. The difference between the two versions is readily apparent and it is critical to the determination of this case. Ms Scott is correct to say that, as at today, by virtue of paragraph EU10(2) no part of rule 34BB applies to an application submitted under Appendix EU. But that is not what it said at the relevant date. In February 2022 the parts of rule 34BB that were disapplied for an application made under Appendix EU were confined to sub-paragraphs (3) to (5).

41. That leaves sub-paragraphs (1) and (2) of rule 34BB still applying in February 2022, namely:

> "34BB. (1) An applicant may only have one outstanding application for leave to remain at a time.
>
> (2) If an application for leave to remain is submitted in circumstances where a previous application for leave to remain has not been decided, it will be treated as a variation of the previous application"

42. The facts of the present case fall squarely within sub-paragraph (2). When the EU application was submitted the ILR application had not been decided. Rule 34BB(2)

therefore had the effect of varying the ILR application so that, in effect, it became the EU application. For all practical purposes this is the same as declaring that the ILR application was voided. It no longer exists in the form in which it was submitted. Only one application, in the form of the EU application, remained.

43. For these reasons I accept Mr Howarth's submission that rule 34BB, when read with the correct version of paragraph EU10(2), has the effect on the ILR application claimed by the Secretary of State.

44. As to Ms Scott's submissions in Ground 1 based on Akinsanya, in oral argument I posited with Ms Scott that the facts in the present case were very different from those in Akinsanya. In Akinsanya, as is evident from [9]-[11] of the judgment of Mostyn J, the claimant had applied for and been granted limited leave to remain in the UK. She then made an application under the EUSS on Zambrano grounds, which the Secretary of State refused to entertain because she said that leave to remain could only be applied for under the EUSS grounds if an applicant had no other right to remain.

45. Mostyn J ruled that the Secretary of State's position was unlawful. He made a declaration for the case consequent upon his judgment and approved the Consent Order to which I have referred above for wider application. The text of both appears at the conclusion of his reported judgment. The Court of Appeal upheld Mostyn J's decision with just some minor amendments to the terms of the declaration (amendments which are immaterial to the determination of the present case).

46. The outcome of Akinsanya was therefore that the Secretary of State was held wrongly to have refused to entertain Ms Akinsanya's EUSS application, being the second application she had made.

47. By contrast, in this case Ms Scott's EU application has been determined by the Defendant. It was refused and is still the subject of appeal proceedings, but this fact is sufficient to distinguish it from the facts of Akinsanya. Ms Scott has not been deprived of a decision on her EU application. Her challenge in this case is to the failure of the Secretary of State to determine another of her applications, the earlier ILR application.

48. In her submissions in reply Ms Scott urged upon me the conclusion that Mostyn J intended to protect people in her position from losing their status. Respectfully, that submission takes her case no further. I can only take account of the actual wording of Mostyn J's judgment and subsequent declaration. It is not appropriate (nor even practically possible) for me to attempt to go behind the words he used to infer a wider intent and a broader application of his judgment than the words themselves convey.

49. In conclusion the Secretary of State was correct to state that the Immigration Rules operated so as to void the ILR application from the moment the subsequent EU application began to be considered. This is by reason of rule 34BB read with paragraph EU10(2) in force in February 2022 when that consideration took place. Neither the Consent Order nor the declaration of the court in Akinsanya disturb this conclusion.

50. For these reasons Ground 1 fails.

Ground 2

Claimant's submissions

51. Ms Scott submitted that paragraph SN1.2 in Appendix SN to the Immigration Rules relates to the giving of notice of decisions and that it is directly applicable to the facts

of this case. She interpreted paragraph SN1.2(b) as requiring the notification of a decision even if that decision were to void an application.

52. Paragraph SN1.2 deals with the provision of notice for various different types of decision. Of these the one that is relevant in the present case is sub-paragraph (b). Paragraph SN1.2(b) provided at the relevant time as follows:

> "SN1.2 A notice in writing:
>
> …
>
> (b) that an application for entry clearance, leave to enter or leave to remain in the United Kingdom is void;
>
> …
>
> may be given to the person affected as follows"

53. There then follows in paragraph SN1.3 a series of methods approved for the giving of notice (including, for example, fax or postal service).

54. Outside of the Appendix SN requirements Ms Scott also relied on the judgment of the House of Lords in R (ota Anufrijeva) v Secretary of State for the Home Department [2004] AC 604 in support of her general contention that there was a duty on the Secretary of State to give her notice of his decision to void her ILR application. In Anufrijeva the claimant, a Lithuanian national, applied for asylum in the UK. She was eligible to receive income support benefits whilst her asylum claim was being considered. The defendant refused the asylum claim and communicated that decision to the Benefits Agency but did not communicate it to the claimant. The Benefits Agency stopped her income support benefits with effect from the date the asylum claim was refused.

55. By a four to one majority (Lord Bingham dissenting) the House of Lords ordered that the claimant's benefit be restored for the period between the date her asylum claim was refused and the date that notice of the refusal decision was given to her. The majority held that until the claimant was actually notified of the refusal of her asylum claim the refusal decision could not have legal effect.

