



Home Office

EU Settlement Scheme: derivative right to reside (Chen and Ibrahim/Teixeira cases)

Version 2.0

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About this guidance

This guidance tells you how, from 31 October 2019, to consider whether an applicant to the EU Settlement Scheme is a 'person with a derivative right to reside' as defined in the Immigration Rules for the scheme contained in Part 1 of [Appendix EU to the Immigration Rules](#).

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](#).

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 European Migration and Citizens' Rights 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.

Clearance and publication

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

- version **2.0**
- published for Home Office staff on **18 November 2019**

Changes from last version of this guidance

Minor amendments to reflect changes to Appendix EU made in Statement of Changes in Immigration Rules: HC 2631, 9 September 2019, [Statement of Changes in Immigration Rules: HC 170, 24 October 2019](#) and the Court of Justice of the European Union judgment in the case of Bajratari.

Related content

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[Statement of Changes in Immigration Rules: HC 2631, 9 September 2019](#)

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[Appendix EU to the Immigration Rules](#)

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

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

Introduction

A 'person with a derivative right to reside' can apply for settled status (indefinite leave to enter or remain in the UK) or pre-settled status (limited leave to enter or remain in the UK) under the EU Settlement Scheme: also referred to in this guidance as 'the scheme'.

Persons with such a derivative right to reside are often described as '[Chen](#)' or 'Ibrahim/Teixeira' cases after the Court of Justice of the European Union (CJEU) judgments of those names: [Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#), [Ibrahim C-310/08](#) and [Teixeira C-480/08](#).

The scheme makes separate provision for those with a derivative right to reside based on the CJEU judgment in [Zambrano](#). From 1 May 2019, a 'person with a Zambrano right to reside' has been able to apply under the scheme. Separate guidance – [EU Settlement Scheme: a person with a Zambrano right to reside](#) – must be used in considering such applications.

The EU Settlement Scheme is contained in Part 1 of 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 derivative 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, by a relevant process for this set out in that form
- the required biometrics have been provided, by a relevant process for this set out in that form

Where you have established that the applicant has made a valid application and, using this guidance, is (or, as the case may be, for the relevant period was) a 'person with a derivative right to reside' as defined in Annex 1 to Appendix EU, you must then use [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) and, where relevant, [EU Settlement Scheme: family member of a qualifying British citizen](#) to establish whether – subject to the reference below to rule EU13 of Appendix EU – they have either:

- completed a continuous qualifying period of 5 years in any, or any combination of, qualifying category covered by condition 3 of rule EU11 (or, where relevant of EU12) of Appendix EU and so are to be considered for indefinite leave to enter or remain

- completed a continuous qualifying period of less than 5 years in any qualifying category covered by condition 1 (or, where relevant, of condition 2) of rule EU14 of Appendix EU and so are to be considered for limited leave to enter or remain

Under rule EU13 of Appendix EU, the reference to the applicant completing a continuous qualifying period of 5 years:

- in condition 3 of rule EU11 can 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 (as the case may be) a relevant EEA citizen, a family member of a relevant EEA citizen (or thereafter a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen), a person with a derivative right to reside or a person with a Zambrano right to reside
- in condition 3 of rule EU12 (family member of a qualifying British citizen) can include a period (or combination of periods) during which the applicant was a relevant EEA citizen, a family member of a relevant EEA citizen, a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen, a person with a derivative right to reside or a person with a Zambrano right to reside before becoming the family member of a qualifying British citizen (or thereafter a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen)

Where this guidance refers to the 'specified date', this means (as defined in Annex 1 to Appendix EU):

If the UK withdraws from the European Union with a Withdrawal Agreement:

- 2300 Greenwich Mean Time (GMT) on 31 December 2020

If the UK withdraws from the European Union without a Withdrawal Agreement:

- the date and the time of withdrawal, which means the date on which, and the time (according to GMT) on that day at which, the UK withdraws from the EU

European Economic Area (EEA) and Swiss citizens (defined in Annex 1 to Appendix EU, and referred to in this guidance, as an 'EEA citizen') can rely on their own continuous qualifying period of residence in order to qualify for indefinite leave to enter or indefinite leave to remain or limited leave to enter or limited leave to remain. An applicant who needs to rely on the derivative rights provisions is more likely to be a non-EEA citizen (defined in Annex 1 to Appendix EU as a person who is not an EEA citizen and is not a British citizen), but they may be an EEA citizen.

Reference in this guidance to 'the Islands' means (as defined in Annex 1 to Appendix EU) the Bailiwick of Guernsey, the Bailiwick of Jersey or the Isle of Man.

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

'Derivative rights' are derived from wider EU law rather than from the Free Movement Directive 2004/38/EC and have been confirmed by CJEU judgments.

A 'person with a derivative right to reside' is defined in Annex 1 to Appendix EU as a person:

- who has satisfied the Secretary of State, including (where applicable) by the required evidence of family relationship, that, by the specified date, they are (and for the relevant period have been), or (as the case may be) for the relevant period were, resident for a continuous qualifying period in the UK with a derivative right to reside by virtue of regulation 16(1) of the [Immigration \(European Economic Area\) EEA Regulations 2016](#) ('the EEA Regulations'):
 - regardless of whether, in respect of the criterion in regulation 16(2)(b)(ii) of the EEA Regulations, the EEA citizen meets, or (as the case may be) met, the requirement in regulation 4(1)(c)(ii) of the EEA Regulations for comprehensive sickness insurance cover in the UK
 - regardless (where the person was previously granted limited leave to enter or remain under Part 1 of Appendix EU as a person with a derivative right to reside and was under the age of 18 years at the date of application for that leave) of whether, in respect of the criterion in regulation 16(6)(a) of the EEA regulations, they are, or (as the case may be) were, under the age of 18 years
 - excluding a person satisfying the criteria in:
 - (i) paragraph (5) of regulation 16(1) of the EEA Regulations; or
 - (ii) paragraph (6) of that regulation where that person's primary carer is, or (as the case may be) was, entitled to a derivative right to reside in the UK under paragraph (5)

This definition covers so-called 'Chen' and 'Ibrahim and Teixeira' cases, but excludes 'Zambrano carers', for whom separate provision is made in Part 1 of Appendix EU.

