



Home Office

EU Settlement Scheme: person with a Zambrano right to reside

Version 6.0

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About this guidance

This guidance tells you how, from 14 December 2022, to consider whether an applicant to the EU Settlement Scheme is a ‘person with a Zambrano right to reside’ as defined in the Immigration Rules for the scheme contained in [Appendix EU to the Immigration Rules](#).

For convenience this guidance generally uses the present tense. However, it is important you apply the guidance to the relevant period relied upon.

The best interests of the child

The duty in [section 55 of the Borders, Citizenship and Immigration Act 2009](#) to have regard to the need to safeguard and promote the welfare of a child under the age of 18 in the UK, together with Article 3 of the UN Convention on the Rights of the Child, means that consideration of the child’s best interests must be a primary consideration, but not the only consideration, in immigration cases. This guidance and the Immigration Rules it covers form part of the arrangements for ensuring that we give practical effect to these obligations.

Where a child or children in the UK will be affected by the decision, you must have regard to their best interests in making the decision. You must carefully consider all the information and evidence provided concerning the best interests of a child in the UK and the impact the decision may have on the child.

Although the duty in section 55 only applies to children in the UK, the statutory guidance – [Every Child Matters – Change for Children](#) – provides guidance on the extent to which the spirit of the duty should be applied to children overseas. You must adhere to the spirit of the duty and make enquiries when you have reason to suspect that a child may be in need of protection or safeguarding, or presents welfare needs that require attention. In some instances, international or local agreements are in place that permit or require children to be referred to the authorities of other countries and you are to abide by these and work with local agencies in order to develop arrangements that protect children and reduce the risk of trafficking and exploitation.

Further guidance can be found in paragraphs 2.34 to 2.36 of the [statutory guidance](#).

For further guidance on how to deal with applications concerning children, see: Applications in respect of children in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

Contacts

If you have any questions about this guidance and your line manager or senior caseworker cannot help you, or you think that the guidance has factual errors, then email the EEA Citizens’ Rights & Hong Kong Unit.

If you notice any formatting errors in this guidance (broken links, spelling mistakes and so on) or have any comments about the layout or navigability of the guidance, then email the Guidance Rules and Forms Team.

Publication

Below is information on when this version of the guidance was published:

- version **6.0**
- published for Home Office staff on **14 December 2022**

Changes from last version of this guidance

To reflect changes to Appendix EU made by the Statement of Changes in Immigration Rules HC 719 laid on 18 October 2022, including:

- to uncouple the definition of a 'person with a Zambrano right to reside' from regulation 16 of the Immigration (European Economic Area) Regulations 2016
- to provide further guidance, following the Court of Appeal judgment in *Velaj v SSHD* [2022] EWCA Civ 767 (31 May 2022), about how to assess whether the British citizen would in practice be unable to reside in the UK, the European Economic Area or Switzerland if the applicant in fact left the UK for an indefinite period
- to prevent the effect of section 3C of the Immigration Act 1971 in extending limited leave pending the outcome of an in-time application from excluding an applicant from eligibility as a 'person with a Zambrano right to reside'

Related content

[Contents](#)

EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members

Related external links

[Appendix EU to the Immigration Rules](#)

[Statement of Changes in Immigration Rules HC 719](#)

[section 55 of the Borders, Citizenship and Immigration Act 2009](#)

[Every Child Matters – Change for Children](#)

Introduction

From 1 May 2019, a 'person with a Zambrano right to reside' has been able to apply to the EU Settlement Scheme: also referred to in this guidance as 'the scheme'.

A 'Zambrano right to reside' is derived from wider EU law rather than from the Free Movement Directive 2004/38/EC and has been confirmed by judgments of the Court of Justice of the European Union (CJEU). Persons with a Zambrano right to reside are described as such after the CJEU judgment of that name: [Ruiz Zambrano \(European citizenship\) \[2011\] EUECJ C-3409](#). The judgment found that an EU Member State cannot refuse a carer the right to reside in that state, where to do so would deprive a dependent EU citizen child (who resides in and is a national of that state) of the genuine enjoyment of the substance of their EU citizenship rights by forcing them to leave the EU (and the EEA and Switzerland).

A Zambrano right to reside in the UK ceased to exist at the end of the post-EU exit transition period at 11pm Greenwich Mean Time (GMT) on 31 December 2020. Such cases are not covered by the Withdrawal Agreement with the EU or the citizens' rights agreements with the other European Economic Area (EEA) countries and Switzerland. However, the UK decided as a matter of more generous domestic provision to provide those with such a right to reside in the UK by the end of the transition period with access to the EU Settlement Scheme.

The EU Settlement Scheme is contained in Appendix EU to the Immigration Rules. This guidance is to be read in conjunction with EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, in particular as to the requirements for the making of a valid application: see the section in that guidance on 'Making an application: validity'. These requirements are that:

- the application has been made using the required application process (which, in the case of a 'person with a Zambrano right to reside', is the required paper application form)
- the required proof of identity and nationality (or of entitlement to apply from outside the UK, where the application is made outside the UK) has been provided
- the required biometrics have been provided

Where you have established that the applicant has made a valid application and, using this guidance, is a 'person with a Zambrano right to reside', you must then use EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members to determine whether they have either:

- completed a continuous qualifying period of 5 years and so are to be considered for indefinite leave to enter or remain
- completed a continuous qualifying period of less than 5 years and so are to be considered for limited leave to enter or remain

Where this guidance refers to the 'specified date', this means the end of the transition period at 11pm GMT on 31 December 2020 (unless the applicant is a 'relevant EEA family permit case').

Where the applicant is a 'person with a Zambrano right to reside' who falls within the definition of a 'relevant EEA family permit case' in Annex 1 to Appendix EU, 'specified date' means, for the purposes specified in that definition, 1159pm GMT on the date they arrived in the UK.

Where this guidance refers to a 'supervening event', this means that, at the date of application, either:

- the person has been absent from the UK and Islands for a period of more than 5 consecutive years at any point since they last either:
 - completed a continuous qualifying period of 5 years
 - acquired the right of permanent residence in the UK under regulation 15 of the EEA Regulations
 - acquired the right of permanent residence in the Islands through the application there of section 7(1) of the Immigration Act 1988 (as it had effect before it was repealed) or under the Immigration (European Economic Area) Regulations of the Isle of Man
- any of the following events has occurred in respect of the person, unless it has been set aside or revoked:
 - any decision or order to exclude or remove them from the UK under regulation 23 or 32 of the EEA Regulations (or under equivalent provisions of the EEA Regulations of the Isle of Man)
 - a decision to which regulation 15(4) of the EEA Regulations otherwise refers in respect of their right to permanent residence in the UK, unless that decision arose from a previous decision under regulation 24(1) (or the equivalent decision, subject to the equivalent qualification, under the Immigration (European Economic Area) Regulations of the Isle of Man)
 - an exclusion decision
 - a deportation order, other than by virtue of the EEA Regulations
 - an Islands deportation order

an Islands exclusion decision

Where this guidance refers to the 'EEA Regulations' it means (as defined in Annex 1 to Appendix EU) either:

- (where relevant to something done before 11pm GMT on 31 December 2020) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately before that date)
- (where relevant to something done after 11pm GMT on 31 December 2020 and before 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as, despite the revocation of those Regulations, they continued to have effect, with specified modifications, by virtue of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020)
- (where relevant to something done on or after 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately

before they were revoked and, where the context requires it, on the basis that those Regulations had not been revoked)

EEA and Swiss citizens (defined, together with certain others, such as certain dual British and EEA citizens, in Annex 1 to Appendix EU, and referred to in this guidance, as an 'EEA citizen') resident in the UK by the specified date can rely on their own continuous qualifying period of residence in order to qualify for leave under the EU Settlement Scheme. There was also scope for them, before the specified date, to reside with a British citizen family member elsewhere in the EEA or in Switzerland under EU free movement law. As a result, an applicant who needs to rely on the Zambrano provisions is likely to be a non-EEA citizen.

References in this guidance to 'the Islands' means the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man.

Relevant EEA family permit case

A 'relevant EEA family permit case' in the context of this guidance is either:

- a person with a Zambrano right to reside who arrived in the UK after 11pm GMT on 31 December 2020 and by 30 June 2021 with a valid EEA family permit issued under the EEA Regulations on the basis of a valid application made under the EEA Regulations before 11pm GMT on 31 December 2020
- a person with a Zambrano right to reside who arrived in the UK after 11pm GMT on 31 December 2020 with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met the definition in Annex 1 to that Appendix of ['specified EEA family permit case'](#)

Applications to switch from pre-settled to settled status

Where a person with limited leave to enter or remain granted under Appendix EU (known as 'pre-settled status' under the EU Settlement Scheme) as a 'person with a Zambrano right to reside' makes a valid application under Appendix EU for indefinite leave to enter or remain (known as 'settled status' under the scheme) as such a person (or as a 'person who had a derivative or Zambrano right to reside'), you do not need to revisit the basis on which that limited leave was granted, but need only consider the eligibility and suitability requirements relevant to the period since then.

Related content

[Contents](#)

EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members

Related external links

[Ruiz Zambrano \(European citizenship\) \[2011\] EUECJ C-3409](#)

[Immigration \(European Economic Area\) Regulations 2006](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

[Appendix EU to the Immigration Rules](#)

[EU Settlement Scheme Family permit and Travel permit](#)

Section 1: Overview of eligibility requirements

Who is a 'person with a Zambrano right to reside'?

