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Case No: CO/4004/2019

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 22 April 2020

Before :

MR JUSTICE FORDHAM

- -

Between :

R (on the application of GEORGE OTOBO)	**Appellant**
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Respondent**

- -
- -

The claimant in person
EMILY WILSDON (instructed by GLD) for the defendant

Hearing date: 23 April 2020
Judgment as delivered in open court at the hearing

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. This is a renewed application for permission for judicial review. Permission was refused on the papers by Mrs Justice Steyn on 6 December 2019. She did so on the basis for that refusal was that this claim is a long out of time challenge to a decision taken in March 2018, which was itself a decision which the claimant could have appealed and did not appeal. That right of appeal was a suitable alternative remedy. On grounds therefore of alternative remedy and delay, permission for judicial review was inappropriate. The judge did not get into the substance of whether there was otherwise a case which would have warranted permission, though she did, as I read her ruling, recognise the underlying substantive question of law which arises on the claimant's case. As I will come to explain, it is a substantive point of law that he has raised on very many occasions over a number of very many years.

2. The first question which I have had to consider is the question whether to adjourn today's oral renewal hearing. I have decided that it is not appropriate to adjourn this hearing. I will need to explain the circumstances and my reasons. However, before doing so I want to explain the mode of hearing that the court adopted for this renewed application.

Mode of hearing

3. In the circumstances of the coronavirus pandemic, as everybody concerned with the legal profession and process is well aware, special arrangements are being adopted within the court system. This was a case in which the parties were contacted on a number of occasions by the court, regarding the mode of hearing. In particular by an email on 16 April 2020 at 1139 the parties were informed that this was to be a remote hearing by telephone or Skype. The claimant received that email and indeed responded by an email the next day 17th April 2020 at 1142, when he explained that he was going to apply for an adjournment. I will need to come onto the question of adjournment. At no stage was it suggested that the mode of hearing of telephone or Skype was a matter prejudicial to the claimant. His points were different ones and I will come to them. The Secretary of State accepted that telephone conference hearing was an appropriate mode and agreed to it. No submissions were received from the claimant about mode of hearing.

4. This hearing was listed in the cause list, as was its timing. Details were given whereby any interested person, whether they be a member of the press or a member of the public, could ask for details and seek permission to join this hearing in order to observe the hearing by dialling in. That system is working healthily. This hearing was joined by Mr Brian Farmer of the press Association and he was able to observe by listening in the hearing in very much the way that he would have been able to observe it had he been sitting in court. For my part, I have heard submissions from Counsel for the Secretary of State just as I would have done if we were sitting in the same courtroom. I am quite satisfied that I would have been able to hear any representations from the claimant, just as I would have done if we had been together in the same courtroom, had he dialled in using the details circulated to him.

5. In my judgment this is an open, public hearing, which secures the open justice principle. If and insofar as there is any restriction on any right, value or interest, I am satisfied that such restriction is necessary, appropriate and proportionate. I am also satisfied that the mode of hearing has not prejudiced any party, when viewed in comparison with the more conventional hearing at which the parties attend court physically.

6. Indeed, quite the contrary. This hearing, as it happens, has illustrated some advantages that can arise from those participating being able to do so from their existing location. That in my judgment, if anything, was and would have been to the advantage of the claimant. He would not have needed and did not need physically to bring himself to the court building. What he needed to do was to dial in, using details circulated. Had he done so he would have been able to address me on the question of adjournment and, if the adjournment was being refused, on the question of permission for judicial review. Another example of the advantage of the arrangements, as it turned out, was that when the hearing began and the claimant was absent I was able to invite Mr Scott Evans of GLD to send an instant email contemporaneously to the claimant: reminding him of the dialling details, informing him that the hearing was underway, and indicating to him that the judge had requested that that communication be sent so that he would be given the further prompt to take advantage of the dial-in telephone conference hearing facility.

Non-participation by the claimant

7. In the event, the claimant has not participated in this hearing. I do not make any finding of fact about that: I do not know what the position is at his end as to what may have happened. I am, however, quite satisfied that it was appropriate in all the circumstances to proceed to consider the question of adjournment notwithstanding the claimant's absence.