In Annex 1 to Appendix EU, a 'person who had a derivative or Zambrano right to reside' is defined – including as a qualifying category under condition 3 of rule EU11 or condition 1 of rule EU14, or for the purposes of meeting condition 3 of rule EU12 or condition 2 of rule EU14 – as a person who both:

- was a person with a derivative right to reside or, as the case may be, a person with a Zambrano right to reside, immediately before they became, as the case may be, a relevant EEA citizen, a family member of a relevant EEA citizen, a person with a derivative right to reside, a person with a Zambrano right to reside or a family member of a qualifying British citizen
- has since remained, to the date of application, in any (or any combination) of those categories or as 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

Chen cases: regulation 16(2)

In the CJEU case of [Chen](#), the court found that the primary carer of a self-sufficient EEA citizen child is entitled to a right of residence under EU law, if refusing such a right prevents the child from continuing to reside in the UK. The conditions for this derivative right to reside are set out in regulation 16(2) of the EEA Regulations.

As set out above, Part 1 of Appendix EU refers to the relevant provisions of the EEA Regulations when defining a 'person with a derivative right to reside', with the exception that Part 1 of Appendix EU does not require the EEA citizen child to hold, or have held, comprehensive sickness insurance.

Therefore, the applicant will be a 'person with a derivative right to reside' under Part 1 of Appendix EU (or, as the case may be, will have been such a person in being a 'person who had a derivative or Zambrano right to reside') where, by the specified date, they are (or, as the case may be, for the relevant period were) resident for a continuous qualifying period in the UK with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the following criteria:

- they are (or, as the case may be, for the relevant period were) the primary carer (and the direct relative or legal guardian) of a child and that child:
 - is (or, as the case may be, for the relevant period was) an EEA citizen under the age of 18
 - is (or, as the case may be, for the relevant period was) resident in the UK
 - holds (or, as the case may be, for the relevant period held) sufficient resources to prevent them becoming a burden on the UK's social assistance system during the period of residence
 - would be (or, as the case may be, for the relevant period would have been) unable to remain in the UK if the primary carer left (or had left) the UK for an indefinite period

In addition, the applicant must not be an 'exempt person', which means, in particular, that they cannot have indefinite leave to enter or remain in the UK, unless this was granted under Part 1 of Appendix EU.

Ibrahim and Teixeira cases: regulation 16(3) and (4)

In the cases of Ibrahim and Teixeira the CJEU ruled that the following persons have a right of residence under EU law:

- the child of a former EEA citizen worker where the child is in education in the UK
- their primary carer (who is the child's direct relative or legal guardian) where requiring the primary carer to leave the UK for an indefinite period would prevent the child from continuing their education in the UK

Regulation 16(3) of the EEA Regulations provides for a derivative right to reside for the child of a former EEA citizen worker. Therefore, the applicant will also be 'a person with a derivative right to reside' under Part 1 of Appendix EU (or, as the case may be, will have been such a person in being a 'person who had a derivative or Zambrano right to reside') where, by the specified date, they are (or, as the case may be, for the relevant period were) resident for a continuous qualifying period in the UK with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the following criteria:

- they are (or, as the case may be, for the relevant period were) the child of a former EEA citizen worker
- they lived in the UK while their EEA citizen parent worked in the UK
- they are (or, as the case may be, for the relevant period were) in education in the UK

Regulation 16(4) of the EEA Regulations provides for a derivative right to reside for the child's primary carer.

Therefore, the applicant will also be a 'person with a derivative right to reside' under Part 1 of Appendix EU (or, as the case may be, will have been such a person in being a 'person who had a derivative or Zambrano right to reside') where, by the specified date, they are (or, as the case may be, for the relevant period were) resident for a continuous qualifying period in the UK with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the following criteria:

- they are (or, as the case may be, for the relevant period were) the primary carer (and the direct relative or legal guardian) of a child of a former EEA citizen worker and that child:
 - lived in the UK while their EEA citizen parent worked in the UK
 - is (or, as the case may be, for the relevant period was) in education in the UK
 - would be (or, as the case may be, for the relevant period would have been) unable to continue to be educated in the UK if the primary carer left (or had left) the UK for an indefinite period

In addition, the applicant must not be an 'exempt person', which means, in particular, that they cannot have indefinite leave to enter or remain in the UK, unless this was granted under Part 1 of Appendix EU.

Dependant of the primary carer: regulation 16(6)

Regulation 16(6) of the EEA Regulations provides for a derivative right to reside for a child under the age of 18 of a primary carer with a derivative right to reside.

Therefore, the applicant will also be 'a person with a derivative right to reside' under Part 1 of Appendix EU (or, as the case may be, will have been such a person in being a 'person who had a derivative or Zambrano right to reside') where, by the specified date they are (or, as the case may be, for the relevant period were) resident for a continuous qualifying period in the UK with a derivative right to reside

by virtue of regulation 16(1) of the EEA Regulations by satisfying the following criteria:

- they are (or, as the case may be, for the relevant period were) under the age of 18 (save where the person was previously granted limited leave to enter or remain under Part 1 of Appendix EU as 'a person with a derivative right to reside' and was under the age of 18 years at the date of application for that leave)
- they do not (or, as the case may be, did not) have leave to enter or remain in the UK under the Immigration Act 1971, unless this was granted under Part 1 of Appendix EU
- their primary carer (who is also their direct relative or legal guardian) is entitled to (or, as the case may be, for the relevant period was entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(2) (save for the requirement that the relevant EEA citizen child holds, or held, comprehensive sickness insurance) or 16(4)
- 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 child left (or, as the case may be, had left) the UK for an indefinite period

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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](#)

Eligibility requirements

Indefinite leave to enter or remain

The applicant meets the eligibility requirements for indefinite leave to enter or remain as a 'person with a derivative right to reside' (or, as the case may be, as a 'person who had a derivative or Zambrano right to reside' who relies on having been a 'person with a derivative 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 3 of rule EU11 of Appendix EU.