A 'person with a Zambrano right to reside' is a person who has satisfied the Secretary of State by evidence provided that they are (and for the relevant period have been) or (as the case may be) for the relevant period they were either:

- resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
 - they are not an exempt person
 - they are the primary carer of a British citizen who resides in the UK
 - the British citizen would in practice be unable to reside in the UK, the European Economic Area or Switzerland if the person (or both primary carers, where the role of primary carer is shared with another person in accordance with the definition of ['primary carer'](#) in Annex 1 to Appendix EU) in fact left the UK for an indefinite period
 - they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 (or, as a temporary concession, is limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit)
 - they are not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

- resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
 - they are not an exempt person
 - they are under the age of 18 years (unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a person with a Zambrano right to reside and were under 18 at the date of application for that leave)
 - their primary carer meets the requirements of sub-paragraph (a) above
 - the primary carer would in practice be prevented from residing in the UK if the person in fact left the UK for an indefinite period
 - they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 (or, as a temporary concession, is limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit)
 - they are not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

[‘Relevant period’](#) means here the continuous qualifying period in which the person relies on meeting this definition. Unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#), the relevant period must have been continuing at 11pm GMT on 31 December 2020

There are 3 key elements which must be met where an applicant to the EU Settlement Scheme relies on being or having been a ‘person with a Zambrano right to reside’:

1. the applicant must meet the requirements of the definition **throughout the continuous qualifying period** in the UK in which they rely on being or having been a ‘person with a Zambrano right to reside’
2. that continuous qualifying period in the UK as a ‘person with a Zambrano right to reside’ **must have begun before the specified date** (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK)
3. the applicant must also meet **one** of the following, either:
 - their **continuous qualifying period in the UK** as a ‘person with a Zambrano right to reside’ must have been continuing at 11pm GMT on 31 December 2020 (unless they are a [relevant EEA family permit case](#)) and must be continuing at the date of their application to the scheme
 - their **continuous qualifying period in the UK** as a ‘person with a Zambrano right to reside’ must have been continuing at 11pm GMT on 31 December 2020 (unless they are a [relevant EEA family permit case](#)) and ended when the applicant completed a 5-year **continuous qualifying period in the UK** as such a person (and by the date of their application there has been no supervening event)
 - at the date of their application to the scheme, the applicant must be a [person who had a derivative or Zambrano right to reside](#), meaning that, before the specified date, they were a ‘person with a Zambrano right to reside’ immediately before they met (whether before or after the specified date) another qualifying category (such as the family member of a relevant EEA citizen) and have since remained in that or another qualifying category through to the date of their application to the scheme - in such cases, they can aggregate their continuous residence across these categories where eligibility for indefinite leave to enter or remain under Appendix EU is concerned

For the purposes of a continuous qualifying period in the UK as a ‘person with a Zambrano right to reside’, the applicant **cannot** rely on any period in which they held non-Appendix EU leave (unless such leave was in effect by virtue of section 3C of the Immigration Act 1971 or, as a temporary concession, is limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit).

However, if they ceased to hold that leave before the specified date, they can, where they meet the relevant criteria, start a continuous qualifying period in the UK as a 'person with a Zambrano right to reside' from the date on which they ceased to hold that leave.

Example

A entered the UK as a visitor on 1 November 2010 and has lived here continuously ever since. From 1 September 2011 to 31 December 2015, A had a right to reside in the UK under the EEA Regulations as the spouse of an EEA citizen working here. In 2016, that marriage ended and A formed a relationship with a British citizen, and their British citizen child was born on 1 June 2017. In September 2017, A applied for leave to remain in the UK under Appendix FM to the Immigration Rules as the parent of a British citizen child. On 1 March 2019, A was granted 30 months' leave to remain under Appendix FM, expiring on 31 August 2021. On 25 August 2021, A applied to the EU Settlement Scheme as a 'person with a Zambrano right to reside'. A is not a 'person with a Zambrano right to reside', because she held non-Appendix EU leave at 11pm GMT on 31 December 2020, and therefore she is not eligible for leave under the scheme.

As set out above, there are 2 groups who can be a 'person with a Zambrano right to reside', either:

- primary carers
- certain dependants of the primary carer

Primary carer cases

The applicant will be a 'person with a Zambrano right to reside' under sub-paragraph (a) of that definition in Annex 1 to Appendix EU where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a Zambrano right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an '[exempt person](#)'
 - the applicant must be the '[primary carer](#)' of a British citizen who resides in the UK, by both:
 - being their [direct relative](#) or [legal guardian](#)
- having primary responsibility for their care or sharing equally the responsibility for their care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations before the person assumed equal care responsibility
- that [British citizen would in practice be unable to reside in the UK, the EEA or Switzerland](#) if the primary carer in fact left the UK for an indefinite period
- the applicant does not have leave to enter or remain in the UK, unless this was granted under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 (or, as a temporary concession, is limited leave to enter

granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit)

- the applicant must not be subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

Dependant of the primary carer cases

The definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU also provides a route under the scheme for a dependant under the age of 18 of a primary carer who meets the conditions of the above category.

The applicant will be 'a person with a Zambrano right to reside' under sub-paragraph (b) of that definition in Annex 1 to Appendix EU where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a Zambrano right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an ['exempt person'](#)
- the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as 'a person with a Zambrano right to reside' and were under the age of 18 at the date of application for that leave
- their ['primary carer'](#) meets the requirements of sub-paragraph (a) of the definition of a 'person with a Zambrano right to reside' (summarised above)
- the primary carer would in practice be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period
- the applicant must not have leave to enter or remain in the UK, unless this was granted under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 (or, as a temporary concession, is limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit)
- the applicant must not be subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

Resident for a continuous qualifying period in the UK which began before the specified date and throughout which the relevant criteria are met

The applicant's continuous qualifying period in the UK as a 'person with a Zambrano right to reside' must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK).

The applicant must meet the requirements of the definition of a ‘person with a Zambrano right to reside’ throughout the continuous qualifying period in the UK in which they rely on being or having been such a person.

Relevant period

‘Relevant period’ means the continuous qualifying period in which the applicant relies on meeting the definition of ‘person with a Zambrano right to reside’. For more information on continuous qualifying period, see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

The relevant period must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

As stated above, for convenience this guidance generally refers to the requirements in the present tense. However, it is important you apply the guidance to the relevant period relied upon.

Who is a ‘person who had a derivative or Zambrano right to reside’?

Appendix EU allows an applicant to rely on past continuous residence in the UK as a ‘person with a Zambrano right to reside’ where, before the specified date, they were a person with a Zambrano right to reside immediately before they switched (whether before or after the specified date) into another qualifying category under the scheme.

Such a ‘person who had a derivative or Zambrano right to reside’ is defined in Annex 1 to Appendix EU (including as a qualifying category under condition 3 of rule EU11). In summary, they are a person who both:

- before the specified date was a person with a Zambrano right to reside immediately before they became (whether before or after the specified date) a relevant EEA citizen, a family member of a relevant EEA citizen, a person with a derivative right to reside or a family member of a qualifying British citizen
- has remained or (as the case may be) remained, in any (or any combination) of those categories (including where they subsequently became a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen or with a qualifying British citizen)

Where an applicant relies on meeting this definition, the continuous qualifying period in which they rely on doing so must have been continuing at 11pm GMT on 31 December 2020. However, it does not matter whether at that point they were a ‘person with a Zambrano right to reside’ or were in one of the other categories referred to above.

Where such an applicant relies on having been a ‘person with a Zambrano right to reside’ as part of their continuous qualifying period, you must use this guidance to assess whether they satisfied the requirements throughout that [relevant period](#).

Making an application: deadline

An application under Appendix EU must be made by the required date: see the section on 'Making an application: deadline' in the guidance on EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, including the scope for an application to be made after the relevant deadline where there are reasonable grounds for the person's delay in making their application.

In line with a consent order in the Akinsanya proceedings, a valid application made under Appendix EU as a 'person with a Zambrano right to reside' (or as a 'person who had a derivative or Zambrano right to reside' where they rely on having been a 'person with a Zambrano right to reside') on or after 1 July 2021 and by 25 July 2022 is deemed to have reasonable grounds for the person's delay in making their application.

Related content

[Contents](#)

EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members

EU Settlement Scheme: family member of a qualifying British citizen

Related external links

[Ruiz Zambrano \(European citizenship\) \[2011\] EUECJ C-3409](#)

[Immigration \(European Economic Area\) Regulations 2006](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

[Appendix EU to the Immigration Rules](#)

Section 2: All applications: initial eligibility requirements

You must first consider whether the applicant meets the initial eligibility requirements.

To be considered eligible under Appendix EU as a 'person with a Zambrano right to reside', the applicant for the [relevant period](#):

- must not be an '[exempt person](#)'
- must not have [leave to enter or remain in the UK](#), unless this was granted under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 (or, as a temporary concession, is limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit)
- must not be [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect

Exempt person

To be considered eligible under Appendix EU as a 'person with a Zambrano right to reside', the applicant must not for the relevant period be an 'exempt person'.

An 'exempt person' (as defined in Annex 1 to Appendix EU) is a person who:

- had a right to reside in the UK under the EEA Regulations, other than under regulation 16. For example, as a person who exercised free movement rights as an EEA citizen or their family member: see [Immigration \(European Economic Area\) Regulations 2016](#) - in such a case, they will be an 'exempt person' and so will not be a 'person with a Zambrano right to reside', but you must then go on to consider whether they are eligible on other grounds for leave under Appendix EU
- has the right of abode in the UK under section 2 of the Immigration Act 1971 - for example, the person is a British citizen: see Right of abode - in such a case, you must treat the application as void, as a person with the right of abode cannot be granted leave under the scheme
- is exempt from immigration control in accordance with section 8(2), (3) or (4) of the Immigration Act 1971: see [persons exempt from control](#) - in such a case, they will be an 'exempt person' and so cannot be considered a 'person with a Zambrano right to reside', but you must then go on to consider whether they are eligible on other grounds for leave under Appendix EU
- has indefinite leave to enter or remain in the UK, unless this was granted under Appendix EU - you can ascertain this by checking Home Office records - if they do, they may be eligible for indefinite leave to enter or remain under the scheme under condition 2 of rule EU11 of Appendix EU

If the applicant is an 'exempt person' on the basis that the first, third or fourth of the bullet points above applies, then you must, based on the information available to you, consider their eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU, see: EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If they are such an 'exempt person' and they do not meet any other eligibility requirements for leave under the scheme, then you must refuse the application under rule EU6, without going on to consider the other eligibility requirements in this guidance.