8. He had made a written application for an adjournment, asking that it be dealt with on the papers. The points that were made this morning in open court in resisting the adjournment were very much along the same lines as the points which had already made been made in writing, in documents which had been sent to the claimant, which documents would have been before me or any judge dealing with adjournment on the papers, as requested by the claimant. The most material difference, in the oral submissions made before me today, was that I was able to invite Miss Wilsdon to - and she would in any event in the discharge of her professional duties have undertaken as she was fully prepared to - address me on any points relating to the adjournment which were against her client and in favour of the claimant , bearing in mind that he is a litigant in person and that he was absent.

Adjournment

9. The basis for the requested adjournment of today's hearing was primarily medical evidence relating to the claimant's health, though he also relied on a wish to have further time to seek to obtain legal representation for the pursuit of this judicial review claim. As Miss Wilsdon very fairly put it, it could be said in the claimant's favour that the fact of his non-participation today is itself evident

of what has been said by and about him, namely that he is 'unable to attend court' – even by way of a telephone conference hearing – to participate. I have in mind what has been said by him and about him so far as his health is concerned. I also have in mind that he would no doubt be able to submit to the court that there is at the heart of this case an important legal issue, that it is important that it should be resolved and resolved properly and fairly, and that there is no prejudice to the Secretary of State from an adjournment of these proceedings. He would be able to say that the unlawfulness, if he is right about it, is a continuing failure by the Secretary of State to afford him a status which is his legal entitlement. He would be able to say that all of the prejudice is really being suffered not by the Secretary of State but by him himself, in the continuing delay and on his case unlawful refusal to recognise at a status.

10. The relevant legal principles are very effectively summarised in the passage at paragraph 3.1.3 of the White Book. I have considered them carefully and Miss Wilsdon helpfully assisted me by taking me through them .I do not propose to prolong this ruling by reading out here whole chunks from the White Book. The passages can be seen from that commentary by anyone who wishes to access them. The points that are made in the authorities discussed include the following. The court must have regard to the overriding objective: the court should deal with the case in a manner which saves expense is proportionate and allocates an appropriate share of the court's resources. Where a litigant in person requests an adjournment on the grounds of ill-health, the court should be slow to refuse, provided that it is their first request and their case has some prospect of success. When faced with an application to adjourn on medical grounds, the court must carefully scrutinise the medical evidence. That evidence should identify the medical condition, should particularise it and its features, and how it and its features prevent participation in the court process. The evidence should provide a reasoned prognosis, giving the court some confidence in what is being expressed. The court will need, based on the evidence, to consider whether arrangements can be made short of an adjournment to accommodate the particular medical difficulties. The court needs to give sufficient reasons for any refusal to adjourn and needs to avoid unfairness. If the court has doubts about medical evidence, it can give directions to enable those doubts to be resolved.

11. In his written application for an adjournment the claimant provided this description. He said he wanted the court to adjourn this hearing 'because I am unwell, doctors sicknote, on medications that make me feel sleepy and tired'. He went on to say he was awaiting a response from solicitors and the bar pro bono unit on legal representation. He had also in his email informed the court on 17 April 2020 that he was 'unwell and sleepy' and that he was unable to get evidence from his GP by reason of the GP being 'in lockdown'. In the event, the claimant was able to obtain a letter from the GP. That letter dated 21 April 2020 informed the court as follows. 'I would like to confirm that Mr Otobo is currently suffering from depression anxiety and ongoing back pain'. It then refers to medication. Then: 'the issues with his low mood have been long-standing and is understandable that his mental state and concentration is affected by this in view of his recent difficulties with the Home Office. He states that the ongoing issues regarding his visa and residency status is

negatively affecting his mood and causing him anxiety due to his current low mood and difficulty in concentrating. I feel he is not fit to attend court on 23 April 2020'.

12. If I were to adjourn this hearing today it would be the fourth adjournment of the application for permission, renewed following Steyn J's refusal on 6 December 2019. There have been 3 previous adjournments of oral hearings. In each case the judges have been astute to identify appropriate timeframes, and to allow opportunities for medical evidence to be obtained. Repeatedly, the judges concerned with those adjournments have warned the claimant of the likelihood that the case would proceed unless there was 'clear medical evidence' and clear medical evidence specifically dealing with the question of 'the likely timescale'.

13. The adjournments previously with these. Mr Justice Chamberlain on 22 January 2020 adjourned an oral hearing which took place on that day to 5 February directing evidence by 29 January. He then on 3 February 2020 adjourned to 2 March 2020 or a date thereafter, giving a warning of the kind to which I have referred. Gwyneth Knowles J adjourned, for a third time, the hearing notified on 4 February 2020 as due to take place on 11 March 2020. She did so in the light of a request on 9 March 2020 by the claimant supported by a GP letter, and the material referred to the claimant being signed 'off sick' to 13 April 2020. She too gave the warning to which I have referred.