You must be satisfied, including (where applicable) by the required evidence of family relationship, that the following requirements are met:

- the applicant is (or, as the case may be – as described above, for the relevant period was) a person with a derivative right to reside: see [Eligibility - Chen cases](#) and [Eligibility - Ibrahim and Teixeira cases](#)
- the applicant has completed a continuous qualifying period in the UK of 5 years as a 'person with a derivative right to reside' (or in any combination of the categories covered by condition 3, which, in some of those other categories, can include residence in the Islands as well as in the UK): 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: see 'supervening event' in the section on 'Consideration of applications: ILE or ILR' in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)

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 (as the case may be) a relevant EEA citizen, a family member of a relevant EEA citizen (or thereafter a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen), a 'person with a derivative right to reside' or a 'person with a Zambrano right to reside'.

Limited leave to enter or remain

The applicant meets the eligibility requirements for limited leave to enter or remain as a 'person with a derivative right to reside' (or, as the case may be, as a 'person who had a derivative or Zambrano right to reside' who relies on having been a 'person with a derivative 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, including (where applicable) by the required evidence of family relationship, that the following requirements are met:

- the applicant is (or, as the case may be – as described above, for the relevant period was) a 'person with a derivative right to reside': see [Eligibility – Chen cases](#) and [Eligibility – Ibrahim and Teixeira cases](#) below
- the applicant is not eligible for indefinite leave to enter or remain under Part 1 of Appendix EU solely because they have completed a continuous qualifying period of less than five years

Exempt person

As set out in regulation 16(1) of the EEA Regulations, a person who is an 'exempt person' cannot have a derivative right to reside. An 'exempt person' is defined in regulation 16(7)(c) as a person who:

- has a right to reside in the UK under another provision of the EEA Regulations, for example, as a person who is already exercising free movement rights as an EEA citizen or who is the family member of such a person: see [Immigration \(European Economic Area\) Regulations 2016](#). Where the applicant has a right to reside in the UK under another provision of the EEA Regulations, they will be an exempt person so cannot be considered a 'person with a derivative right to reside', but you must then go on to consider their eligibility on other grounds for leave under Part 1 of Appendix EU
- has the right of abode in the UK under section 2 of the Immigration Act 1971 (the 1971 Act), for example, the person is a British citizen: see [Right of abode](#)
- is a person to whom section 8 of the 1971 Act, or an order made under section 8(2), applies: see [persons exempt from control](#)
- has indefinite leave to enter or remain in the UK, unless this was granted under Part 1 of 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

The first thing you must consider therefore is whether the applicant is an 'exempt person' in line with regulation 16(7)(c).

If the applicant is an 'exempt person' on the basis that the first or fourth of the bullet points above applies, 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 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.

If the applicant is an 'exempt person' on the basis that the second or third of the bullet points above applies, then you must treat the application as void, as a person who has the right of abode or is exempt from immigration control cannot be granted leave under the scheme.

If they are not an 'exempt person', then you must move on to consider whether they meet other relevant eligibility criteria set out below for leave under the scheme as a 'person with a derivative right to reside'.

Evidence

Where, in order to evidence that they meet the eligibility requirements of Part 1 of Appendix EU as a 'person with a derivative 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.

You must also follow the guidance on 'Consideration of applications: eligibility' see: [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) to ensure that applicants are given reasonable opportunity in line with that guidance to provide the required evidence to establish their eligibility under the scheme.

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Eligibility: Chen cases

Where the applicant is not an exempt person, there are 5 stages you must consider when assessing whether, by the specified date, the applicant is (or, as the case may be, for the relevant period was) resident with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations as a Chen case by satisfying the criteria in regulation 16(2) (save for the requirement that the relevant EEA citizen child holds, or held, comprehensive sickness insurance):

- [stage 1: EEA citizen child](#): assessing whether the child is (or, as the case may be, for the relevant period was) an EEA citizen and under the age of 18
- [stage 2: self-sufficiency](#): assessing whether the child is (or, as the case may be, for the relevant period was) self-sufficient
- [stage 3: direct relative or legal guardian](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) a direct relative or legal guardian of the child
- [stage 4: primary carer](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) the primary carer of the child
- [stage 5: EEA child unable to remain in the UK](#): assessing whether the EEA citizen child would be (or, as the case may be, for the relevant period would have been) unable to remain in the UK if the applicant was (or, as the case may be, had been) required to leave the UK for an indefinite period

The applicant must meet these criteria for the whole continuous qualifying period in the UK on which they are relying in order to be eligible as a 'person with a derivative right to reside' for the purposes of making an application under the EU Settlement Scheme.

If the applicant needs to provide more information or evidence than the application contains of their eligibility as a 'person with a derivative right to reside': see the section on 'Consideration of applications: eligibility' in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)

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Stage 1: EEA citizen child

The first stage is to consider whether the relevant child is (or, as the case may be, for the relevant period was) an EEA citizen and under the age of 18.

EEA citizenship

Under regulation 2(1) of the EEA Regulations, an 'EEA national' is:

- a) a national of an EEA State (which means a member State, other than the UK; or Iceland, Liechtenstein, Norway or Switzerland) who is not also a British citizen
- b) or a national of an EEA State who is also a British citizen and who prior to acquiring British citizenship exercised a right to reside as such a national, in accordance with regulation 14 or 15
save that a person does not fall within paragraph (b) if the EEA State of which they are a national became a member State after that person acquired British citizenship

So, under the EU Settlement Scheme, an 'EEA citizen' (as defined in Annex 1 to Appendix EU) is a person who is either:

- a national of: Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden or Switzerland, and not also a British citizen
- a 'relevant naturalised British citizen' (as defined in Annex 1 to Appendix EU)

To satisfy you of the EEA citizenship of the relevant child, the applicant can, for example, provide the valid passport or the valid national identity card of the child as an EEA citizen, or the EU Settlement Scheme application number of the child where they have applied for or been granted leave as an EEA citizen under the scheme.

Age

To satisfy you that the child is (or, as the case may be, for the relevant period was) under the age of 18, the applicant can, for example, provide the valid passport or valid national identity card of the child; the child's birth certificate; or the EU Settlement Scheme application number of the child where they have applied for or been granted leave under the scheme.

Conclusion

Where you are satisfied that the relevant child is (or, as the case may be, for the relevant period was) an EEA citizen who is under the age of 18, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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: self-sufficiency

The second stage is to assess whether the relevant EEA citizen child has (or, as the case may be, for the relevant period did have) sufficient resources for them not to become (or have become) a burden on the UK's social assistance system during the period of residence.

Income from the primary carer

The applicant may show that the relevant child is (or, as the case may be, for the relevant period was) self-sufficient by relying on the income of the applicant.