Leave to enter or remain in the UK, other than leave granted under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971

A Zambrano right to reside is only available to a person who has no other lawful basis of stay in the UK as the primary carer of a dependent British citizen, or as a dependant of that primary carer. In the case of [Akinsanya v the Secretary of State for the Home Department \(SSHD\) \[2022\] EWCA Civ 37 \(25 January 2022\)](#), the Court of Appeal found that, as a matter of EU law, a Zambrano right to reside does not arise where a person holds leave to remain.

Following Akinsanya, the SSHD reconsidered her policy in this area and, as announced on 13 June 2022, decided to maintain the provision in the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU which means that an applicant cannot meet that definition if they have (or, as the case may be, for the relevant period they had) leave to enter or remain in the UK, unless this was granted under Appendix EU or, as below, was in effect by virtue of section 3C of the Immigration Act 1971 (or, as a temporary concession pending inclusion in Appendix EU at the next available opportunity, is limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit).

Outside those cases, an applicant cannot therefore meet the definition of a 'person with a Zambrano right to reside' during a period they held leave to enter or remain granted under another part of the Immigration Rules (such as Appendix FM), Discretionary Leave or [Leave outside the Rules](#).

To qualify as a 'person with a Zambrano right to reside' under Annex 1 to Appendix EU, the applicant must meet the requirements of that definition in a continuous qualifying period which began before the specified date (normally, 11pm GMT on 31 December 2020) and for the relevant period relied upon. This means in particular that they must not have held leave to enter or remain in the UK under another part of the Immigration Rules, or outside the Rules, for that period (unless it was in effect by virtue of section 3C of the Immigration Act 1971 or, as a temporary concession, is limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit).

Section 3C of the Immigration Act 1971 extends limited leave pending the outcome of an in-time application where the leave would otherwise expire before the in-time

application has been decided. The broad aim of section 3C is to prevent a person's existing leave expiring while that application is pending. Leave extended by section 3C will not generally be relevant to an applicant's eligibility as a 'person with a Zambrano right to reside', because under rules EU11 and EU14 of Appendix EU, eligibility is assessed at the date of the application. Therefore, the assessment of eligibility will generally take place prior to the leave being extended by section 3C.

Nevertheless, the definition of a 'person with a Zambrano right to reside' under Annex 1 to Appendix EU removes the impact of non-Appendix EU leave to enter or remain which was in effect by virtue of section 3C for the purposes of the leave to enter or remain assessment. This means that an applicant is not excluded from eligibility as such a person where, at the date of application, their previous non-Appendix EU leave would have expired before the specified date but was extended past that date by section 3C because they either:

- applied for further non-Appendix EU leave
- applied for leave under Appendix EU. For example, as a 'person with a Zambrano right to reside' (which was refused after the specified date because, at the date of application, they had non-Appendix EU leave)

This will not necessarily mean that the applicant will qualify under Appendix EU as a 'person with a Zambrano right to reside' as they will still have to meet the remaining eligibility requirements. However, they will not be excluded simply by virtue of their previous non-Appendix EU leave which was extended by section 3C.

If the applicant does not meet the requirement regarding leave to enter or remain in the UK, then you must, based on the information available to you, consider their eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU, see: EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If they do not meet any other eligibility requirements for leave under the scheme, then you must refuse the application under rule EU6, without going on to consider the other eligibility requirements in this guidance.

Subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

A Zambrano right to reside is not available to a person subject to one of the following decisions made under the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect:

- under [regulation 23\(6\)\(b\)](#), to remove on grounds of public policy, public security or public health in accordance with regulation 27
- under [regulation 24\(1\)](#), to refuse to issue, to revoke or to refuse to renew residence documentation on grounds of public policy, public security or public health, or on grounds of misuse of rights in accordance with regulation 26(3)

- under [regulation 25\(1\)](#), to cancel a right of residence
- under [regulation 26\(3\)](#), on grounds of misuse of rights
- under [regulation 31\(1\)](#), to revoke admission

An applicant cannot therefore meet the definition of a ‘person with a Zambrano right to reside’ under Annex 1 to Appendix EU if they are subject to any of the above decisions during the [relevant period](#), unless that decision has been set aside or otherwise no longer has effect.

If the applicant does not meet this requirement, then you must, based on the information available to you, consider their eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU, see: EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If they do not meet any other eligibility requirements for leave under the scheme, then you must refuse the application under rule EU6, without going on to consider the other eligibility requirements in this guidance.

Related content

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EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members

EU Settlement Scheme: family member of a qualifying British citizen

Related external links

[Immigration \(European Economic Area\) Regulations 2006](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

[Appendix EU to the Immigration Rules](#)

Discretionary leave

[Leave outside the Immigration Rules](#)

Section 3: Eligibility – Zambrano primary carer

Where the applicant relies on being a Zambrano primary carer and meets the initial eligibility requirements in section 2 of this guidance, you must then consider the following 3 additional stages.

These are:

- [stage 1: British citizen resides in the UK](#): assessing whether the person for whom the applicant claims to be the primary carer is a British citizen who resides in the UK
- [stage 2: primary carer](#): assessing whether the applicant is the primary carer of the British citizen
- [stage 3: British citizen unable to reside in the UK, the EEA or Switzerland](#): assessing whether, in practice, the British citizen would be unable to reside in the UK, the EEA or Switzerland if the applicant was in fact required to leave the UK for an indefinite period

The applicant must meet these 3 stages for the whole continuous qualifying period in the UK, which began before the specified date, in which they rely on having been a 'person with a Zambrano right to reside' in order to be eligible for leave under the scheme as such a person.

In addition, that [relevant period](#) must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

Related content

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[Appendix EU to the Immigration Rules](#)

Stage 1: assessing British citizenship and UK residence

The first additional stage is to consider whether the person for whom the applicant claims to be the primary carer is a British citizen who resides in the UK.

Assessing British citizenship

Whether a person has British citizenship is a matter that can only be determined conclusively by the courts. However, any one of the following documents, for example, will normally be enough to determine that a person is a British citizen:

- current valid British citizen passport
- certificate of registration or naturalisation as a British citizen
- UK birth certificate showing birth in the UK before 1 January 1983
- UK birth certificate showing birth in the UK on or after 1 January 1983 and evidence that either parent was a British citizen or settled in the UK at the time of the birth
- a certificate of entitlement to the right of abode issued under section 2(1)(a) of the Immigration Act 1971
- a derivative residence card or EEA family permit issued under the EEA Regulations on the basis that the applicant is the primary carer of the relevant British citizen

The definition of 'parent' for nationality purposes will depend on whether the child was born before or from 1 July 2006. Where the relevant person being cared for was born before 1 July 2006 and they are relying on their father being British or settled in the UK at the time of their birth, then their parents must have been married when they were born for them to be a British citizen automatically.

As the relevant requirements must be met throughout a continuous qualifying period which began before the specified date, British citizenship must have been acquired before the specified date. Where British citizenship was acquired after the specified date, the application **must** be refused.

Persons not considered British citizens

Persons with the following forms of status are not considered British citizens:

- British Overseas Territories Citizens (BOTC)
- British Overseas Citizens (BOC)
- British Nationals (Overseas) (BNO)
- British Subjects (BS)
- British Protected Persons (BPP)

For more guidance on assessing British citizenship, see [Nationality instructions](#).

Assessing UK residence

The British citizen must be resident in the UK before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK) and throughout the continuous qualifying period in which the applicant relies on having been a 'person with a Zambrano right to reside'.

Where the applicant provides the person's National Insurance number, the British citizen's residence in the UK may be confirmed by checks of HM Revenue & Customs (HMRC) and Department for Work and Pensions (DWP) data.

Applicants are otherwise able to provide documentary evidence of the British citizen's residence in the UK. For a non-exhaustive list of the type of documentary evidence that an applicant can provide see: EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

Conclusion on stage 1

Where you are satisfied that the relevant person is and for the relevant period has been (or, as the case may be, for the relevant period they were) a British citizen resident in the UK, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members
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[Appendix EU to the Immigration Rules](#)
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Stage 2: primary carer

The second additional stage is to assess whether the applicant is the primary carer of the relevant British citizen, including whether the applicant is the direct relative or legal guardian of the British citizen.

Primary carer

A primary carer is defined in Annex 1 to Appendix EU as a direct relative or legal guardian of another person and who either:

- has primary responsibility for that person's care
- shares equally the responsibility for that person's care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations before the person assumed equal care responsibility

A person is not to be regarded as having responsibility for another person's care on the sole basis of a financial contribution to that care.

Where the applicant has been issued with a residence card or a family permit under the EEA Regulations on the basis that they were the primary carer of the relevant British citizen, you must assess whether the applicant remains the primary carer of the relevant British citizen throughout the continuous qualifying period relied upon which began before the specified date.

For guidance on assessing whether a person is a primary carer, see: [Primary carer](#).

Assessing 'direct relative' or 'legal guardian'

Where the applicant has been issued with a residence card or a family permit under the EEA Regulations on the basis that they are the direct relative of the relevant British citizen, you can accept that this has already been confirmed.

Where the applicant has not been issued with such a document or has been issued with one based on legal guardianship, you must be satisfied from information or evidence provided by the applicant that either:

- they are the direct relative of the relevant British citizen and were so before the specified date
- throughout the continuous qualifying period relied upon which began before the specified date, they were the British citizen's legal guardian

See [direct relative or legal guardian](#) for more guidance on determining who is a direct relative or legal guardian.

Conclusion on stage 2

Where you are satisfied that the applicant is and for the relevant period has been (or, as the case may be, for the relevant period they were) the primary carer of the relevant British citizen, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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[Appendix EU to the Immigration Rules](#)

[Immigration \(European Economic Area\) Regulations 2016](#)

Stage 3: British citizen unable to reside in the UK, the EEA or Switzerland

The third additional stage is to assess whether, in practice, the British citizen would be unable to reside in the UK, the EEA (the 27 EU Member States, other than the UK when it was a member, together with Iceland, Liechtenstein and Norway) or Switzerland if the applicant were in fact required to leave the UK for an indefinite period.

