Neutral Citation Number: [2015] EWHC 507 (Admin)

Case No: CO/10840/2013

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Monday, 2nd March 2015

Before:

MR JUSTICE TURNER

- -

Between:

LUIS MARIA NAVARRO — **Claimant**

- and –

SECRETARY OF STATE FOR THE HOME DEPARTMENT — **Defendant**

- -
- -

Mr J Martin for the **Claimant**
Mr T Eicke QC and **Mr M Donmall** (instructed by **TSols**) for the **Defendant**

Hearing date: : 12th February 2015

- -

Approved Judgment

Mr Justice Turner:

Introduction

1. Doctor Luis Maria Navarro is from Argentina. In this litigation he lays claim to what, in more jingoistic times, was memorably described as "first prize in the lottery of life", namely, British citizenship. He comes before this court contending that the Home Secretary has wrongly refused to issue him with the winning ticket to which he is entitled.

The Background

2. Dr Navarro's maternal grandfather was born in Brighton in 1897. It is from him that he stakes his claim to British citizenship. Dr Navarro's mother, however, was born in Argentina in 1948 and went on to marry an Argentinean.

3. After his birth in Argentina in December 1973, Dr Navarro contends that his mother asked at the British Embassy if her baby son could be registered as a British citizen but was informed that he could not. There matters lay until February 2001 when Dr Navarro arrived in London to study under a visa lawfully obtained for the purpose. He remained in this country for about six years. His experience of life in the United Kingdom must have been a positive one. He made enquiries as to whether he could become a British citizen but the Home Office told him that this would not be possible. He researched into the legal background on the internet and became convinced that he was fully entitled, as a matter of law, to the status he had hitherto been repeatedly denied and, on 14 January 2013, one hundred and sixteen years after the birth of his grandfather, he applied to the defendant to be recognised as a British citizen. The application was made under statute and, alternatively, with reference to the defendant's failure to exercise an alleged residual discretion in his favour.

4. On 7 February 2013 the defendant refused Dr Navarro's request and similarly refused Dr Navarro's later request for her to reconsider her decision. Judicial review proceedings were commenced on 8 August 2013.

5. He was refused permission for judicial review on paper. He renewed his application orally before Blake J. who refused permission once more in a judgment to be found at [2014] EWHC 907 (Admin). Dr Navarro's tenacity was, however, to pay off in the Court of Appeal when McCombe L.J. granted permission observing:

> "Regrettably (it is probably my fault) I do not understand Blake J's reasoning on the construction of the statutes."

6. It is these very statutes to which, with a due sense of foreboding, I now turn my attention.

The Law

The British Nationality Act 1948 ('the 1948 Act')

7. The London Declaration of 1949 saw the birth of the modern Commonwealth. It marked the moment when the "British Commonwealth" became the "Commonwealth of Nations". Earlier in the same year, the British Nationality Act 1948 had come into force. This Act introduced the concept of a "citizen of the UK and colonies" (or 'CUKC').

8. Paragraphs 4 and 5 of the 1948 Act provided respectively for two categories of citizenship. They were citizenship by birth and citizenship by descent. To an important extent, the citizen by descent, if he were a man, was a second class citizen. And if she were a woman, she was a third class citizen.

9. By the standards of today, the provisions of the 1948 Act contained a blatant and unacceptable piece of gender discrimination on the face of sections 4 and 5 which, in so far as is material, provided:

> "Citizenship of the United Kingdom and Colonies
>
> Citizenship by birth or descent
>
> 4 Citizenship by birth
>
> …every person born within the United Kingdom and Colonies after the commencement of this Act shall be a citizen of the United Kingdom and Colonies by birth [*subject to two exceptions not relevant to this case*].
>
> 5 Citizenship by descent
>
> (1) Subject to the provisions of this section, a person born after the commencement of this Act shall be a citizen of the United Kingdom and Colonies by descent if his father is a citizen of the United Kingdom and Colonies at the time of the birth:
>
> > Provided that if the father of such a person is a citizen of the United Kingdom and Colonies by descent only, that person shall not be a citizen of the United Kingdom and Colonies by virtue of this section unless—
> >
> > …(b) that person's birth having occurred in a place in a foreign country other than a place such as is mentioned in the last foregoing paragraph, the birth is registered at a United Kingdom consulate within one year of its occurrence, or, with the permission of the Secretary of State, later;"