Before 16 July 2012, primary carers of EEA citizen self-sufficient children did not have the right to work in the UK. Since 16 July 2012, a primary carer with a derivative right of residence has had the right to work in the UK, regardless of whether a residence document had been issued to them in that capacity. This means that there may be cases where the primary carer seeks to rely on work undertaken since 16 July 2012 to meet the self-sufficiency requirement and they did not, during that period, have a derivative residence card issued under the EEA Regulations. You must, therefore, consider whether the EEA citizen child was self-sufficient before the primary carer started employment in a 'Chen' capacity. The primary carer may engage in 'unlawful employment', ie employment without permission, provided that employment is not engaging in a criminal activity.

Income from other sources

If the applicant is (or was) not working in the UK, or does (or did) not earn enough income to demonstrate that the child and they are (or for the relevant period were) self-sufficient, you may accept other evidence which may include:

- bank statements showing income from other sources, for example rental income
- savings accounts showing funds which are accessible to the child

This is not an exhaustive list and there may be other evidence of funds which can be considered acceptable.

Comprehensive sickness insurance

As set out in Annex 1 to Appendix EU, an individual applying as a 'person with a derivative right to reside' based on 'Chen' does not need to show that the relevant EEA citizen child holds, or held, comprehensive sickness insurance. You must not seek evidence of this.

Conclusion

Where you are satisfied that the relevant child is (or, as the case may be, for the relevant period was) self-sufficient, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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: direct relative or legal guardian

The third stage is to assess whether the applicant is (or, as the case may be, for the relevant period was) the direct relative or legal guardian of the relevant EEA citizen child.

Assessing ‘direct relative’ or ‘legal guardian’

Where the applicant has been issued with a residence card or an EEA family permit under the EEA Regulations on the basis that they are the direct relative of the relevant child, you can accept that this has already been confirmed and move to the next stage.

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 they are the direct relative of the relevant EEA citizen child or that they are (or, as the case may be, for the relevant period were) the child’s legal guardian.

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

Conclusion

Where you are satisfied that the applicant is (or, as the case may be, for the relevant period was) the direct relative or legal guardian of the relevant EEA citizen child, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant’s 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 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 4: primary carer

The fourth stage is to assess whether the applicant is (or, as the case may be, for the relevant period was) the primary carer of the relevant EEA citizen child.

Primary carer

A primary carer is defined under regulation 16(8) of the EEA Regulations as a direct relative or legal guardian who either:

- has primary responsibility for the child's care
- shares equally the responsibility for the child's care with one other person

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

Conclusion

Where you are satisfied that the applicant is (or, as the case may be, for the relevant period was) the primary carer of the relevant EEA citizen child, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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 5: EEA child unable to remain in the UK

The fifth stage is to assess whether the relevant EEA citizen child would be (or, as the case may be, for the relevant period would have been) unable to remain in the UK if the applicant were (or, as the case may be, had been) required to leave the UK for an indefinite period.

Alternative care arrangements

To assess whether the relevant child would be (or, as the case may be, for the relevant period would have been) unable to remain in the UK if the primary carer were (or had been) required to leave the UK for an indefinite period, you must consider whether there are (or were) alternative care arrangements which could be (or could have been) made if the primary carer were (or had been) required to leave the UK for an indefinite period.

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

Conclusion

Where you are satisfied that the application meets the requirements of stages 1 to 5, you must then use [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) to establish whether (as a 'person with a derivative right to reside' or in any combination of that and other relevant qualifying categories) 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.

Where you are satisfied that there are (or, as the case may be, were) alternative care arrangements for the relevant EEA citizen child which could be (or could have been) made if the primary carer were (or had been) required to leave the UK for an indefinite period, and therefore you are not satisfied that, in that event, the relevant EEA citizen child would be (or would have been) unable to remain in the UK, you must consider the applicant's eligibility 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 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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Decision

Suitability requirements

After you have considered the validity and eligibility requirements, and before you decide the application, you must consider the suitability requirements. See [EU Settlement Scheme: suitability requirements](#).

Indefinite leave to enter or remain

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, of rule 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

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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Eligibility: Ibrahim and Teixeira child cases

Where the applicant is not an exempt person, there are three stages you must consider when assessing whether, by the specified date, the applicant is (or, as the case may be, was) resident with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations as a child as an Ibrahim and Teixeira case by satisfying the criteria in regulation 16(3):

- [stage 1: child of an EEA citizen](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) the child of an EEA citizen
- [stage 2: child in UK when the EEA citizen was a worker](#): assessing whether the applicant lived in the UK while the EEA citizen was a worker in the UK
- [stage 3: child in education](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) in education in the UK

The applicant must meet the relevant criteria for the whole continuous qualifying period in the UK on which they are relying in order to be eligible as a 'person with a derivative right to reside' for the purposes of making an application under the EU Settlement Scheme.

If the applicant needs to provide more information or evidence than the application contains of their eligibility as a 'person with a derivative right to reside': see the section on 'Consideration of applications: eligibility' in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)

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Stage 1: child of an EEA citizen

The first stage is to assess whether the applicant is (or, as the case may be, for the relevant period was) the child of an EEA citizen.

Where the applicant has been issued with a residence card or family permit under the EEA Regulations on the basis they are the child of the same EEA citizen, you can accept that this has already been confirmed and move to the next stage.

Adopted children and step-children

An adopted child and a step-child of an EEA citizen are considered the same as if they were the biological child of the EEA citizen with regard to Ibrahim and Teixeira.

Relationship between child and EEA citizen

To satisfy you of the relationship between the child and the EEA citizen, the applicant can, for example, provide their birth certificate, their birth certificate and the marriage certificate for their parent and the EEA citizen (where applying as a step-child), or evidence of the adoption (where applying as an adopted child).

You must be satisfied as to the relationship between the child and the EEA citizen upon whom the child is basing their application.

EEA citizen parent's nationality

To satisfy you of the EEA citizenship of the parent, the applicant can, for example, provide the valid passport or the valid national identity card of the parent as an EEA citizen, or the EU Settlement Scheme application number of the parent where they have applied for or been granted leave as an EEA citizen under the scheme.