As held by the Court of Appeal in *Velaj v SSHD* [2022] EWCA Civ 767, this assessment requires a fact-based enquiry looking at whether, in practice, the British citizen would be unable to remain in the UK, an EEA Member State or Switzerland, if the applicant were in fact required to leave the UK for an indefinite period.

Assessing whether a British citizen would be unable to reside in the UK, the EEA or Switzerland

An applicant can only be considered a ‘person with a Zambrano right to reside’ where, in practice, the relevant British citizen would be unable to reside in the UK, the EEA or Switzerland if the applicant were in fact required to leave the UK for an indefinite period.

You will have already established that the applicant cannot be considered a ‘person with a Zambrano right to reside’ where they have leave to enter or remain in the UK, other than leave granted under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 (or, as a temporary concession, limited leave to enter granted by virtue of having arrived in the UK with an EU Settlement Scheme family permit).

In all other cases – including where the applicant’s non-Appendix EU leave to enter or remain was for the relevant period extended by section 3C of the Immigration Act 1971 – you will need to assess whether they satisfy this test.

In order to assess this stage, you must consider the following:

- [could the British citizen live in the UK?](#)
- [could the British citizen live in an EEA Member State or Switzerland?](#)

Could the British citizen live in the UK?

The first stage is to consider whether the relevant British citizen could continue to live in the UK.

The Court of Appeal confirmed in *Velaj v SSHD* [2022] EWCA Civ 767 (31 May 2022) that the assessment of whether or not a British citizen would be compelled to leave the UK (and the EEA and Switzerland) must be based on what would happen

in practice. The assessment is not to be based on a hypothetical, assumed or counter-factual premise.

This assessment requires a 2-step consideration.

First, you must consider whether the applicant would be required to leave the UK for an indefinite period if their EU Settlement Scheme application as a 'person with a Zambrano right to reside' is refused.

This includes an assessment of whether the applicant either has or could obtain lawful immigration status. If, as a result of the refusal of their EU Settlement Scheme application, the applicant would not in fact leave the UK for an indefinite period, then the applicant will not meet this criterion.

You must base your assessment on the applicant's individual circumstances. Some examples of how to approach this assessment are set out below. These are:

- [The applicant used to have Appendix FM leave](#)
- [The applicant has since been granted Appendix FM leave](#)
- [The applicant was previously refused under Appendix FM or Article 8 ECHR](#)
- [The applicant has never applied under Appendix FM or Article 8 ECHR](#)

If you conclude the applicant would not in fact be required to leave the UK for an indefinite period, then the British citizen would be able to continue to reside in the UK. Consequently, this criterion would not be satisfied. In these circumstances, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

Second, if you conclude the applicant would in fact be required to leave the UK for an indefinite period, you must consider whether this means the British citizen would in practice be unable to reside in the UK, the EEA or Switzerland: see [Alternative care arrangements](#).

Where you are not satisfied of this inability to reside in the UK, the EEA or Switzerland you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

The applicant used to have Appendix FM leave

If Home Office records show the applicant previously had leave to enter or remain under Appendix FM to the Immigration Rules, but it expired before the specified date, then you must ascertain the reason the leave was granted and consider whether, on the balance of probabilities, they are (or would have been) likely to qualify for further leave in the same route (for example, if they were granted as a parent and their child is still under the age of 18) or in a different route (for example, they have ceased to meet the requirements of the partner route but they are a parent).

See [Considering the prospects of making a successful Appendix FM, private life or long residence application](#) for how to consider whether, on the balance of probabilities, an applicant is likely to qualify for Appendix FM leave, such that the applicant has failed to show that they would in fact leave the UK for an indefinite period.

The applicant has since been granted Appendix FM leave

If the applicant did not have non-Appendix EU leave during the continuous qualifying period on which they rely on being a 'person with a Zambrano right to reside', but they have since been granted leave under Appendix FM (regardless of which application was made first), you must consider whether, on the balance of probabilities, it is likely they would have been granted that Appendix FM leave earlier if they had applied for it earlier, before they applied to the EU Settlement Scheme and/or before the specified date.

You must consider whether:

- there is any credible reason why the applicant could not have applied under Appendix FM before they applied to the EU Settlement Scheme and/or before the specified date (see [Claims of financial barriers to alternative applications](#) for how to consider claims relating to the application fee and immigration health charge). You do not need to request this information if it is not provided with the application, but if it is provided, you must consider it
- on the balance of probabilities, an earlier Appendix FM application would have succeeded:
 - generally, absent a material change in circumstances (or in the requirements of Appendix FM), if the later application succeeded under the partner or parent route, it is reasonable to conclude that an earlier application would have done (see [Considering the prospects of making a successful Appendix FM, private life or long residence application](#) for how to consider whether, on the balance of probabilities, an applicant is likely to qualify for Appendix FM leave, such that the applicant has failed to show that they would in fact leave the UK for an indefinite period
 - where the Appendix FM application succeeded under the exceptional circumstances policy, it will not necessarily be reasonable to conclude that it would have succeeded earlier – if you have a case that may fall for refusal on this basis, you must email the EEA Citizens' Rights & Hong Kong Unit for advice

- you do not need to request evidence of any material change in circumstances if it is not provided with the application, but if it is provided, you must consider it

The applicant was previously refused under Appendix FM or Article 8 ECHR

If the applicant previously made an application under Appendix FM or a claim that their removal from the UK would breach their right to respect for private or family life as protected by Article 8 of the European Convention on Human Rights (ECHR) and this was refused, you must consider whether there has been a material change in circumstances such that a repeat application or claim is (or would have been) likely, on the balance of probabilities, to succeed.

See [Considering the prospects of making a successful Appendix FM, private life or long residence application](#) for how to consider whether, on the balance of probabilities, an applicant is likely to qualify for Appendix FM leave such that the applicant has failed to show that they would in fact leave the UK for an indefinite period.

The applicant has never applied under Appendix FM or Article 8 ECHR

If the applicant has never made an application under Appendix FM or a claim that their removal from the UK would breach their right to respect for private or family life as protected by Article 8 ECHR, you must consider whether, on the balance of probabilities, an applicant is likely to qualify for Appendix FM leave such that the applicant has failed to show that they would in fact leave the UK for an indefinite period: see [Considering the prospects of making a successful Appendix FM, private life or long residence application](#).

Considering the prospects of making a successful Appendix FM, private life or long residence application

This is not an exercise to assess whether the applicant qualifies for leave to remain under Appendix FM or based on their private life or long residence, as this can only be done by the relevant caseworker following the making of a valid application under that route, but to consider whether there is a realistic prospect that they would do so (or would have done so), such that they cannot satisfy you that they would (or would have) in fact left the UK for an indefinite period.

If the applicant cannot satisfy you of this on the balance of probabilities, then the British citizen would be able to continue to live in the UK. As a result, the applicant will not meet the requirements to be a 'person with a Zambrano right to reside'.

If the applicant submits any information or evidence about whether or not they meet the relevant requirements, this must be taken into account when you make the decision.

You must not argue that an applicant could have obtained leave under a route before that route existed. Therefore please note:

- Appendix FM came into force on 9 July 2012. Before that, parent and partner routes were in Part 8 of the Immigration Rules
- Appendix Private Life came into force on 20 June 2022 for applications made on or after that date, replacing paragraphs 276ADE to 276DH in Part 7 of the Immigration Rules

You must base your assessment on the applicant's individual circumstances and consider any relevant information or evidence provided. Some guidance is set out below on some of the scenarios you may see:

- [The applicant claims to be the parent \(including adoptive parent\) or legal guardian of a British citizen child](#)
- [The applicant claims to be the primary carer of their British citizen spouse or civil partner](#)
- [The applicant claims to be the primary carer of a British citizen direct relative who is not their spouse, civil partner, or minor child](#)
- [The applicant claims long residence in the UK](#)

The applicant claims to be the parent (including adoptive parent) or legal guardian of a British citizen child

You must consider first whether the applicant has a realistic prospect of being granted Appendix FM leave as a partner. This is because if they are a qualifying partner under Appendix FM, they will not be eligible under Appendix FM as a parent.

It will generally be reasonable to consider that the applicant has a realistic prospect of being granted Appendix FM leave as a partner where the applicant is at least 18 years of age and not in the UK with leave of six months or less (e.g. as a visitor) and claims that all of the following apply:

- their partner is in the UK and at least 18 years of age
- their partner either:
 - is a British citizen
 - is present and settled in the UK (e.g. with indefinite leave to remain)
 - has refugee leave or humanitarian protection
 - is an EEA national with limited leave granted under rule EU3 of Appendix EU
 - has limited leave as a worker or business person under Appendix ECAA Extension of Stay
- they have a genuine and subsisting relationship with their partner, who is either their:
 - spouse
 - civil partner
 - unmarried partner (where the relationship is one similar to marriage or civil partnership and they have cohabited for at least 2 years)
- they do not have a serious criminal history

In addition, there is no evidence they could not meet the financial and English language requirements, and the applicant has not claimed (implicitly or explicitly) that they have a qualifying child who could not be reasonably expected to leave the UK or that there would be insurmountable obstacles to their family life with their partner continuing outside the UK. You must consider any relevant information or evidence provided.

If the applicant does not have a qualifying partner, you must go on to consider whether the applicant has a realistic prospect of being granted Appendix FM leave as a parent.

It will generally be reasonable to consider that the applicant has a realistic prospect of being granted Appendix FM leave as a parent of a British citizen child (who is, or would have been, under the age of 18 at the date of the Appendix FM application) where the application does not fall for refusal on general or suitability grounds and the applicant claims (implicitly or explicitly) that all of the following apply:

- they have sole parental responsibility for or direct access to a child who is in the UK
- the child is a British citizen or has lived in the UK for at least seven years
- it would be unreasonable for the child to leave the UK (which is implicit in a Zambrano application)

This is not an exercise to assess whether the applicant qualifies for leave to remain under Appendix FM, as this can only be done by the relevant caseworker following the making of a valid application under that route, but to consider whether there is a realistic prospect that they would do so (or would have done so), such that they cannot satisfy you that they would (or would have) in fact left the UK for an indefinite period.