10. Dr Navarro's mother, not having been born in the UK, was a CUKC by descent through the citizenship of her father. But she could not pass on her citizenship to Dr Navarro when he, too, was born abroad because she was a woman and only a father was entitled to register his birth at the UK consulate. Dr Navarro's father could not register him because, as an Argentinean national, he was not a CUKC either by descent or otherwise.

11. This gender discrimination was duly reflected in the Registration of Births and Deaths (Consular Officers) Regulations 1948 (No 2837) ('the 1948 Regulations'). Regulation 2(1) provided for the keeping of a register of births of CUKCs born after 1 January 1949, by way of Form A in the Schedule, which included under column 6:

> "Rank, profession or occupation of <u>father</u> and claim to citizenship of the United Kingdom and colonies"

with a note:

> "To be inserted as fully as possible, followed by full particulars of <u>his</u> claim to citizenship of the United Kingdom and colonies". [Emphasis added].

Regulation 5(4) provided:

> "In every case the consular officer must satisfy himself fully that the national status of the person whose birth or death he is requested to register is such that the registration could properly be effected under these Regulations."

In short, the effect of the 1948 Regulations, operating in conjunction with the 1948 Act, was that the birth of a child abroad to a CUKC mother by descent could not be registered per se because that child at the time could have no claim to citizenship. It follows that, under the prevailing law at the time, Dr Navarro could not have been registered with legal effect by the UK consulate in Argentina.

12. That the provisions of the 1948 Act were, by modern standards, bigoted and unfair cannot be doubted. They did, however, at least have the advantage of clarity and it is regrettable that subsequent legislative attempts to mitigate this bigotry have made, in the process, a wholly unnecessary sacrifice of the virtue of simplicity.

The 1979 Rees policy

13. The first and, some may argue, long overdue, change in the discrimination against women inherent in the operation of the 1948 Act arose not from the provisions of section 5 , with which the instant case is directly concerned, but under section 7(1) under which the Secretary of State had a discretion to register a child on the application of the parent or guardian. On 7 February 1979 the then Home Secretary Merlyn Rees stated, in response to a Parliamentary Question, that:

> "The registration of minor children as citizens of the United Kingdom and Colonies under section 7(1) of the British Nationality Act 1948 is at my discretion. I have decided to make some alterations to the general policy in dealing with applications by women who were born in the United Kingdom and whose children born overseas are still minors. The practice hitherto has been to refuse registration if it appeared that the child was likely to live overseas or if, when the child was living in this country, the father had taken no steps to seek our citizenship for himself.
>
> In future, registration will not be refused on those grounds and a woman born in the United Kingdom will normally be able to have her child registered, subject to there being no well founded objection by the father -as there could be, for example, if registration would deprive the child of his or her existing citizenship. The notes for the guidance of intending applicants will be suitably amended.
>
> The whole question of transmission of citizenship in the female line will be a matter to be dealt with in future nationality legislation." (HC Official Report, 7.2.79, cols 203–4)

14. As is evident, this policy ('the Rees policy') was limited in two ways. First, it was a policy on the exercise of the discretionary power to register minors under section 7 of the 1948 Act. Necessarily therefore, it could only be applicable to those who were under the age of 18 at the time the announcement was made, i.e. those born after 7 February 1961. Second, it was limited to those who were born to "a woman born in the United Kingdom". In other words, a child of a UK born CUKC mother other than by descent could benefit from the policy but a child of a CUKC mother by descent could not.

The British Nationality Act 1981 ("the 1981 Act")

15. The 1981 Act ended the concept of "citizen of the UK and colonies", and introduced the new status of 'British citizen' whether by birth, adoption, registration, naturalisation or by descent.