14. Alongside the GP's letter is a form which describes the claimant as signed off from work to 13 June 2020 and says I will not need to assess your fitness for work again at the end of this period.

15. It is obvious to me that it is impossible for the claimant to put forward a concrete timescale under which at this hearing if adjourned could proceed, on the basis of the difficulties arising in relation to his medical condition changing in order to allow a different set of circumstances to apply. The GP's letter confirms that these are long-standing matters.

16. I do not, for a moment, belittle the conditions that are described in the GP's letter. However, that evidence does not achieve what the various directions of the various judges, warning the claimant was necessary. The evidence at is not such as to 'clearly' give a 'likely timescale'.

17. More importantly than that, perhaps, the medical evidence does not engage at all with the fact that this hearing was already scheduled to be one conducted by remote access. There is a very real difference between an individual having to come physically to court to address at an oral hearing, and circumstances in which the parties have already been informed by the court that a hearing can be conducted by them dialling in using telephone. There is nothing in the medical evidence that assists me with why it is said that the claimant would not be able to dial in and speak to me in a telephone conference setting.

18. Moreover, nothing in the application or email or supporting evidence addresses the question of arrangements which could be made short of an adjournment to accommodate difficulties. Those arrangements could, for example, relate to the timing of the hearing and when during the day it takes place. They could relate

to the taking of breaks or the dealing of the hearing in chunks of time. They could address the question of video or telephone and consideration as to what was going to be the most effective and amenable mode of communication for the claimant to adopt.

19. All of that has been completely ignored.

20. I am not prepared to accept, on the evidence that I have, that the claimant - who has been active in providing submissions and applications in writing and who has responded sometimes but not others to emails that had been sent to him – was and would have been incapable, by reason of his medical condition, of dialling in to this hearing. Had there been evidence of that kind, consideration could have been given to whether to adopt a hybrid process in which he had time to commit submissions in writing for example having listened to counsel for the Secretary of State to commit his representations to an email. I do not accept on the evidence that the claimant is unable with appropriate arrangements to participate at this hearing. In any event, I am quite satisfied that it would be inappropriate and disproportionate and contrary to the interests of justice for there to be a fourth adjournment, of this oral renewal application. The commentary in the White Book, to which I have referred, describes the situation where a litigant in person is making 'a first request' and of course this is the fourth request for adjournment; and where the case has 'some prospect of success'. I have considered the legal merits of the application for permission for judicial review and, for reasons to which I will come, I am wholly satisfied that Mrs Justice Steyn was right for the reasons she gave to refuse permission for judicial review in this case. This is not a claim which has a realistic prospect of success. I will return to that matter in due course.

21. I do not want, however, to leave the procedural position without making some further points that relate to the history of this case.

22. As Miss Wilsdon rightly points out, in considering the question of adjournment and whether it is appropriate to adjourn at all, the nature of the hearing including the nature of the issues is relevant, One of the consequences of the long history of this matter is that the underlying issue is one which is very well known to the claimant and with which he is fully familiar. Indeed, he has essentially been advancing the same substantive point of law for a period of many years through a number of different proceedings including judicial reviews.

23. In the light of the refusal on the papers of permission for judicial review by Mrs Justice Steyn, what the claimant needed to do at this short hearing was to address the court on the question of alternative remedy and the question of delay. There was no difficulty such as arises out of lengthy hearings with oral evidence and cross-examination, or technical and unfamiliar matters. The court simply needed to have from what he wished to say about his underlying legal grievance and about the procedural points so far as alternative remedy and delay were concerned.

24. I have already mentioned that one of the features of the application for an adjournment was the claimant's expressed wish to seek to secure legal

representation. So far as that point is concerned I agree with the observations that were made when Gwyneth Knowles J adjourned this hearing for the third time on 10 March 2020. She made clear that she did not regard that as being a proper basis for an adjournment and would not have adjourned for that reason. As she explained, the claimant has had plenty of opportunity over a prolonged period of time to seek to secure legal representation. I agree and the most recent material to which the claimant has invited my attention is far too little far too late.

The history

25. I need now to say a little more about the background. The claimant has been submitting, ever since the end of 2012, that the Secretary of State should be providing him with a new residence card.