If the applicant cannot satisfy you of this on the balance of probabilities, then the British citizen would be able to continue to live in the UK. As a result, the applicant will not meet the requirements to be a 'person with a Zambrano right to reside'.

If the applicant has specified any other requirement and claimed they do not meet it, you can email the EEA Citizens' Rights & Hong Kong Unit for advice.

The applicant claims to be the primary carer of their British citizen spouse or civil partner

You must consider first whether the applicant has a realistic prospect of being granted Appendix FM leave as a partner. Guidance is set out above in [The applicant claims to be the parent \(including adoptive parent\) or legal guardian of a British citizen child](#).

If there is not a realistic prospect of being granted Appendix FM leave as a partner, you must consider whether there is a realistic prospect of being granted Appendix FM leave based on exceptional circumstances.

It will generally be reasonable to consider that the applicant has a realistic prospect of being granted Appendix FM leave based on exceptional circumstances where the application would not fall for refusal on general or suitability grounds and the applicant claims (implicitly or explicitly) that either:

- they have (or had) a genuine and subsisting parental relationship with a child who is under the age of 18, in the UK, and a British citizen or having lived in the UK for at least seven years and, taking into account their best interests as a primary consideration, it would not be reasonable to expect the child to leave the UK
- they have (or had) a genuine and subsisting relationship with a partner in the UK and a British citizen, settled in the UK, in the UK with refugee leave or humanitarian protection, in the UK as an EEA national with limited leave granted under rule EU3 of Appendix EU, or in the UK with limited leave as a worker or business person under Appendix ECAA Extension of Stay, and there are insurmountable obstacles to family life with that partner continuing outside the UK

This is not an exercise to assess whether the applicant qualifies for leave to remain under Appendix FM, as this can only be done by the relevant caseworker following the making of a valid application under that route, but to consider whether there is a realistic prospect that they would do so (or would have done so), such that they cannot satisfy you that they would (or would have) in fact left the UK for an indefinite period.

If the applicant cannot satisfy you of this on the balance of probabilities, then the British citizen would be able to continue to live in the UK. As a result, the applicant will not meet the requirements to be a 'person with a Zambrano right to reside'.

If the applicant has specified any other requirement and claimed they do not meet it, you can email the EEA Citizens' Rights & Hong Kong Unit for advice.

The applicant claims to be the primary carer of a British citizen direct relative who is not their spouse, civil partner or minor child

Appendix FM does not cater for applicants claiming to be the primary carer of their British citizen parent, grandparent or adult child, brother or sister. This means the applicant would need to make an Article 8 ECHR claim that removal would breach their right to respect for family life with their adult relative.

GEN.3.2. of Appendix FM sets out that such a claim will succeed where the decision-maker considers there are exceptional circumstances which would render refusal a breach of Article 8 ECHR, because such a refusal would result in unjustifiably harsh consequences for the applicant, their partner, a relevant child or another family member whose Article 8 rights it is evident from that information would be affected by a decision to refuse the application.

You are not generally expected to consider whether such a claim would have a realistic prospect of success. However, where you have a case you think may fall for refusal on the basis that the applicant has a realistic prospect of making a successful

Article 8 ECHR claim based on exceptional circumstances, you can email the EEA Citizens' Rights & Hong Kong Unit for advice.

The applicant claims long residence in the UK

It will generally be reasonable to consider that the applicant has a realistic prospect of being granted on the basis of 10 years' long residence in the UK, under paragraphs 276A to 276D of the Immigration Rules, where the applicant both:

- claims to have had at least 10 years' continuous lawful residence in the UK
- does not have a serious criminal history

It will generally be reasonable to consider that the applicant has a realistic prospect of being granted Appendix Private Life leave where the applicant does not have a serious criminal history and claims that either:

- they have been continuously resident in the UK for more than 20 years
- they have not been continuously resident in the UK for more than 20 years but there would be very significant obstacles to the applicant's integration into the country where they would have to live if required to leave the UK

Claims of financial barriers to alternative applications

An applicant may claim they did not make an application under Appendix FM or Appendix Private Life or based on long residence because they could not afford the application fee or the immigration health charge and claim that they should not be refused as a 'person with a Zambrano right to reside' on this basis.

You must consider the credibility of such a claim on a case by case basis with reference to any relevant information or evidence provided. You must also consider whether the alternative route has a fee waiver policy (including what information was available on GOV.UK at the material time, using [National Archives](#) as appropriate) – Appendix FM, for example, has a fee waiver policy. If the applicant has successfully applied for a fee waiver in the past (for example, in connection with a historical Appendix FM application), then it is reasonable to conclude that the application fee and immigration health charge were not a barrier to applying under a non-Appendix EU route.

Alternatively, an applicant may claim they could afford the application fee and the immigration health charge but paying them would have a negative impact on the best interests of a child or children. The Appendix FM fee waiver policy takes into account any negative impact on children, as well as affordability.

You must also consider the credibility of such a claim with reference to the evidence provided and take into account that leave under Appendix FM or Appendix Private Life or based on long residence is granted without an immigration condition prohibiting employment or self-employment. This means that a successful applicant could work in the UK, including to mitigate the impact of paying the fees on any

children affected by the decision, to meet their needs and the needs of any dependants, and to afford the fees for any subsequent applications.

Claims that a British citizen would be unable to reside in the UK even if the applicant were granted non-Appendix EU limited leave

An applicant may claim that conditions attached to non-Appendix EU limited leave are such as to make it impossible in fact for them to remain in the UK and to continue to care for the British citizen, with the result that EU Settlement Scheme status is required to prevent the British citizen from being unable in practice to reside in the UK (or the EEA or Switzerland).

You must consider what conditions may be attached to the limited leave and what impact they would have on the applicant and whether it would be open to the applicant to apply for a change of conditions.

You must also compare the applicant's circumstances if they were granted non-Appendix EU limited leave against their circumstances if they were granted limited leave under Appendix EU and consider whether there would be any material differences.

For example, Appendix FM leave permits the holder to take up employment or self-employment, and is generally subject to a 'no recourse to public funds' condition but it is possible to apply for the condition to be lifted.

In comparison, limited leave (pre-settled status) under Appendix EU also permits the holder to take up employment or self-employment, but there is legislation preventing access to public funds where the holder is a 'person with a Zambrano right to reside' and no means to disapply it.

In these circumstances, an applicant will generally find it difficult to substantiate a claim that they would not be able to remain in the UK if granted limited leave under Appendix FM but would be able to remain if granted limited leave (pre-settled status) under Appendix EU.

Could the British citizen live in an EEA Member State or Switzerland?

Where the relevant British citizen could not continue to live in the UK, the second stage is to consider whether the British citizen could live in an EEA Member State or Switzerland.

If the applicant is an EEA citizen, or has a right to reside in an EEA Member State or Switzerland, you must consider whether the British citizen would be able to reside in that country with the applicant. Where this is so, the applicant will not be a 'person with a Zambrano right to reside'.

In particular, there was scope, before the end of the transition period at 11pm GMT on 31 December 2020, for an EEA citizen and a British citizen family member to reside elsewhere in the EEA or in Switzerland under EU free movement law. The British citizen's right to begin doing so ended at the end of the transition period. This does not alter the fact that the applicant must meet the criteria as a 'person with a Zambrano right to reside' in a continuous qualifying period which began before the specified date. An EEA citizen applicant is unlikely to do so, given that before the end of the transition period they were able to reside with a British citizen family member elsewhere in the EEA or in Switzerland.

Alternative care arrangements

To assess whether, in practice, the relevant British citizen would be unable to reside in the UK, the EEA or Switzerland if the applicant were in fact required to leave the UK for an indefinite period, you must consider whether there are alternative care arrangements which could be made for the British citizen in those circumstances.

If there are such alternative care arrangements, you must then consider whether such arrangements are appropriate, including, in particular, in light of the [best interests](#) of the child or of any other child of the applicant affected by the decision. For further guidance see: [Alternative care arrangements](#).

If there are appropriate alternative care arrangements for the British citizen, the applicant will not be a 'person with a Zambrano right to reside'.

Conclusion on stage 3

Where you are satisfied that, in practice, the British citizen would be and for the relevant period would have been (or, as the case may be, for the relevant period they would have been) unable to reside in the UK, the EEA or Switzerland if the applicant were (or, as the case may be, had been) in fact required to leave the UK for an indefinite period, you must move on to the overall conclusion below.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 3, you must next go on to [section 6: All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a Zambrano right to reside'.

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Section 4: Eligibility: dependant of the primary carer

Where the applicant relies on being a dependant of a Zambrano primary carer and meets the initial eligibility requirements in section 2 of this guidance, you must consider the following 3 additional stages when assessing whether the applicant meets the criteria as a 'person with a Zambrano right of reside' in sub-paragraph (b) of that definition in Annex 1 to Appendix EU.

These are:

- [stage 1: applicant under the age of 18](#): assessing whether the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as 'a person with a Zambrano right to reside' and were under the age of 18 at the date of application for that leave
- [stage 2: applicant's primary carer with a Zambrano right to reside](#): assessing whether the applicant's primary carer meets the requirements of sub-paragraph (a) of the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU
- [stage 3: primary carer prevented from residing in the UK](#): assessing whether, in practice, the applicant's primary carer would be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period

The applicant must meet these criteria for the whole continuous qualifying period in the UK, which began before the specified date, in which they rely on having been a 'person with a Zambrano right to reside' in order to be eligible for leave under the scheme as such a person.

In addition, that [relevant period](#) must have been continuing at 11pm GMT on 31 December 2020, unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#).

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Stage 1: applicant under the age of 18

The first additional stage is to consider whether, before the specified date and at the date of application, the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as 'a person with a Zambrano right to reside' and were under the age of 18 at the date of application for that leave.

Age

To satisfy you that, before the specified date and at the date of application, they are under the age of 18, the applicant can, for example, provide their valid passport, their valid national identity card, an in-date residence document issued under the European Economic Area (EEA) Regulations or their birth certificate.