16. In respect of the acquisition of citizenship by descent, the Act finally gave fathers and mothers equal rights. It did not, however, purport to be of retrospective application.

Section 4C of the 1981 Act (as inserted by the Nationality, Immigration and Asylum Act 2002)

17. Section 13(1) of the Nationality, Immigration and Asylum Act 2002 inserted the following into the 1981 Act:

"4C Acquisition by registration: certain persons born between 1961 and 1983

(1) A person is entitled to be registered as a British citizen if—

(a) he applies for registration under this section, and

(b) he satisfies each of the following conditions.

(2) The first condition is that the applicant was born after 7th February 1961 and before 1st January 1983.

(3) The second condition is that the applicant would at some time before 1st January 1983 have become a citizen of the United Kingdom and Colonies by virtue of section 5 of the British Nationality Act 1948 (c. 56) if that section had provided for citizenship by descent from a mother in the same terms as it provided for citizenship by descent from a father.

(4) The third condition is that immediately before 1st January 1983 the applicant would have had the right of abode in the United Kingdom by virtue of section 2 of the Immigration Act 1971 (c. 77) had he become a citizen of the United Kingdom and Colonies as described in subsection (3) above."

Section 4C (as amended by the Borders, Citizenship and Immigration Act 2009)

18. Following amendment by the 2009 Act, section 4C , as currently in force and applicable to this case, provides:

"(1) A person is entitled to be registered as a British citizen if—

(a) he applies for registration under this section, and

(b) he satisfies each of the following conditions.

(2) The first condition is that the applicant was born before 1st January 1983.

(3) The second condition is that the applicant would at some time before 1st January 1983 have become a citizen of the United Kingdom and Colonies—

(a) under section 5 of, or paragraph 3 of Schedule 3 to, the 1948 Act if assumption A had applied,

(b) under section 12(3), (4) or (5) of that Act if assumption B had applied and as a result of its application the applicant would have been a British subject immediately before 1st January 1949, or

(c) under section 12(2) of that Act if one or both of the following had applied—

(i) assumption A had applied;

(ii) assumption B had applied and as a result of its application the applicant would have been a British subject immediately before 1st January 1949.

(3A) Assumption A is that—

(a) section 5 or 12(2) of, or paragraph 3 of Schedule 3 to, the 1948 Act (as the case may be) provided for citizenship by descent from a mother in the same terms as it provided for citizenship by descent from a father, and

(b) references in that provision to a father were references to the applicant's mother.

(3B) Assumption B is that—

(a) a provision of the law at some time before 1st January 1949 which provided for a nationality status to be acquired by descent from a father provided in the same terms for its acquisition by descent from a mother, and

(b) references in that provision to a father were references to the applicant's mother.

(3C) For the purposes of subsection (3B), a nationality status is acquired by a person ("P") by descent where its acquisition—

(a) depends, amongst other things, on the nationality status of one or both of P's parents, and

(b) does not depend upon an application being made for P's registration as a person who has the status in question.

(3D) For the purposes of subsection (3), it is not to be assumed that any registration or other requirements of the provisions mentioned in that subsection or in subsection (3B) were met.

(4) The third condition is that immediately before 1st January 1983 the applicant would have had the right of abode in the United Kingdom by virtue of section 2 of the Immigration Act 1971 (c. 77) had he become a citizen of the United Kingdom and Colonies as described in subsection (3) above.

> (5) For the purposes of the interpretation of section 5 of the 1948 Act in its application in the case of assumption A to a case of descent from a mother, the reference in the proviso to subsection (1) of that section to "a citizen of the United Kingdom and Colonies by descent only" includes a reference to a female person who became a citizen of the United Kingdom and Colonies by virtue of—
>
> (a) section 12(2), (4) or (6) only of the 1948 Act,
>
> (b) section 13(2) of that Act,
>
> (c) paragraph 3 of Schedule 3 to that Act, or
>
> (d) section 1(1)(a) or (c) of the British Nationality (No. 2) Act 1964 ."