Conclusion

Where you are satisfied that the applicant is the child of an EEA citizen, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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: child in the UK when EEA citizen was a worker

The second stage is to assess whether the applicant lived in the UK at the time that their EEA citizen parent was a worker in the UK. It is not necessary for the parent to have been a worker at a time when the applicant was in education. The applicant must have been living in the UK while their parent was a worker here.

EEA worker

An EEA citizen is considered to be (or, as the case may be, to have been) a worker where they are (or were) a worker as defined under EU law. There is no minimum period for how long the EEA citizen must have been a worker in the UK, as long as the applicant was in the UK at the same time. Work undertaken in line with the EU8 and EU2 worker schemes is acceptable. For more information see: [Qualified persons guidance](#).

A worker does not include the following for the purposes of regulation 16(3)(b):

- a jobseeker
- a person who can continue to be considered a worker where they have stopped working in line with regulation 6(2)
- a self-employed person

Child in UK

You must be satisfied that the child was resident in the UK at the same time as the EEA citizen was a worker here, and you must work flexibly with the applicant to help them evidence this by the best means available to them. For further information see Annex A in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

Conclusion

Where you are satisfied that the applicant was resident in the UK while the EEA citizen was a worker in the UK, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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: child in education

The third stage is to assess whether the child is (or, as the case may be, for the relevant period was) in education in the UK.

Education

Under regulation 16(7)(a) of the EEA Regulations, education excludes nursery education but includes education received before the compulsory school age where that education is equivalent to the education received from the compulsory school age. Attending a reception class is not considered nursery education and is therefore included.

To satisfy you that the child is (or, as the case may be, for the relevant period was) in education in the UK, the applicant can, for example, provide a letter from the relevant education establishment(s) that confirms the date that they started education at that establishment and, if relevant, the date they completed their education there.

Conclusion

Where the applicant is the child and you are satisfied that they meet the requirements of stages 1 to 3, you must then use [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) to establish whether (as a 'person with a derivative right to reside' or in any combination of that and other relevant qualifying categories) the applicant has completed a continuous qualifying period of five 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 five years and so is to be considered for limited leave to enter or remain under rule EU14 of Appendix EU.

Where you are not satisfied of this, you must consider the applicant's 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 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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Decision

Suitability requirements

After you have considered the validity and eligibility requirements, and before you decide the application, you must consider the suitability requirements. See [EU Settlement Scheme: suitability requirements](#).

Indefinite leave to enter or remain

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

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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Eligibility: Ibrahim and Teixeira primary carer cases

Where the applicant is not an exempt person, there are 3 stages you must consider when assessing whether, by the specified date, the applicant is (or, as the case may be, was) resident with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations as a primary carer as an Ibrahim and Teixeira case by satisfying the criteria in regulation 16(4):

- [stage 1: direct relative or legal guardian](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) a direct relative or legal guardian of the child
- [stage 2: primary carer](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) the primary carer of the child
- [stage 3: child unable to continue education](#): assessing whether the child would be (or, as the case may be, for the relevant period would have been) unable to continue to remain in education in the UK if the applicant was (or, as the case may be, had been) required to leave the UK for an indefinite period

You must first consider whether the relevant child meets (or, as the case may be, during the relevant period met) the requirements as an Ibrahim and Teixeira child case, or would do so (or as the case may be, would have done so) if they made or had made a valid application under the scheme as a 'person with a derivative right to reside'. See [Eligibility – Ibrahim and Teixeira child cases](#).

If so, you must then consider whether the applicant meets the requirements below (at stages 1 to 3) as an Ibrahim and Teixeira primary carer.

The applicant must meet the relevant criteria for the whole continuous qualifying period in the UK on which they are relying in order to be eligible as a 'person with a derivative right to reside' for the purposes of making an application under the EU Settlement Scheme.

If the applicant needs to provide more information or evidence than the application contains of their eligibility as a 'person with a derivative right to reside': see the section on 'Consideration of applications: eligibility' in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)

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Stage 1: direct relative or legal guardian

The first stage is to assess whether the applicant is (or, as the case may be, for the relevant period was) the direct relative or legal guardian of a child of a former EEA citizen worker, where the child is (or, as the case may be, for the relevant period was) in education in the UK.

Assessing ‘direct relative’ or ‘legal guardian’

Where the applicant has been issued with a residence card or an EEA family permit under the EEA Regulations on the basis that they are the direct relative of the relevant child, you can accept that this has already been confirmed and move to the next stage.

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 they are (or, as the case may be, for the relevant period were) the direct relative of the relevant child or the child’s legal guardian.

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

Conclusion

Where you are satisfied that the applicant is (or, as the case may be, for the relevant period was) the direct relative or legal guardian of the relevant child of a former EEA citizen worker, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant’s 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 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

The second stage is to assess whether the applicant is (or, as the case may be, for the relevant period was) the primary carer of the relevant child of a former EEA citizen worker.

Primary carer

A primary carer is defined under regulation 16(8) of the EEA Regulations as a direct relative or legal guardian who either:

- has primary responsibility for the child's care
- shares equally the responsibility for the child's care with one other person

Where the child is (or, as the case may be, for the relevant period was) in education in the UK and they are under 18 years of age, it is considered that any such child would normally require the presence and care of a primary carer to continue to be educated in the UK.

Where the child is (or, as the case may be, for all or part the relevant period was) over the age of 18, it would be reasonable to expect a higher threshold of care to be evidenced which, if it were unavailable, would mean the child would be (or, as the case may be, for the relevant period would have been) unable to continue their education in the UK. Each case must be considered on its individual merits with reference to a senior caseworker.

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

Conclusion

Where you are satisfied that the applicant is (or, as the case may be, for the relevant period was) the primary carer of the relevant child of a former EEA citizen worker, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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: child unable to continue their education in UK

The third stage is to assess whether the relevant child of a former EEA citizen worker would be (or, as the case may be, for the relevant period would have been) unable to continue their education in the UK if the applicant were (or, as the case may be, had been) required to leave the UK for an indefinite period.

Alternative care arrangements

To assess whether the relevant child of a former EEA citizen worker would be (or, as the case may be, for the relevant period would have been) unable to continue their education in the UK if the applicant were (or had been) required to leave the UK for an indefinite period, you must consider whether there are (or were) alternative care arrangements which could be (or could have been) made if the applicant were (or had been) required to leave the UK for an indefinite period.