Where the applicant provides an in-date residence document issued under the EEA Regulations, it does not matter that the person concerned no longer has the right to enter or reside under the EEA Regulations on which basis the document was issued, by virtue of the revocation of those Regulations.

Conclusion on stage 1

Where you are satisfied that the applicant is (or was) under the age of 18, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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Stage 2: primary carer with a Zambrano right to reside

The second additional stage is to consider whether the applicant's primary carer meets the requirements of sub-paragraph (a) of the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU.

Consideration

To do so, you must consider the additional eligibility requirements in section 3 of this guidance at [Eligibility - Zambrano primary carer](#).

To satisfy you of this, the applicant can, for example, provide the EU Settlement Scheme application number of the primary carer where they have been granted leave under the scheme. However, there is no need for the primary carer to apply first under the scheme and, where they have not been granted leave under the scheme, the applicant will need to satisfy you that the primary carer meets the requirements of sub-paragraph (a) of the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU, as set out in section 3 of this guidance.

Conclusion on stage 2

Where you are satisfied that the applicant's primary carer meets and for the relevant period has met (or, as the case may be, for the relevant period they met) the requirements of sub-paragraph (a) of the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to the next stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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Stage 3: primary carer prevented from residing in the UK

The third additional stage is to consider whether, in practice, the primary carer would be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period.

In line with the Court of Appeal judgment in *Velaj v SSHD* [2022] EWCA Civ 767, in assessing this a fact-based enquiry is required looking at whether, in practice, the primary carer would be and for the relevant period would have been prevented from residing in the UK if the applicant were in fact required to leave the UK for an indefinite period.

It will generally be reasonable to consider that the applicant has a realistic prospect of being granted Appendix Private Life leave where the applicant is under the age of 18, has lived in the UK for at least seven years and does not have a serious criminal history. Where this applies, it is likely that the applicant would not in fact leave the UK for an indefinite period. If the applicant cannot satisfy you of this on the balance of probabilities, then the primary carer would not be prevented from residing in the UK. As a result, the applicant will not meet the requirements to be a 'person with a Zambrano right to reside'.

Alternative care arrangements

To assess whether, in practice, the primary carer would be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period, you must consider whether there are alternative care arrangements which could be made for the applicant either in the UK or in another country.

If there are alternative care arrangements, you must then consider whether such arrangements are appropriate, including, in particular, in light of the [best interests](#) of the applicant (and of any other child affected by the decision). For further guidance, see [alternative care arrangements](#).

Where the applicant has been issued with a residence card under the European Economic Area (EEA) Regulations on the basis of their relationship with the primary carer, you must assess whether the primary carer would still be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period.

Conclusion on stage 3

Where you are not satisfied that there are (or were) alternative care arrangements which could be (or could have been) made for the applicant, and therefore you are satisfied that, in practice, the primary carer would be (or, as the case may be, for the relevant period would have been) prevented from residing in the UK if the applicant left (or had left) the UK for an indefinite period, you must move on to the overall conclusion below.

Where you are satisfied that there are (or were) alternative care arrangements which could be (or could have been) made for the applicant, and therefore you are not satisfied that, in practice, the primary carer would be (or have been) prevented from residing in the UK if the applicant left (or had left) the UK for an indefinite period, stage 3 will not be met.

In that case, you must not move on to the overall conclusion, but must instead consider the applicant's eligibility for leave on another basis rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 3, you must next go on to [section 6: All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a Zambrano right to reside'.

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Section 5: Person who had a derivative or Zambrano right to reside

Where the applicant relies on being a ‘person who had a derivative or Zambrano right to reside’ and meets the initial eligibility requirements in section 2 of this guidance in respect of the relevant period in which they rely on having been a ‘person with a Zambrano right to reside’, then you must consider the following 2 additional stages to assess their eligibility.

These are:

- [stage 1: applicant met the definition of a ‘person with a Zambrano right to reside’](#): assessing whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a Zambrano right to reside’, the applicant met the additional requirements of that definition set out in section 3 or 4 of this guidance
- [stage 2: applicant then immediately switched to another qualifying category and remained in such a category](#): assessing whether, on ceasing to be a ‘person with a Zambrano right to reside’, before or after the specified date, the applicant immediately became a relevant EEA citizen, a family member of a relevant EEA citizen, a person with a derivative right to reside or a family member of a qualifying British citizen, and has since remained in any of those categories

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Stage 1: applicant met the definition of a ‘person with a Zambrano right to reside’

The first additional stage is to consider whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a Zambrano right to reside’, the applicant met the additional requirements of that definition set out in section 3 or 4 of this guidance.

Consideration

To assess whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a Zambrano right to reside’, the applicant met the additional requirements of that definition, you must refer to:

- [section 3: Eligibility - Zambrano primary carer](#)
- [section 4: Eligibility – Dependant of the primary carer](#)

Conclusion on stage 1

Where you are satisfied that, throughout a continuous qualifying period which began before the specified date in which they rely on having been ‘a person with a Zambrano right to reside’, the applicant met the additional requirements of that definition set out in section 3 or 4 of this guidance, you must move on to the next stage.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant’s eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

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Stage 2: Applicant then immediately switched to another qualifying category and remained in such a category

The second additional stage is to consider whether, on ceasing to be a 'person with a Zambrano right to reside', before or after the specified date, the applicant immediately satisfied the requirements of another qualifying category and has since remained in any of those categories.

Consideration

To assess whether, on ceasing to be a 'person with a Zambrano right to reside', before or after the specified date, the applicant immediately satisfied the requirements of another qualifying category and has since remained in or (as the case may be) remained, in any (or any combination) of those categories. To complete this assessment, you must refer to the relevant guidance:

- a relevant EEA citizen: see [EU Settlement Scheme EU, other EEA, Swiss citizens and family members](#)
- a family member of a relevant EEA citizen: see [EU Settlement Scheme EU, other EEA, Swiss citizens and family members](#)
- a person with a derivative right to reside: see [EU Settlement Scheme derivative right to reside \(Chen and Ibrahim Teixeira cases\)](#)
- a family member of a qualifying British citizen: see [EU Settlement Scheme family member of a qualifying British citizen](#)
- a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen or with a qualifying British citizen: see [EU Settlement Scheme EU, other EEA, Swiss citizens and family members](#)

In addition, the continuous qualifying period in which the applicant relies on meeting the definition of a 'person who had a derivative or Zambrano right to reside' **must** have been continuing at 11pm GMT on 31 December 2020. However, it does not matter whether at that point they were a 'person with a Zambrano right to reside' or in any of the other categories referred to above.

Conclusion on stage 2

Where you are satisfied that on ceasing to be a 'person with a Zambrano right to reside', before or after the specified date, the applicant immediately satisfied the requirements of another qualifying category and remained in such a category, you must move on to the overall conclusion below.

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU.

Overall conclusion

Where you are satisfied that the application meets the requirements of stages 1 and 2, you must next go on to [section 6: All applications not yet concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person who had a derivative or Zambrano right to reside'.

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Section 6: All applications not so far concluded

Continuous qualifying period

Where you are satisfied that the application meets the requirements of the relevant additional stages, you must then use EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members to establish whether the applicant has completed a continuous qualifying period of 5 years and so is to be considered for indefinite leave to enter or remain under rule EU11 (or, where relevant, EU12) of Appendix EU, or has completed a continuous qualifying period of less than 5 years and so is to be considered for limited leave to enter or remain under rule EU14 of Appendix EU.

Indefinite leave to enter or remain as a ‘person with a Zambrano right to reside’ or a ‘person who had a derivative or Zambrano right to reside’

The applicant meets the eligibility requirements for indefinite leave to enter or remain as a ‘person with a Zambrano right to reside’ (or, as the case may be, as a ‘person who had a derivative or Zambrano right to reside’) if, at the date of application, they meet condition 3 of rule EU11 of Appendix EU.

You must be satisfied that the following requirements are met:

- the applicant is a ‘person with a Zambrano right to reside’ or a ‘person who had a derivative or Zambrano right to reside’: see [section 3: Eligibility – Zambrano primary carer](#) and [section 4: Eligibility: dependant of the primary carer](#)
- the applicant has completed a continuous qualifying period in the UK of 5 years as a ‘person with a Zambrano right to reside’ (or as a [‘person who had a derivative or Zambrano right to reside’](#)): see ‘continuous qualifying period’ in the section on ‘Qualifying residence’ in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members (and see the paragraph below about rule EU13 of Appendix EU)
- since completing the continuous qualifying period of 5 years, no supervening event has occurred in respect of the applicant

As described above, the applicant’s continuous qualifying period in the UK as a ‘person with a Zambrano right to reside’ must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK).

Rule EU13 of Appendix EU provides that the continuous qualifying period under condition 3 in rule EU11 can also include a period during which the applicant was a family member of a qualifying British citizen or a family member who has retained the

right of residence by virtue of a relationship with a qualifying British citizen before becoming a 'person with a Zambrano right to reside'.

Limited leave to enter or remain as a 'person with a Zambrano right to reside' or a 'person who had a derivative or Zambrano right to reside'

The applicant meets the eligibility requirements for limited leave to enter or remain as a 'person with a Zambrano right to reside' (or a 'person with a Zambrano right to reside' before they moved into any – and have since remained in any or any combination – of the other categories to which the definition of a 'person who had a derivative or Zambrano right to reside' refers) if, at the date of application, they meet condition 1 in rule EU14 of Appendix EU.

You must be satisfied that the following requirements are met:

- the applicant is a 'person with a Zambrano right to reside or a 'person who had a derivative or Zambrano right to reside': see [section 3: Eligibility – Zambrano primary carer](#) and [section 4: Eligibility: dependant of the primary carer](#)
- the applicant is not eligible for indefinite leave to enter or remain under Appendix EU solely because they have completed a continuous qualifying period of less than 5 years

As described above, the applicant's continuous qualifying period in the UK as a 'person with a Zambrano right to reside' must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 1159pm GMT on the date they arrived in the UK).

Evidence

Where, in order to evidence that they meet the eligibility requirements of Appendix EU as a 'person with a Zambrano right to reside' or a 'person who had a derivative or Zambrano right to reside', the applicant submits a copy (and not the original) of a document, you can require the applicant to submit the original document where you have reasonable doubt as to the authenticity of the copy submitted.