19. It was his analysis and interpretation of this subsection that Blake J found impossible to articulate in a way that McCombe LJ could understand. I find myself, respectfully, unable to criticise either for this state of affairs. In this case, the draftsman's attempts to graft onto the 1948 Act a complex counterfactual sequence of conditions, assumptions and exceptions have produced a composite as unattractive and unnatural as any of the creations of Dr Moreau.

Deconstructing section 4C

20. Dr Navarro's application to the defendant was under section 4C of the 1981 Act and he was born before 1 January 1983. Accordingly, the question arises as to whether he satisfies the second of the two conditions set out in the sub-section. If he does he is entitled to be registered as a British citizen. If he does not he is not.

21. The second condition would be fulfilled if Dr Navarro would, before 1 January 1983, have become a CUKC under section 5 if assumption A had applied. We know that Dr Navarro did not become a CUKC under section 5 of the 1948 Act as originally formulated and so the success or failure of his bid for British citizenship turns upon whether assumption A applies.

22. In so far as is directly material to this case, Assumption A is that section 5 of the 1948 Act provided for citizenship by descent from a mother in the same terms as it provided for citizenship by descent from a father, and references in that provision to a father were references to the applicant's mother.

23. Importing Assumption A without qualification into the original section would give the following result with the cumulative consequences of the Assumption appearing in bold and in square brackets:

> "5 Citizenship by descent
>
> (1) Subject to the provisions of this section, a person born after the commencement of this Act shall be a citizen of the United Kingdom and Colonies by descent if his father [or mother] is a citizen of the United Kingdom and Colonies at the time of the birth:
>
> Provided that if the father [or mother] of such a person is a citizen of the United Kingdom and Colonies by descent only, that person shall not be

> a citizen of the United Kingdom and Colonies by virtue of this section unless—
>
> …(b) that person's birth having occurred in a place in a foreign country other than a place such as is mentioned in the last foregoing paragraph, the birth is registered at a United Kingdom consulate within one year of its occurrence, or, with the permission of the Secretary of State, later;"

24. This unqualified importation of Assumption A is, however, diluted by the wording of sub-section 3D which provides that "For the purposes of subsection (3), it is not to be assumed that any registration or other requirements of the provisions mentioned in that subsection or in subsection (3B) were met."

25. In summary the respective analyses of the parties are as follows:

Dr Navarro:

Sub-section 3D does no more than to place the burden of proof on the applicant to show on a balance of probabilities that if his (or her) mother had hypothetically been able to pass on citizenship by descent then his (or her) birth would have been registered at the relevant consulate.

The Secretary of State:

Sub-section 3D precludes any unregistered applicant from even raising the hypothesis that he (or she) would have been registered had his (or her) mother been able to pass on citizenship by descent. No registration means no citizenship.

26. So the quintessence of the dispute is whether "not to be assumed" (i) does no more than to impose the burden of proof on an applicant to demonstrate that registration would have occurred or (ii) whether it precludes (with consequences automatically adverse to the applicant) any consideration of the likelihood or otherwise that registration would have occurred.

27. I have tried to find other instances in which Parliament has deployed the "not to be assumed" formula in an attempt to see if it has acquired a bespoke application in the context of statutory drafting. However, it appears otherwise only in the Limitation (Northern Ireland) Order 1989/1339 in which remote context it provides this court with no assistance whatsoever.

Assumptions

28. In ordinary usage, an assumption can either be (i) an immutable premise or (ii) a working hypothesis capable of being proved wrong. In the context of section 4C , assumptions A and B are clearly intended to be in category (i). They are not susceptible to rebuttal in any circumstances. Thus where the cognate "assumed" is deployed within subsection (3D) it is reasonable to assume that Parliament did not intend to give the concept a different meaning within the same statutory framework. Such an interpretation precludes speculation about (or the receipt in evidence of) what may hypothetically have happened if a female citizen by descent had in any case been able to register.