If there are (or, as the case may be, were) alternative care arrangements, you must then consider whether such arrangements are (or were) appropriate, including, in particular, in light of the [best interests](#) of the relevant child of the former EEA citizen worker (and of any other child of the applicant affected by the decision). For further guidance, see [alternative care arrangements](#).

Conclusion

Where you are satisfied that the application meets the requirements of stages 1 to 3, you must then use [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) to establish whether (as a 'person with a derivative right to reside' or in any combination of that and other relevant qualifying categories) 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.

Where you are satisfied that there are (or, as the case may be, were) alternative care arrangements for the relevant child of a former EEA citizen worker which could be (or could have been) made if the primary carer were (or had been) required to leave the UK for an indefinite period, and therefore you are not satisfied that, in that event, the relevant child of a former EEA citizen worker would be (or would have been) unable to remain in the UK, you must consider the applicant's eligibility 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 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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Decision

Suitability requirements

After you have considered the validity and eligibility requirements, and before you decide the application, you must consider the suitability requirements. See [EU Settlement Scheme: suitability requirements](#).

Indefinite leave to enter or remain

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 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

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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Eligibility: dependant of the primary carer

Where the applicant is not an exempt person, there are four stages you must consider when assessing whether, by the specified date, the applicant is (or, as the case may be, was) resident with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(6), on the basis that they are (or were) under the age of 18 and their primary carer has (or had) a derivative right to reside:

- [stage 1: applicant under the age of 18](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) under the age of 18 (save where the person was previously granted limited leave to enter or remain under Part 1 of Appendix EU as ‘a person with a derivative right to reside’ and was under the age of 18 years at the date of application for that leave)
- [stage 2: applicant without leave to enter or remain](#): assessing whether the applicant already has (or, as the case may be, for the relevant period had) leave to enter or remain in the UK, unless this was granted under Part 1 of Appendix EU
- [stage 3: applicant’s primary carer with a derivative right to reside](#): assessing whether the relevant person is (or, as the case may be, for the relevant period was) the applicant’s primary carer and whether that person is entitled to (or, as the case may be, for the relevant period was entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(2) (save for the requirement that the relevant EEA citizen child holds, or held, comprehensive sickness insurance) or (4).
- [stage 4: primary carer prevented from residing in the UK](#): assessing whether the applicant’s 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, as the case may be, had left) the UK for an indefinite period

The applicant must meet the relevant criteria for the whole continuous qualifying period in the UK on which they are relying in order to be eligible as a ‘person with a derivative right to reside’ for the purposes of making an application under the EU Settlement Scheme.

If the applicant needs to provide more information or evidence than the application contains of their eligibility as a ‘person with a derivative right to reside’: see the section on ‘Consideration of applications: eligibility’ in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)

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Stage 1: applicant under the age of 18

The first stage is to consider whether the applicant is (or, as the case may be, for the relevant period was) under the age of 18 (save where the person was previously granted limited leave to enter or remain under Part 1 of Appendix EU as 'a person with a derivative right to reside' and was under the age of 18 years at the date of application for that leave).

Age

To satisfy you that they are (or, as the case may be, for the relevant period were) under the age of 18, the applicant can, for example, provide their valid passport, their valid residence document issued under the EEA Regulations or their birth certificate.

Conclusion

Where you are satisfied that the applicant is (or, as the case may be, for the relevant period was) under the age of 18, you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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 without leave to enter to remain

The second stage is to consider whether the applicant has (or, as the case may be, for the relevant period had) leave to enter or remain in the UK under the Immigration Act 1971, unless this was granted under Part 1 of Appendix EU.

Consideration

To satisfy yourself that the applicant does not have (or, as the case may be, for the relevant period did not have) leave to enter or remain in the UK, unless this was granted under Part 1 of Appendix EU, you must check Home Office records to ascertain whether they have previously been granted such leave and, if they have, whether there is evidence that it has lapsed or been curtailed, cancelled or revoked.

Conclusion

Where you are satisfied that the applicant does not have (or, as the case may be, for the relevant period did not have) leave to enter or remain in the UK, unless this was granted under Part 1 of Appendix EU, you must move on to the next stage.

If the applicant already has (or, as the case may be, for the relevant period had) leave to enter or remain in the UK, unless this was granted under Part 1 of Appendix EU, you must consider the applicant's 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 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 with a derivative right to reside

The third stage is to consider whether the relevant person is (or, as the case may be, for the relevant period was) the primary carer of the applicant, and whether they are entitled to (or, as the case may be, for the relevant period were entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(2) (save for the requirement that the relevant EEA citizen child holds, or held, comprehensive sickness insurance) or 16(4).

Primary carer

A primary carer is defined under regulation 16(8) of the EEA Regulations as a direct relative or legal guardian who either:

- has primary responsibility for the child's care
- shares equally the responsibility for the child's care with one other person

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

Consideration

To satisfy yourself that the applicant's primary carer is entitled to (or, as the case may be, for the relevant period was entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(2) (save for the requirement that the relevant EEA citizen child holds, or held, comprehensive sickness insurance) or 16(4), you must consider whether they meet the eligibility requirements on the basis of 'Chen' or 'Ibrahim and Teixeira', see [Eligibility – Chen cases](#) and [Eligibility – Ibrahim and Teixeira cases](#).

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 criteria in regulation 16(2) (save for the requirement that the relevant EEA citizen child holds, or held, comprehensive sickness insurance) or 16(4) of the EEA Regulations.

Conclusion

Where you are satisfied that the applicant's primary carer is entitled to (or, as the case may be, for the relevant period was entitled to) a derivative right to reside on the basis of 'Chen' or 'Ibrahim and Teixeira', you must move on to the next stage.

Where you are not satisfied of this, you must consider the applicant's 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 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 4: primary carer prevented from residing in the UK

The fourth stage is to consider whether 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.

Alternative care arrangements

To assess whether 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 consider whether there are (or were) alternative care arrangements which could be (or could have been) made for the applicant either in the UK or in another country.

If there are (or were) alternative care arrangements, you must then consider whether such arrangements are (or were) 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](#).

Conclusion

Where you are satisfied that the application meets the requirements of stages 1 to 4, you must then use [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) to establish whether (as a 'person with a derivative right to reside' or in any combination of that and other relevant qualifying categories) 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 of Appendix EU (or, where relevant, EU12), 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.