Decision

Suitability requirements

Before you decide the application, you must consider the suitability requirements. See EU Settlement Scheme: suitability requirements.

Indefinite leave to enter or remain (ILE) or (ILR)

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9

- the applicant meets the eligibility requirements for ILE or ILR in accordance with condition 3 of rule EU11 (or, where relevant, of rule EU12)
- the applicant is not to be refused on grounds of suitability in accordance with rule EU15 or EU16

you must grant the applicant ILE (where the application is made outside the UK) or ILR (where the application is made within the UK) under rule EU2 of Appendix EU.

Where you are not satisfied that the applicant meets the eligibility requirements for ILE or ILR of rule EU11 (or, where relevant, EU12), you must consider whether the applicant meets the eligibility requirements for LTE or LTR under condition 1 (or, where relevant, condition 2) of rule EU14 of Appendix EU.

Limited leave to enter or remain (LTE) or (LTR)

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9
- the applicant does not meet the eligibility requirements for ILE or ILR in accordance with rule EU11 or EU12), but meets the eligibility requirements for LTE or LTR in accordance with condition 1 or 2 of rule EU14
- the applicant is not to be refused on grounds of suitability in accordance with rule EU15 or EU16

you must grant the applicant 5 years' LTE (where the application is made outside the UK) or 5 years' LTR (where the application is made within the UK) under rule EU3 of Appendix EU.

Refusal

Where a valid application does not meet the requirements for ILE or ILR, or for LTE or LTR, you must refuse the application under rule EU6 of Appendix EU.

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Section 7: Detailed guidance for sections 2, 3 and 4

Direct relatives and legal guardians

Direct relatives

For the purposes of assessing whether the applicant is a direct relative of the relevant British citizen, the following relationships are accepted:

- a parent
- a grandparent
- a brother or sister
- a spouse or civil partner (for example, in the case of an adult British citizen)
- a child
- a grandchild

This is an exhaustive list and no other types of relationship may be accepted.

You must be satisfied of the claimed family relationship between the direct relative and the relevant British citizen. See section 'Assessing family relationship' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

Adoption orders

Where a recognised adoption has taken place, an adoption order is acceptable as evidence of a British citizen child's relationship to the adoptive parent.

Step-children are not considered to come within the definition of 'direct relative' for the purposes of assessing whether they are a primary carer unless there is also an adoption order or a lawful guardianship order, as described below, in place.

Legal guardian

You must be satisfied, for example by the provision by the applicant of the relevant special guardianship order or other relevant guardianship order (that is a formal court order which vests parental responsibility or similar for a child in a person other than a parent of the child), that the person is the legal guardian of the relevant British citizen child.

Primary carer

Primary responsibility for a child by a parent

Where an individual is applying as a 'person with a Zambrano right to reside' as the primary carer of a relevant British citizen child, in most cases it is likely that they will also be the parent of that child. Where this is claimed to be so, you must be satisfied, for example by the provision by the applicant of the child's birth certificate, that they are the parent of the child.

A parent who resides with the child on a permanent basis and does not share the caring responsibility for that child with another person can be accepted as having primary carer responsibility for that child.

However, you must make further enquiries where there is either:

- evidence the child resides permanently with another parent or carer
- evidence there is another parent in the UK who shares responsibility for the child
- no evidence as to where the child resides

It may be necessary to contact the other parent or carer before you decide who the child's primary carer is.

Other direct relative or legal guardian with primary carer responsibility

Where the person claiming to be the primary carer of a relevant British citizen child is not their parent, you must be satisfied that they are another direct relative of the child, or their legal guardian, with primary carer responsibility for the child, for example by the provision of a valid legal guardianship order or another valid court order which establishes their primary carer responsibility for the child.

An example of an alternative court order would be one transferring parental responsibility. Such court orders must be considered on a case by case basis to determine whether they establish that the person is the child's primary carer.

Court orders

A court order establishing primary carer responsibility for the child is most likely to be made in the context of family proceedings. The most common court orders seen during family proceedings are:

- child arrangements orders or (before that) residence orders – used to decide where, and with which parent, a child will live
- child arrangements orders or (before that) contact orders – used to decide when a party to the court hearing can have contact with the child, for example, at weekends or school holidays
- specific issue order – used to look at specific questions about the child's upbringing, for example, what school they go to or if they should have religious education
- prohibited steps order – prevents a party from removing a child from a specific location, most commonly the UK but can be narrowed to city limits

If a court order establishes shared residence or that there is another parent in the UK who has contact with the child, further enquiries must be made, unless there is alternative evidence as to why the other parent is unable to care for the child.

Primary responsibility for adults

Where the applicant is claiming to be a 'person with a Zambrano right to reside' on the basis they are the primary carer of a British citizen dependent adult over the age of 18, they may be the spouse or civil partner of that adult or another direct relative.

Primary responsibility for the relevant British citizen's care will be established in cases involving adults where the applicant can show they are responsible for the majority of that adult's care.

The level of evidence required to demonstrate primary responsibility for the relevant British citizen's care and dependency will be higher in cases involving adults than in those involving children. In such cases, only evidence that shows the British citizen's dependency on the applicant is due to a severe physical or mental disability is likely to satisfy you that the British citizen requires the care of the applicant.

For more information on physical or mental impairment see [Physical or mental impairment](#).

Sharing equal primary carer responsibility

Two people can be considered to share equally the primary carer responsibility for a British citizen, in line with the definition of a 'primary carer' in Annex 1 to Appendix EU, where they both share equally the responsibility for the care and welfare of the British citizen, in the long-term and on a day-to-day basis.

In the case of a child, this includes things like deciding where the child lives, choosing what school they attend, deciding how and where the child spends time outside school, and authorising medical treatment or a school trip. In the case of an adult, this includes things like deciding where the person lives, and arranging and being involved in their medical care.

Two people who spend different amounts of time with a British citizen child (for example where the British citizen lives with one parent during the week and the other at weekends) may still have equal primary carer responsibility for the child. Where a British citizen child lives with 2 parents, the parents will usually be considered to share equal primary carer responsibility for the child, even where one parent works and the other does not.

Two people who spend different amounts of time with a British citizen adult (for example where the British citizen lives with one adult child, but another adult child is also heavily involved in the British citizen's medical care) may also still have equal primary carer responsibility for the person.

Circumstances must be considered on a case by case basis.

Evidence of shared primary carer responsibility

A person will generally be considered to share equal primary carer responsibility where:

- both individuals are living together in the same household with the British citizen
- the individuals share responsibility for the British citizen – evidence of this may include (but is not limited to):
 - a custody agreement or court order
 - statements from the individuals to this effect

Equal primary carer responsibility does not mean there has to be evidence of equal sharing of responsibilities, as this is not always practical. For example, a child may reside with their mother during the week and their father at weekends or they may reside with the mother full-time, but the father has regular contact with the child. Whilst the father may not provide most of the care for the child, in both examples, the father is actively involved in the child's life. In such cases, unless there is evidence to indicate the father is in practice unable to care for the child, it can be accepted that both parents share equal primary carer responsibility.

Or, for example, a dependent parent might live with one adult child full-time, but another adult child has regular contact with their parent and is involved in their day-to-day care. Again, unless there is evidence to indicate the second adult child is in practice unable to care for their parent, it can be accepted that both share equal primary carer responsibility.

You must consider each case on its individual merits and consult your senior caseworker if you have any doubt whether primary carer responsibility for a British citizen is equally shared.

Financial support

As set out in the definition of 'primary carer' in Annex 1 to Appendix EU, financial support alone will not bring a person within the definition of primary carer. For example, where a person only provides the British citizen with financial support and has no day-to-day caring responsibilities, this is not sufficient to demonstrate that they are the British citizen's primary carer.

Two primary carers

If there are 2 primary carers of the same British citizen, they can, subject to the rest of this section, both be considered a 'person with a Zambrano right to reside' for the purposes of Appendix EU, even if they apply under the scheme at different times.

In line with the definition of 'primary carer' in Annex 1 to Appendix EU, a person does not have a Zambrano right to reside as a co-primary carer where, before they

assumed equal care responsibility, the person with whom care responsibility is shared had already acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations.

In addition, as held by the Court of Appeal in *Velaj v SSHD* [2022] EWCA Civ 767, where you are assessing whether the British citizen would in practice be unable to remain in the UK, an EEA Member State or Switzerland if both primary carers were required to leave the UK for an indefinite period, you must consider whether both primary carers would in fact leave the UK for an indefinite period.

Both primary carers can also have a Zambrano right to reside for any period in which they are the British citizen's sole primary carer.

Alternative care arrangements

Alternative care arrangements – British citizen children

Where an applicant has demonstrated that they are a primary carer of the relevant British citizen child, you must consider whether there is another person living in the UK, the European Economic Area (EEA) or Switzerland, for example a direct relative or legal guardian, who can for the child.

Where there is another such person living in the UK, the EEA or Switzerland, you must consider whether, if the applicant is required to leave the UK for an indefinite period, it is appropriate, including, in particular, in light of the child's best interests, for that person to care for the child instead of the applicant.

Other parent

In all cases in which only one parent is applying to the scheme as a 'person with a Zambrano right to reside', you must establish the whereabouts and immigration status of the British citizen child's other parent (or, if the applicant is another direct relative or legal guardian, the whereabouts and immigration status of both parents for the relevant period). If this information is not held, you must ask the applicant to provide it.

Unless there is information that there is another direct relative or legal guardian in the UK, the EEA or Switzerland who is caring for the child, or is able to do so, you can accept that there are no alternative care arrangements for the child where there is evidence that the other parent either:

- is not a British citizen and does not have another right to reside in the UK (unless under Appendix EU as a 'person with a Zambrano right to reside'), the EEA or Switzerland
- is residing outside the UK, the EEA and Switzerland

Where there is evidence to suggest that the applicant did not have permission to take the child out of another jurisdiction (for example, where a court in another country has ordered that the child live with the other parent or that neither parent

may take the child abroad without the consent of each other or the court), you must contact the British Embassy or High Commission in that other country before deciding the application. The British Embassy or High Commission would then need to contact the relevant authorities to determine whether the child needs to return to the other country.