56. In discussion with Ms Scott she agreed with me that the part of the Anufrijeva decision upon which she sought to rely was the speech of Lord Steyn for the majority where he said, at [26]:

> "The arguments for the Home Secretary ignore fundamental principles of our law. Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice. That is a fundamental and constitutional principle of our legal system"

57. Ms Scott submitted that this statement of the law applied precisely to the facts of her case.

Defendant's submissions

58. For the Defendant Mr Howarth submitted that, properly construed, paragraph SN1 of Appendix SN1 merely specified the means by which a decision should be communicated to an applicant if it were decided to give notice of the decision. He submitted that the mode of communication, and – more importantly – the decision whether to communicate it at all, were within the discretion of the Secretary of State.

59. As I have already noted, when dealing with the voiding of a previous application by the submission of a subsequent application sub-paragraph (5) of rule 34BB cross-refers to the notice requirements in Appendix SN1 as follows:

> "(5) Notice of invalidity will be given in writing and served in accordance with Appendix SN of these Rules"

60. But, submitted Mr Howarth, rule 34BB must be read in light of paragraph EU10(2) prevailing at the time. Paragraph EU10(2) disapplied the requirement in paragraph (5) to notify of the voiding of an earlier application where that voiding results from the submission of a subsequent application under Appendix EU.

61. Finally Mr Howarth submitted that there can have been no doubt about the voiding of the ILR application because it was an automatic consequence of the later submission of the EU application, as the Secretary of State's published guidance in rule 34BB made clear. That fact supports the conclusion that there was no requirement to proactively notify Ms Scott of the voiding.

Discussion and conclusions

62. The facts are agreed. The Secretary of State did not notify Ms Scott that her ILR application was deemed to be voided when the EU application began to be considered. She only discovered this when the Secretary of State responded to a direct question asking about progress with the ILR application. Ms Scott added that a failure to notify her of the decision, in breach of the requirements of the Rules, deprived her of the opportunity to mount a challenge to the decision as soon as it was made. Instead she had to wait a considerable period after the decision had been taken before she even became aware that there was something to challenge. She commenced her challenge as soon as she did become aware.

63. Ms Scott began her oral submissions to me on this ground by asserting that basic decency should have required the Secretary of State to notify her of the voiding irrespective of whether the Rules even required it (although her primary submission

remained that the Rules did in fact require it). I have some sympathy for this viewpoint. Nevertheless, as I made clear to Ms Scott in response to that submission, the task of this court is to oversee the rule of law rather than a wider question of what basic standards of decency may require.

64. In my view paragraphs SN1.2 and SN1.3 confer a discretion on the Secretary of State about the mode of communication but not about the prior question of whether notice needs to be given at all. For that one must read rule 34BB of the Rules. Read in isolation rule 34BB requires in terms (per sub-paragraph (5)) that notice of invalidity should be given in writing and served in accordance with the provisions of Appendix SN. I should say that I equate "invalidity" with "voiding" for these purposes.

65. But – crucially – rule 34BB cannot be read in isolation. It must be read alongside paragraph EU10(2), which expressly disapplies sub-paragraph (5) in circumstances where a prior application has been voided automatically by a subsequent application under Appendix EU. One is therefore left with a former express requirement that has now been disapplied. In my judgement that can only be read as removing any express or implied requirement under the Rules for the Secretary of State to notify Ms Scott that her ILR application had been voided, leaving it as a matter for the Secretary of State's discretion.

66. Are there any other legal requirements to notify outside of the Immigration Rules? In my judgement there are not.

67. The case of Anufrijeva upon which Ms Scott relies can be clearly distinguished on the facts. The uncommunicated outcome of the asylum claim in that case was a proper "decision" in the sense that it was the product of an exercise of discretion based on the application of relevant criteria and guidance. Ms Anufrijeva's asylum claim could

have gone either way. As it turned out it was refused. By contrast, in this case the outcome of the ILR application was a foregone conclusion from the moment the EU application was submitted. It had to become void because that was the consequence preordained by the Immigration Rules. There was no exercise of discretion involved and no other outcome was possible. In that sense it is fair to construe it as merely a consequence rather than a decision. I agree with Mr Howarth that a reasonable familiarity with the relevant parts of the Immigration Rules should have made the inevitability of the outcome obvious.

68. For this reason I therefore agree with Mr Howarth that there was no obligation on the Secretary of State arising under the Immigration Rules or otherwise to communicate the voiding decision to Ms Scott, and nothing which constrains the exercise of his discretion.

69. For these reasons Ground 2 fails.

Overall Conclusions

70. I should record for completeness that Ms Scott's written submissions also cited several well-known cases of high authority such as the Supreme Court judgments in Miller and in Unison. These were each advanced to support submissions that (for example) public decisions should follow proper procedures and observe the principles of procedural fairness especially where fundamental rights are involved. As general propositions of public law they are indisputable but in my judgement they add nothing to the specific considerations that apply to the facts of this case.

71. For the reasons I have given above Grounds 1 and 2 are both dismissed. The claim therefore fails.

72. I will now invite submissions from the parties on a suitable form of order and any subsidiary matters.