Where you are satisfied that there are (or, as the case may be, were) alternative care arrangements which could be (or could have been) made for the applicant, and therefore you are not satisfied that, in that event, the primary carer would be (or have been) prevented from residing in the UK, you must consider the applicant's eligibility 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 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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Decision

Suitability requirements

After you have considered the validity and eligibility requirements, and before you decide the application, you must consider the suitability requirements. See [EU Settlement Scheme: suitability requirements](#).

Indefinite leave to enter or remain

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 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

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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Direct relatives and legal guardians

Direct relative

For the purposes of assessing whether, by the specified date, the applicant is (or, as the case may be, for the relevant period was) a ‘person with a derivative right to reside’ for the purposes of Part 1 of Appendix EU, a direct relative of the relevant EEA citizen child is:

- a parent
- a grandparent
- a brother or sister
- a spouse or civil partner (for example, in the case of Ibrahim and Teixeira where the individual in education is aged 18)
- a child
- a grandchild

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

You must be satisfied, for example by the provision by the applicant of the relevant birth certificate or evidence of adoption, of the claimed family relationship between the direct relative and the relevant child. 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 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 (or were) 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 child.

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Primary carer

Primary responsibility for a child by a parent

Where an individual is applying as a 'person with a derivative right to reside' (or, as the case may be, is relying on having been such a person as 'a person who had a derivative or Zambrano right to reside') as the primary carer of a relevant 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 (or resided) with the child on a permanent basis and does not (or did not) share the caring responsibility for that child with another person can be accepted as having (or having had) primary carer responsibility for that child.

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

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

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

Other direct relative or legal guardian with primary carer responsibility

Where the person claiming to be the primary carer of the 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 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 derivative right to reside’ (or, as the case may be, is relying on having been such a person as ‘a person who had a derivative or Zambrano right to reside’) on the basis they are (or were) the primary carer of a person over the age of 18 years in education in the UK (Ibrahim and Teixeira cases), they may be (or have been) the spouse or civil partner of that adult or another direct relative.

Primary responsibility for the relevant person in education in the UK 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 person’s care and dependency will be higher in cases involving adults than in those involving children. In such cases, only evidence that shows the relevant person’s dependency on the applicant is due to a severe physical or mental disability is likely to satisfy you that they require (or, as the case may be, for the relevant period required) 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 must be considered to share equally primary carer responsibility when they both have responsibility for the care and welfare of the relevant person, 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 the relevant person (for example where the relevant person lives with one parent during the week and the other at weekends) may still have equal primary carer responsibility. Where a child lives with two 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 the relevant person who is an adult (for example where the relevant person lives with one child, but another child is also heavily involved in the relevant person'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 parents are living together in the same household with the child
- the parents are separated but share responsibility for the child – evidence of this may include (but is not limited to):
 - a custody agreement or court order
 - statement(s) from the parent(s) 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 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 child full-time, but another 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 child is unable to care for their parent, it can be accepted that both children 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 child is equally shared.

Financial support

Under regulation 16(11) of the EEA Regulations, financial support alone will not bring a person within the definition of primary carer. For example, where a person only provides the child with financial support and has no day-to-day caring responsibilities, this is not sufficient to demonstrate that they are the child's primary carer.

Two primary carers

If there are 2 primary carers of the same child, they can both be considered a 'person with a derivative right to reside' for the purposes of Part 1 of Appendix EU, even if they apply under the scheme at different times.

In line with regulation 16(10) of the EEA Regulations, where one primary carer has a derivative right to reside on the basis of shared equal primary carer responsibility, the second primary carer can only have a derivative right to reside on that basis if they had shared equal primary carer responsibility for the child with, and at the same time as, the first primary carer.

Both primary carers can also have a derivative right to reside for any period in which they are (or, as the case may be, for the relevant period were) the child's sole primary carer.

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Alternative care arrangements

Alternative care arrangements: 'Chen' or 'Ibrahim and Teixeira' children

Where an applicant has demonstrated that they are (or, as the case may be, for the relevant period were) a primary carer of the relevant child, you must consider whether there is (or, as the case may be, for the relevant period was) another person living in the UK, for example a direct relative or legal guardian, who can care (or, as the case may be, who could have cared) for the child.

Where there is another such person living in the UK, you must consider whether, if the applicant is (or had been) required to leave the UK for an indefinite period, it is (or would have been) appropriate, including, in particular, in light of the child's best interests, for that person to care (or have cared) 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 derivative right to reside', you must establish the whereabouts and immigration status of the 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 (or was) another direct relative or legal guardian in the UK who is caring for the child, or is (or was) 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 (or did not) have another right to reside in the UK (unless under Part 1 of Appendix EU as a 'person with a derivative right to reside')
- is (or was) residing outside the UK

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 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 (or was) another direct relative or legal guardian in the UK who is caring for the child, or is (or was) able to do so, you can accept that there are (or were) 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 who could care for the child (or, as the case may be, who for the relevant period could have done so) if that direct relative either:

- is currently caring for the child (or, as the case may be, who for the relevant period was doing so)
- has stated that they are able to care for the child and has had contact with the child within the last 12 months (or, as the case may be, who so stated during the relevant period and had had contact with the child within 12 months of the period relied on)

To be satisfied that the child has a legal guardian who could care for them in the UK (or, as the case may be, who for the relevant period could have done so) if the primary carer left (or had 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 child (or, as the case may be, who for the relevant period could have done so) but they are (or were) considered unsuitable. For example, where there are (or were) child protection issues which would prevent (or would have prevented) the child being placed with them. In such cases it would not be appropriate to expect the child to live (or to have lived) with that person.

A lack of financial resources, a lack of willingness to assume caring responsibilities, or an assertion that a person would need (or, as the case may be, would have needed) to alter their working pattern would not, by itself, be a sufficient basis for a person to claim they are (or were) 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 (or, as the case may be, for the relevant period were) a dependant of a primary carer who is entitled to (or for the relevant period was entitled to) a derivative right to reside by virtue of regulation

16(1) of the EEA Regulations by satisfying the criteria in regulation 16(2) (save for the requirement that the relevant EEA citizen child holds, or held, comprehensive sickness insurance) or 16(4), you must consider whether there is (or for the relevant period was) another person living in the UK or elsewhere, for example a direct relative or legal guardian, who can care (or who could have cared) for the child.