29. Furthermore, if the sub-section had been intended to leave open the possibility of an evidential enquiry into whether any given mother "would" have registered her child then it would be expected that it would have used the conditional perfect "would have been met" and not the words "were met". The issue is, therefore, whether the registration requirements "were met" and not whether they "would have been met".

30. The same conclusion was reached by Blake J in the instant case in refusing Dr Navarro's renewed application for permission to apply for judicial review:

> "In my judgment, this makes it plain that the "would" question under s.4A BNA as amended is limited to the direct consequence of the removal of gender discrimination, rather than the two-step approach which exists here. That is to say the question is now confined to the question of whether, if the law had not been gender discriminatory at the time of the defendant's birth, he would have become a British citizen by reason of his birth alone. The answer is he would not because his mother was a British citizen by descent. The fact that there would have been an opportunity to have furthered the continuation of British nationality in his mother's family by registration at a consulate is now excluded from consideration in asking the "would" question."

31. A further consideration (although not necessarily, in itself, a decisive one) is the inevitable practical difficulties which would follow from an interpretation of the sub-section which permitted applicants to attempt to prove what would have happened if their mothers had been entitled to register their births. The prospect of investigating the hypothetical state of mind of a (quite probably deceased) mother decades ago is unattractive and there are sound policy reasons for precluding such speculative forensic explorations.

The position in Scotland

32. Since McCombe LJ granted Dr Navarro permission to apply for judicial review, the issue of the proper interpretation of sub-section 3D has been addressed in Scotland in *Romein v Advocate General for Scotland 2015 S.L.T. 32* .

33. Mrs Romein's father was American. Her mother was a CUKC by descent. Mrs Romein was born in the US and was an American citizen. Her mother attempted to register her birth with the British Consulate but was told that this would serve no purpose because British nationality by descent could only be passed through the male line.

34. The court rejected Mrs Romein's attempt to overturn the decision of the Secretary of State refusing to register her as a British citizen, holding at para 31:

> "It appears to me to be undesirable to resort to a construction of language which is accepted as "unnatural" when a natural construction, as here, is possible. In particular the requirement to make assumptions in relation to conduct regarding registration which are of necessity hypothetical, which is implied in the petitioner's construction, is, in my view, inconsistent with general principles of statutory construction and, moreover, fraught with difficulty. No doubt any person seeking to bring themselves within the provision relating to registration would be prepared to assert, as is done in the present case, that a certain state of facts would have existed. I am unclear as to how such an assertion could ever properly be tested or verified. It seems to me that the intention of Parliament cannot have been to introduce such uncertainty into the law. I recognise that in order to ensure compliance with the ECHR and other treaty

> obligations, a degree of flexibility may require to be introduced to statutory construction. It does not however appear to me to be legitimate to stretch flexibility of language to such an extent that what was accepted to be an "unnatural construction" is preferred over a straightforward, although possibly unattractive, construction. For these reasons I consider that the construction advanced by counsel for the respondents is correct."

35. Although not strictly binding on this court, the decision in Romein is of persuasive authority and, in any event, one which is in accordance with the approach of this court.

Hansard

36. I was encouraged by both parties to have regard to what was said by Lord Brett at the Committee Stage in the House of Lords with respect to the purpose behind section 4C(3D) . It is, indeed, replicated in Fransman's Nationality Law Third Edition and referred to by Blake J in his judgment.

37. However, the general rule, as laid down in *Pepper v Hart [1993] A.C. 593* , remains that it is not permissible to have regard to reports of proceedings in Parliament as an aid to statutory interpretation. Neither the agreement of counsel nor the inclusion of the material passages in a textbook provide recognised exceptions to this rule.

38. The first pre-condition of peeking into Hansard is that the legislation in question is ambiguous or obscure or leads to an absurdity. As Lord Bingham observed in *R v Secretary of State for the Environment, Transport and the Regions [2001] 2 A.C. 349* :

> "I think it important that the conditions laid down by the House in Pepper v Hart should be strictly insisted upon. Otherwise, the cost and inconvenience feared by Lord Mackay of Clashfern LC, whose objections to relaxation of the exclusionary rule were based on considerations of practice not principle (see p 615g), will be realised. The worst of all worlds would be achieved if parties routinely combed through Hansard, and the courts dredged through conflicting statements of parliamentary intention (see p 631f), only to conclude that the statutory provision called for no further elucidation or that no clear and unequivocal statement by a responsible minister could be derived from Hansard."