26. Originally, in judicial review proceedings commenced in September 2012, he was complaining about the failure to reissue a residence card which had originally been issued for 5 years in September 2007 and which expired in September 2012, having in the meantime being revoked by the Secretary of State in decisions that started in September 2008.

27. The essence of the claimant's position has been that the Secretary of State ought to have recognised his entitlement to a residence card, including from August 2012 onwards a permanent residence card, on the basis of his meeting relevant criteria. The Secretary of State's position throughout has been that the claimant has had every opportunity to meet, with evidence, the relevant criteria and has failed to do so.

28. A central legal point made by the claimant has been this. In circumstances where the Secretary of State purported to revoke the 2007 residence card, based on adverse conclusions relating to relevant eligibility criteria, but where the claimant was successful in an appeal before the First-Tier Tribunal, upheld by the Upper Tribunal, in 2012 it is not lawful for the Secretary of State subsequently to withhold a permanent residence card on the basis of non-fulfilment of those same criteria. That essential point has been advanced in many documents, on the claimant's behalf and by him over the years, including in some judicial review grounds settled by Counsel in May 2015 in a claim brought by the claimant's brother.

29. There have been a large number of judicial review claims of various kinds relating to this issue. A claim was brought on 7 September 2012 complaining about delay in the reissue of a residence card. A further claim was brought on 5 March 2013. The brother's claim was brought on 12 November 2013. Yet another judicial review claim was brought on 21 January 2014, and a further claim on 7 September 2015.

30. At various stages judicial review proceeding have failed to secure permission. Without going into the detail of all the proceedings it is, in my judgment, fair to say that the claimant has been met with procedural objections in particular. Judges have explained that proceedings have been inappropriate because they have been 'academic' or 'premature'. The emphasis has been placed on the

decision-making mechanisms that the Secretary of State adopts for determining the question of entitlement to a permanent residence card. Particularly relevant, in my judgment, from what I have are the judgments of Deputy High Court Judge Gill on 26 November 2013 and the judgment of Mr Justice Nicol on 20 July 2015.

31. Two themes are very striking about the history so far as this matter is concerned. One to which I have already referred is the consistent theme based on the legal issue to which I have referred, on which various judges have commented at various times. There is however another unmistakable them to which it is appropriate that I refer.

32. That is that a large number of oral hearings of renewed applications for permission for judicial review have been dismissed by judges, at hearings which the claimant did not attend. That was the position in front of Deputy High Court Judge Gill on 26 November 2013 when the claimant's brother attended court and the claimant did not. There was a document on that occasion which referred to the claimant being 'signed off sick'. The Judge made the observation that that did not constitute medical evidence of inability to attend court. On 20 May 2014, at an oral hearing, permission for judicial review was refused and the claimant did not attend. On 28 October 2015, permission for judicial review was refused at a hearing and the claimant did not attend. On 20 July 2016, permission for judicial review was refused an oral hearing when the claimant did not attend. The same thing happened on 11 October 2016. It is appropriate in my judgment, in a case which has a history as long-standing as this one, for the court to be alive to the background. I am indebted to GLD and counsel for the Secretary of State for the detailed chronology which with which the court has been presented in the summary grounds, which enabled Mrs Justice Steyn to set out in some detail the lengthy history of this case.

Permission for judicial review

33. I turn then finally to the question of arguability. I do so having indicated that I am quite satisfied that the judge got this right on the papers in refusing permission for judicial review.

34. The difficulty can really be seen exposed in a 'Chronology' which the claimant provided to the court in support of this claim. In that Chronology he describes this case as "another Windrush". He then refers to the revocation of his earlier residence card and his successful appeal in 2012 to the First-Tier Tribunal which the Secretary of State unsuccessfully sought to appeal to the Upper Tribunal. The next item in that Chronology reads as follows: 'that tribunal decision has not been set aside. The current JR is seeking to give effect to the decision of the Tribunal allowing appeal in line with court decisions'. There is then reference to an EU Directive and UK regulations. The reference continues: 'an appeal decision must be given effect according to authorities already before the court'. That passage is clearly describing the underlying point of law to which I have referred. The next item in the claimant's Chronology is 14 October 2019 and the 'issuing of the current judicial review proceedings'.

35. The central and fatal problem that is faced by this claim for judicial review is that the statutory scheme under which decisions relating to residence cards are taken involves formal decision-making by the Secretary of State and rights of access to justice in order to challenge in an appropriate forum those decisions.