To assess this, you must carry out the same assessment as in [Alternative care arrangements – ‘Chen’ or ‘Ibrahim and Teixeira’ children](#), but consider also whether there is (or, as the case may be, for the relevant period was) another direct relative or legal guardian living in another country who can care (or who could have cared) for the child.

Alternative care arrangements: adults

Where a person has reached the age of 18 years, you can generally assume they are (or, as the case may be, for the relevant period were) capable of meeting their own needs. In some cases, the person may need (or have needed) the presence and care of that primary carer to pursue and complete their education. This is likely to occur where the person has (or had) a physical or mental impairment that means they are (or were) 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 a person has demonstrated they are a primary carer, you must consider whether there are (or, as the case may be, for the relevant period were) alternative care arrangements for the person in education. 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 another parent, direct relative, legal guardian (or, in the case of an adult, a local authority or private care provider) in the UK (or where relevant, outside the UK) who is currently caring for the relevant person, or is (or, as the case may be, for the relevant period was) able to do so, you can accept that there are (or were) no alternative care arrangements for them. This means that the relevant person 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 or to be educated in the UK if the applicant 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 be prevented from residing in the UK if the applicant 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 (or, as the case may be, met) the definition of a 'person with a derivative right to reside' under Part 1 of Appendix EU.

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Assessing whether alternative care arrangements are appropriate

‘Chen and ‘Ibrahim and Teixeira’ children

Where alternative care arrangements for the relevant child are (or, as the case may be, were) available, you must consider what would happen (or in the relevant period would have happened) to the child in practice if the applicant left (or had left) the UK for an indefinite period.

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

- leave the UK (or in the relevant period would have done so)
- or remain in the UK with the other person who can care (or for the relevant period who could have cared) for them

Dependency

A key consideration when assessing what would happen (or would have happened) to the child is the level of dependency between the child and the applicant.

Specifically, you must consider whether, considering the level of dependency, the removal of the applicant would also compel (or would have compelled) the child to leave (or to have left) the UK even though there is (or was) another person who, in principle, could care for the child in the UK (or who could have done so).

When considering the level of dependency, you must consider the extent to which the child is (or for the relevant period was) emotionally attached to or otherwise dependent on the applicant and on the other person you have identified as able to care for them (or to have done so).

Relevant factors include:

- the child’s age, the stage of their physical and emotional development 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 currently provide to the child or have provided recently (or for the relevant period provided or had provided recently)
- who makes (or made) the decisions that affect the child’s life
- who the child currently lives (or then lived) with and who they have lived with previously
- how much time the child spends (or for the relevant period spent) with the applicant and the other person who is (or was) able to care for them and how they spend (or spent) their time together

Living arrangements

Where the child lives (or for the relevant period lived) in a household with the applicant and the other person who can care for them (or who could have done so), you will normally accept that the child is (or was) equally dependent on them both. However, if the other person has (or had) only lived with the child for a short time, you must consider their relationship with the child before they started living together to establish the level of dependence.

Where the child does (or did) not live with the other person, factors relevant to the level of dependency include:

- whether they have (or had) lived together before – if so, how recently and for how long
- whether the child stays (or stayed) with the other person – for example, in cases of shared custody
- 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 (or made) to the child's life – for example, making decisions affecting the child or providing financial support

Level of dependency

Depending on the information and evidence available, you may conclude that the child is (or for the relevant period was):

- 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 (or in the relevant period would have happened) in practice to the primary carer if the applicant left (or had 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 (or in the relevant period would have done so)
- leave the UK with the dependent child (or for the relevant period would have left with the child)

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

The child's best interests

Before deciding on whether the alternative care arrangements for a child under the age of 18 are (or were) appropriate, you must first consider what are (or were) 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 (or would have meant) that the child would be (or would have been) 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 (or for the relevant period had been) separated from the applicant, for example:

- would they be (or have been) safe and well cared for and have (or had) access to any support they need (or would have needed) to cope with change?
- would they be (or have been) able to keep in contact with the applicant, for example through letters, telephone calls, instant messaging, and video messaging services such as Skype and FaceTime, email and/or visits?
- would they need (or have needed) to move home, and if so, how does (or did) the nature, quality and location of their current home compare with where they would live (or would have lived) in future?
- would there be (or have been) disruption to their education, for example could they keep (or have kept) attending the same school?
- would they be (or have been) 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 (or for the relevant period was) in the child's best interests to:

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

Conclusion

When you have considered the child's level of dependency on the applicant and on the other person, and considered the child's best interests, you must draw an overall conclusion about whether the child would be (or would have been) unable to continue living in the UK if the applicant left (or had left) the UK for an indefinite period – 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 dependant left (or had left) the UK for an indefinite period.

Where the child (or primary carer) would be (or would have been) unable to continue living in the UK if the applicant left (or had left) the UK for an indefinite period, you can accept that, in respect of this element, the applicant meets (or, as the case may be, met) the definition of a 'person with a derivative right to reside' under Part 1 of Appendix EU.

Where the child (or primary carer) would be (or would have been) able to continue living in the UK if the applicant left (or had left) the UK for an indefinite period, the applicant will not be (or, as the case may be, will not have been) a 'person with a derivative right to reside'.

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Physical or mental impairment

This section tells you how to consider applications on the basis that the applicant is (or for the relevant period was) the primary carer of a child of a former EEA citizen worker who is (or was) over the age of 18 in education in the UK (Ibrahim and Teixeira)

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

Physical or mental impairment

To satisfy you that they are (or for the relevant period were) the primary carer, the applicant can provide, for example, medical evidence from a registered consultant or specialist who is (or was) involved in the dependant's care outlining the medical condition, the level of care required, and who is (or for the relevant period was) 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 (or for the relevant period was) providing, including:

- when the applicant assumed caring responsibilities for the dependant
- what sort of care is (or for the relevant period was) being provided
- if appropriate, who cared for the dependant before this time and why that care cannot resume
- what other care is (or for the relevant period was) being provided by either another person, medical professionals, a local authority or a private care provider
- if no other care is (or for the relevant period was) being provided, what enquiries have been (or were) 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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