Although the complex wording of the section did not readily yield up its meaning, I am satisfied in this case that after analysis that meaning is not ambiguous or obscure and it did not lead to an absurdity.

39. In this case, I looked at the Hansard material *de bene esse* and can say that even if I had considered the first threshold test in Pepper v Hart to have been passed (which I did not), I would not have reached any different conclusion in my eventual interpretation of the statute in the light of what it contained.

EHCR

40. Dr Navarro relies upon articles 8 and 14 of the ECHR in two different respects. Firstly, as an aid to interpretation of section 4C and, secondly, as a basis upon which to assert that the defendant ought to have granted him leave to remain in the UK outside the Immigration Rules .

41. Of the first contention, Blake J found at para 16:

> "Where a primary Act of Parliament dictates how the Secretary of State should act, the Claimant cannot contend that the exercise of that statutory function is inconsistent with his human rights before this court. This is also sufficient to dispose of this case on any human rights principle, abstractly put. It may be that it can be said refusal of nationality is some aspect of an Article 8 claim to private life which, taken together with Article 14 , gives rise to an arguable claim before the European Court of Human Rights in Strasbourg. There are many other problems that I can foresee, such as the timing of the application, and the margin of appreciation afforded to a state to remedy historic injustice but that is not for this court today. However, this court cannot disapply a provision of primary legislation."

I respectfully agree, with particular emphasis upon the likely problems which Dr Navarro would face in Strasbourg.

42. As to the question of granting Dr Navarro some form of relief short of the conferment of British citizenship Blake J held at para 15:

> "I then raised with the Claimant if that is the case, what else can be done to ameliorate the historic discrimination and I am satisfied that there is no other remedy available to him within the British Nationality Act 1981 , as amended. He, of course, is no longer a child under 18 and therefore cannot pursue a claim for discretionary registration. There is no other provision for discretionary registration that would be applicable to him; registration is now limited to children and other classes of British nationals. Naturalisation is now the primary means by which people who are not born British acquire British citizenship. The Claimant has been present in the United Kingdom as a visitor and he has no claim under the immigration rules to indefinite leave to remain. Settlement is now a prerequisite of the exercise of naturalisation. I cannot consider that there is an arguable case that the Secretary of State should be required to exercise her discretion outside the Immigration Rules to grant the Claimant indefinite leave to remain because in 1973 British nationality law was gender discriminatory. Parliament has addressed the historic discrimination claims in the way outlined above."

43. The limits of the scope of reliance upon the ECHR were also considered in the judgment in Petropavlovskis v Latvia Application 44230/06 (13 January 2013) in which the Strasbourg Court , dealing with a case very different on the facts, nevertheless made the following observations which were clearly intended to be of general application:

> "Turning now to the Convention system, the Court reiterates that in some circumstances it has ruled that arbitrary or discriminatory decisions in the field of nationality may raise issues in human rights law in general and under the Convention specifically (see the above-cited cases of Karassev, Riener, § 153, and Genovese, § 34). However, as noted above, neither the Convention nor international law in general provides for the right to acquire a specific nationality. The applicant has accepted this. The Court observes that there is nothing in the Latvian Citizenship Law to indicate that the applicant could unconditionally claim a right to Latvian citizenship (see paragraphs 20, 29 and 63 above) or that the negative decision of the Cabinet of Ministers could be seen as an arbitrary denial of such citizenship (contrast Genovese, cited above, § 34).