Deceased parent

Unless there is information that there is another direct relative or legal guardian in the UK or the EEA who is caring for the British citizen child, or is able to do so, you can accept that there are no alternative care arrangements for the child if the other parent has died. The applicant can satisfy you of this by, for example, providing the death certificate of that parent.

Direct relatives and legal guardians

You can accept that there is another direct relative in the UK, the EEA or Switzerland who could care for the British citizen child if that direct relative either:

- is currently caring for the child
- has stated that they are able to care for the child and has had contact with the child within 12 months

To be satisfied that the child has a legal guardian who could care for them in the UK, the EEA or Switzerland if the primary carer in fact left the UK for an indefinite period, you need for example to see evidence that a court has granted that person legal guardianship of the child.

Unsuitable care arrangements

There may be instances where there is another parent or direct relative who you would expect could care for the British citizen child but they are considered unsuitable. For example, where there are child protection issues which would prevent the child being placed with them. In such cases it would not be appropriate to expect the child to live with that person.

A lack of financial resources, a lack of willingness to assume caring responsibilities, or an assertion that a person would need to alter their working pattern would not, by itself, be a sufficient basis for a person to claim they are unable to care for the child. You must consult a senior caseworker in any such case before making your decision.

Alternative care arrangements: dependant of a primary carer

Where an applicant has demonstrated that they are dependant of a primary carer who meets the requirements of sub-paragraph (a) of the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU, you must consider whether there is another person living in the UK or elsewhere, for example a direct relative or legal guardian, who can care for the child.

To assess this, you must carry out the same assessment as in [Alternative care arrangements – British citizen children](#), but consider also whether there is another direct relative or legal guardian living in another country who can care for the child.

Alternative care arrangements: adults

Where the relevant British citizen is over the age of 18 years, you can generally assume they are capable of meeting their own needs. In some cases, the British citizen may need the presence and care of a primary carer where the British citizen has a physical or mental impairment that means they are unable to care for themselves.

For further information on assessing a person's physical or mental impairments and how that impacts upon their ability to care for themselves, see [Physical or mental impairment](#).

Alternative care

Where an applicant has demonstrated they are a primary carer, you must consider whether there are alternative care arrangements for the British citizen. Alternative care may include, but is not limited to:

- direct relatives or a legal guardian
- local authority care provider
- private care provider

You must consider each case on its individual merits and refer it to a deputy chief caseworker before you make your decision.

Conclusion

Unless there is information that there is and for the relevant period has been (or, as the case may be, for the relevant period there was) another parent, direct relative, legal guardian (or, in the case of an adult, a local authority or private care provider) in the UK, the EEA or Switzerland (or, where relevant, elsewhere) caring for the relevant British citizen, or such a person or body able to do so, you can accept that there are (or were) no alternative care arrangements for them. This means that, in practice, the relevant British citizen would not be able (or, as the case may be, for the relevant period would not have been able) to continue residing in the UK, the EEA or Switzerland if the applicant in fact left (or had left) the UK for an indefinite period. Or, in the case of a dependant of a primary carer, the primary carer would, in practice, be prevented from residing in the UK if the applicant in fact left (or had left) the UK for an indefinite period. If you reach this conclusion, you can accept that, in respect of this element, the applicant meets the definition of a 'person with a Zambrano right to reside' in Appendix EU.

Assessing whether alternative care arrangements are appropriate

Where alternative care arrangements for the relevant British citizen are available, you must consider what would happen to the British citizen in practice if the applicant in fact left the UK for an indefinite period.

You must assess whether, on the balance of probabilities, it is more likely than not that the British citizen would either:

- leave the UK, the European Economic Area (EEA) and Switzerland
- remain in the UK, the EEA or Switzerland with the other person who can care for them

Dependency

A key consideration when assessing what would happen to the British citizen is the level of dependency between the British citizen and the applicant.

Specifically, you must consider whether, given the level of dependency, the removal of the applicant would also compel the British citizen to leave the UK, the EEA or Switzerland even though there is another person who, in principle, could care for the British citizen in the UK, the EEA or Switzerland.

When considering the level of dependency, you must consider the extent to which the British citizen is emotionally attached to or otherwise dependent on the applicant and on the other person you have identified as able to care for them.

Relevant factors include:

- the British citizen's age, the stage of their physical and emotional development (or, in the case of an adult, their physical and emotional state) and the level of care and support they require (or required)
- the level of emotional, physical and financial support the applicant and the other person provide to the British citizen or have provided recently
- who makes the decisions that affect the British citizen's life
- who the British citizen lives with and who they have lived with previously
- how much time the British citizen spends with the applicant and the other person who is able to care for them and how they spend their time together

Living arrangements

Where the British citizen lives in a household with the applicant and the other person who can care for them, you will normally accept that the British citizen is equally dependent on them both. However, if the other person has only lived with the British citizen for a short time, you must consider their relationship with the British citizen before they started living together to establish the level of dependence.

Where the British citizen does not live with the other person, for example the other person lives in an EEA Member State or Switzerland, factors relevant to the level of dependency include:

- whether they have lived together before – if so, how recently and for how long
- whether they have stayed with the other person – for example, in cases of shared custody of a child
- their level of contact – including the nature of contact (for example, face to face, telephone, correspondence), frequency and duration
- other contributions the other person makes to the British citizen's life – for example, making decisions affecting them or providing financial support

Level of dependency

Depending on the information and evidence available, you may conclude that the British citizen is:

- entirely dependent on the applicant and not dependent on the other person at all, or vice versa
- much more dependent on the applicant and much less dependent on the other person, or vice versa
- slightly more dependent on the applicant and slightly less dependent on the other person, or vice versa
- equally dependent on the applicant and on the other person

Dependants of a primary carer

Where alternative care arrangements for a dependant of a primary carer are available, you must consider what would happen in practice to the primary carer if the applicant in fact left the UK for an indefinite period.

You must assess whether, on the balance of probabilities, it is more likely than not that the primary carer would:

- remain in the UK
- leave the UK with the dependent child

Where the alternative carer lives outside the UK, you can only conclude that, subject to the best interests of the child, the primary carer might remain in the UK if the dependant left the UK for an indefinite period if the dependant is more or equally dependent on that other person.

The child's best interests

Before deciding whether the alternative care arrangements for a child under the age of 18 are appropriate, you must first consider what are the best interests of the child. The child's best interests are not on their own determinative of whether requiring the applicant to leave the UK for an indefinite period would mean that the child (or the

primary carer) would be unable to continue living in the UK. They are a primary consideration and must be considered as such, together with all the other information and evidence before you. You must consider any evidence provided in support of the application, which may include the child's own views.

When considering the child's best interests, you must consider the consequences on the child's everyday life if they are separated from the applicant (or from the primary carer), for example:

- would they be safe and well cared for and have access to any support they need to cope with change?
- would they be able to keep in contact with the applicant (or the primary carer), for example through letters, telephone calls, instant messaging, and video messaging services such as Skype and FaceTime, email and/or visits?
- would they need to move home, and if so, how does the nature, quality and location of their current home compare with where they would live in future?
- would there be disruption to their education, for example could they keep attending the same school?
- would they be able to keep in contact with their friends and family?

You must seek further information or evidence if you do not have sufficient information to assess the child's best interests. However, you can generally assume that it is in the child's best interests to:

- remain in the UK, unless they have equal or stronger ties to another country
- live with both parents or, if the parents live apart, to have contact with both parents, unless there are any child welfare concerns
- minimise disruption to their everyday life, unless it is in their best interests to change the status quo

Conclusion

When you have considered the British citizen's level of dependency on the applicant (or, in the case of a dependant of a primary carer, the applicant child's level of dependency on the primary carer) and on the other person, and considered the child's best interests (where appropriate), you must draw an overall conclusion about whether, in practice, the British citizen would be (or would have been) compelled to leave the UK, the EEA and Switzerland – or, in the case of a dependant of a primary carer, whether the primary carer would be (or would have been) prevented from living in the UK – if the applicant in fact left (or had left) the UK for an indefinite period.

Where, in practice, the British citizen (or the primary carer) would be (or would have been) unable to continue living in the UK (or the EEA or Switzerland, in the case of the British citizen) if the applicant in fact left (or had left) the UK for an indefinite period, you can accept that, in respect of this element, the applicant meets the definition of a 'person with a Zambrano right to reside' in Appendix EU.

Where, in practice, the British citizen (or the primary carer) would be (or would have been) able to continue living in the UK (or the EEA or Switzerland, in the case of the British citizen) if the applicant in fact left (or had left) the UK for an indefinite period, the applicant will not be a 'person with a Zambrano right to reside'.

Physical or mental impairment

This section tells you how to consider applications on the basis that the applicant is the primary carer of a British citizen adult over the age of 18.

In such cases the level of evidence required to demonstrate primary responsibility will be significantly higher. Only evidence that shows the adult's dependency on the primary carer is due to a severe physical or mental disability is likely to satisfy you that they require the care of the applicant.

Such cases will need to be considered on an individual basis. You must refer cases involving a dependent adult to a deputy chief caseworker before you make your decision.

To satisfy you that they are the primary carer, the applicant can provide, for example, medical evidence from a registered consultant or specialist who is involved in the dependant's care outlining the medical condition, the level of care required, and who is providing the care for the dependent adult. This may be provided by the applicant, and any evidence of this nature must be:

- on letter-headed paper
- signed by the relevant consultant or specialist

You must also consider the level of support that the applicant is providing, including:

- when the applicant assumed caring responsibilities for the dependant
- what sort of care is being provided
- if appropriate, who cared for the dependant before this time and why that care cannot resume
- what other care is being provided by either another person, medical professionals, a local authority or a private care provider
- if no other care is being provided, what enquiries have been made with other direct relatives, medical professionals, the local authority or private care providers regarding the care for the dependant

If necessary, you must request additional information to establish the medical condition of the dependant.

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