36. The story really starts, so far as this is concerned, with the decision of 14 December 2015 by which the Secretary of State decided to refuse the claimant the permanent residence card that he seeks and says cannot lawfully be denied him. That decision carried a right of appeal. The claimant did not appeal that decision. No judicial review of lawfulness of the refusal of a residence card would have been entertained in circumstances where the statutory scheme provides a right of appeal which constitutes an appropriate remedy operating under appropriate rules. The claimant is very well experienced in relation to an litigation including judicial review and appeals. He has considerable experience of the procedural limitations of judicial review and the timing of claims.

37. But perhaps most importantly, and perhaps an irony of this case, the entirety of his underlying legal point rests on a successful appeal which he previously brought, succeeding in the First-Tier Tribunal on 18 July 2012.

38. No reason has been given, in any document I have seen, as to why the right of appeal was not pursued; nor any reason as to why it could be appropriate for the judicial review court to entertain the sorts of issues that could have been advanced on such an appeal. There is no reason to suppose that the appeal could not have included within it the very legal point that the claimant wishes to advance: namely that the only lawful course open to the Secretary of State so far as the permanent residence card is concerned is to grant it, in the light of what happened in the appeal in 2012.

39. However, the story does not stop there. By a further decision of 26 March 2018, the Secretary of State once again made a formal and communicated to determination on the question of whether to grant or refuse a permanent residence card. That decision was again adverse to the claimant. However, once again, it gave rise to a right of appeal. That was described on the face of the decision document. Again, the claimant failed to pursue any appeal against that decision. Again, the court has no explanation or excuse as to why that was the case.

40. The claimant has not engaged with the questions of alternative remedy and delay at all.

41. It is in those circumstances that Mrs Justice Steyn on 6 December 2019 refused permission for judicial review and ordered the claimant to pay the AOS costs of the Secretary of State of £4593. The Judge in her ruling explained that permission was being refused on the procedural grounds to which I have referred. She said the right of appeal was a suitable alternative remedy; the claimant chose not to or failed to exercise the right he was given. She said she was refusing permission on the ground that he had a suitable alternative remedy. She went on to say that the relevant decision which the claimant had now has to seek to review would be the 26 March 2018 decision. That was more than 18

months earlier and the challenge was in any event not one which was prompt and there was no good reason to extend time.

42. As I have already said, that, in my judgment, is plainly legally right.

43. It would subvert the statutory scheme if an individual who receives a formal appealable decision and then chooses not to take advantage of the legal rights of challenge afforded to them under the statutory scheme could then bring a judicial review much later, raising a point which could have been advanced on an appeal. The position is yet stronger in a case which has a history like the present case because there can be no excuse at all, and certainly none is given, for the failure to advance the point against the backcloth of litigation where the essential central point is repeatedly being raised in legal proceedings.

44. Nor can it be right for a claimant to bring a judicial review by reference to characterising a 'continuing unlawfulness', in circumstances where there is a formal decision-making process and decisions are repeatedly made and communicated and constitute appropriate decisions for the invocation of any legal process in relation to those decisions.

45. That brings me to a final matter of materiality, which is this. The Secretary of State in the summary grounds of resistance says the following: 'the defendant further notes that it is of course open to the claimant to submit a further application for an EEA permanent residence card or for settled status under appendix EU to the immigration rules'.

46. That is not the first time that this point has been made. When Mr Justice Nicol was refusing permission for judicial review to the claimant's brother in July 2015, he was doing so pointing to the fact that the question of permanent residence card and the legality of granting or refusing it was one which would be addressed under the Secretary of State's decision-making process. Mr Justice Nicol, on that basis, regarded the challenge at that stage being brought as premature. He referred specifically in his judgment to the decision-making process, to the fact that a decision was envisaged, and to the fact that once it was made it would then be a matter for 'the court or tribunal (if there is a right of appeal) to assess whether the Secretary of State had acted lawfully or unlawfully'.

47. Nor was that the first time that point had been made. Deputy High Court Judge Gill, in the claimant's own 2013 judicial review, had said in refusing permission at the oral hearing (which he did not attend) that it was open to the claimant to make another application for a residence card. The Judge also explained that 'if an issue arises in the future and he wishes to rely on the points that he is making he would have an alternative remedy under which to address that concern'.

48. In other words, there had been the clearest possible warning in the previous judicial review proceedings of the importance of the decision-making process and of the importance of rights procedural rights being invoked as appropriate when decisions were made.