84. The issue whether or not the applicant has an arguable right to acquire citizenship of a State must in principle be resolved by reference to the domestic law of that State (see Kolosovskiy v. Latvia (dec.), no. 50183/99, 29 January 2004). Similarly, the question

whether a person was denied a State's citizenship arbitrarily in a manner that might raise an issue under the Convention is to be determined with reference to the terms of the domestic law (see Fehér and Dolník v. Slovakia (dec.), nos. 14927/12 and 30415/12, § 41, 21 May 2013). The choice of criteria for the purposes of granting citizenship through naturalisation in accordance with domestic law is linked to the nature of the bond between the State and the individual concerned that each society deems necessary to ensure. In many jurisdictions, acquisition of citizenship is accompanied by an oath of allegiance whereby the individual pledges loyalty to the State. The Court has addressed the issue of loyalty, albeit in a slightly different context of electoral rights, and drawn a distinction between loyalty to the State and loyalty to the government (see Tănase, cited above, § 166)."

44. I am satisfied on the evidence in this case that Article 8 has not been engaged. The circumstances of the cases of Genovese v Malta 58 EHRR 25 and R (Johnson) v SSHD [2014] EWHC (Admin) upon which he relies are readily distinguishable from the position in which Dr Navarro finds himself. He was 39 years old at the time of his application for citizenship in 2013 and his social identity was already well formed. It is difficult to conceive how his private life has been impacted upon in these circumstances so as to engage Article 8 .

45. Further, within the context of Article 14 the person discriminated against was not Dr Navarro but his mother. Dr Navarro has not been treated any differently as a consequence of his gender. In addition, the discrimination occurred before the coming into force of section 7 of the Human Rights Act 1998 and as Lord Nicholls observed in *Wilson v First County Trust Ltd (No 2) [2004] 1 A.C. 816* at para 12: "One would not expect a statute promoting human rights values to render unlawful acts which were lawful when done. That would be to impose liability where none existed at the time the act was done." [1] This approach was adopted in *Salgado v United Kingdom (2012) 51 EHRR SE2* in the case of a British mother of a child born in Colombia in 1954 whose request to register her son had been refused on the grounds that British nationality passed through the paternal line. The discrimination came to an end when her son became an adult.

46. Finally, I am satisfied, in any event, that the decision which the defendant was called upon to make by Dr Navarro was limited in scope to that relating to his ambitions to become a British citizen. The defendant was never asked to consider the exercise of any discretionary power to grant leave to him to enter or remain in the UK. As Lindblom J held in Property Investments ltd v Southwark LBC [2012] EWHC 855 at para 73:

> "In principle, it cannot be unlawful for the Secretary of State, when responding to a request made in limited terms, to heed the limits imposed. Even where a public body is under a general duty to consider exercising a power—which, in this case, the Secretary of State was not—the duty can be qualified where the request to do so is expressly limited."

[1] In this context, and strictly by way of passing reference only, I note that the Succession to the Crown Act 2013 eliminates gender discrimination but only in respect of those born after 28 October 2011. Had it applied retrospectively to the year of Queen Victoria's Golden Jubilee, when Dr Navarro's English grandfather was born, the Queen would have been succeeded on her death not by Edward VII but by her eldest child, Princess Victoria. She, in turn and after very a short reign, would have been succeeded by her son, Kaiser Wilhelm II of Germany and now King of England and Emperor of India.

It follows that it was impermissible for Dr Navarro to attempt to extend the scope of relief sought from this court to include challenges to the failure to exercise an alleged discretion which the defendant was never invited to consider in the first place.

Conclusion

47. For the reasons given above, I am satisfied that, on a proper interpretation of section 4C , Dr Navarro is precluded from claiming entitlement to British citizenship regardless of any evidence as to whether his mother would hypothetically have registered him in the year after his birth. His reliance upon Articles 8 and 14 takes his case no further. Contemporary unfair gender discrimination is not to be tolerated but the extent to which the standards of today can effectively and proportionately be applied with retrospective effect will often require a line to be drawn. In this case Parliament, albeit inelegantly, has identified where and how that line is to be drawn and the defendant was right to conclude that Dr Navarro falls on the wrong side of that line. This application, therefore, fails.