49. I asked Miss Wilsdon whether the Secretary of State's position was that, were a further application made, a decision on an application would or would not attract a right of appeal. For reasons that I entirely understand, she was not in a position to accept that there would or not be a right of appeal.

50. I do not propose to say any more in all the circumstances as to whether there is or isn't anything in the underlying legal point that the claimant has drawn attention to, so many times in so many sets of legal proceedings. I have not been shown any determination which has authoritatively resolved that point. But the difficulty, and it is a very important one, is one of procedural discipline in circumstances where determinations are made which are appealable. That is the remedy which the claimant needed to pursue in order to vindicate his points, if he is right about them. It is far too late for a judicial review, subverting the statutory scheme. If the claimant wishes to make a further application for a permanent residence card, that is a matter for him. If further decisions are made, and if they attract up rights of recourse either by way of appeal or judicial review, those are all matters which will have to be addressed at the appropriate time and in the appropriate forum. I am not giving any indication in any direction as to whether there might be anything in any underlying legal point.

Conclusion

51. For all those reasons, which I have given at length in the very unusual circumstances of this case, my decision is firstly to refuse the application for an adjournment and secondly to refuse the renewed application for permission for judicial review.

Consequential matters

52. So far as costs are concerned, the costs order made by Mrs Justice Steyn on 6 December 2019 stands. That order explained that it would stand unless particular steps were taken by the claimant in the context of a renewal application that has been the taking of no such steps. No further application is made in relation to costs for pragmatic reasons.

53. Finally I have been invited in post-ruling submission by Miss Wilsdon to consider, and indeed to make or include within my order, that the applications were 'totally without merit'. I do not need to repeat all the circumstances. So far as the adjournment application is concerned, she emphasises that this was adjournment number four and that the previous judges had given clear directions and warnings to what was needed. So far as permission for judicial review is concerned, she emphasises that I have upheld the same two procedural objections that Mrs Justice Steyn identified and that the claimant made no attempt to engage with them in his application for renewed permission.

54. I do not consider it appropriate to make a certification of, or include within an order, a 'totally without merit' characterisation. What I do consider to be appropriate is to have dealt robustly, and I hope clearly and comprehensively, with the applications in the context in which they have arisen in against their history.

55. So far as the adjournment application is concerned although this was adjournment application number four, adjournment applications one, two and three had all succeeded and been granted. The claimant was putting forward medical evidence, of a nature akin to that which had previously been provided, and had resulted in previous adjournments being granted. It was in my judgment an application that the claimant could properly make, albeit that it was application which I have robustly rejected. The fact that I am fully satisfied that the adjournment should on this fourth occasion be refused does not, of itself, cross the threshold of characterising the application as having been 'totally without merit'.

56. So far as the application for permission for judicial review is concerned, I have in mind that the judge in refusing permission on the papers considered specifically the question of TWM certification, having found as she did that there were the alternative remedy and delay objections. Had she certified the case as 'totally without merit' there could have been no renewal application to me. She explained that she was not prepared to certify because she had in mind that the claimant has his underlying legal point relating to the lawfulness of the Secretary of State's position. She described that as being an 'arguable' point. In my judgment, she was not so much deciding that it was arguable for the purposes of permission for judicial review, as identifying that it was a point which had not been resolved and was on the face of it a point of law. But it does not matter, even if she was identifying the point as arguable in judicial review terms. I have to look at the position in the round in circumstances where the claimant has renewed his application. I do not consider it appropriate to characterise the pursuit of the application, in the light of that observation by the judge, as one which is 'totally without merit'. I have in mind that the claimant is a litigant in person. I have in mind that he has continued to advance the very point to which the judge was referring. Although I have robustly concluded that the judge was right in relation to the procedural objections to which she referred in her ruling, that does not in my judgment crossed the line for characterisation of 'totally without merit'. It is true that the claimant has not engaged at this hearing and provided an explanation in relation to alternative remedy or in relation to delay, but those features are not in my judgment sufficient in the circumstances of this case to say that the renewal of the application, in the context of the reasons that had been given by the judge on the papers, is one which deserves characterisation as being 'totally without merit'.

57. I therefore decline to include such a certification in relation to either of the two applications before me. The justice of the case, as I have said, is appropriately addressed by having given detailed reasons which any subsequent court will be able to see, to the extent it is appropriate to inform anything that is decided subsequently.

23 April 2020