



Home Office

# EU Settlement Scheme: person with a Zambrano right to reside

Version 9.0

# Contents

|  |    |
|--|----|
| Contents.....  | 2  |
| About this guidance.....   | 7  |
| The best interests of the child.....   | 7  |
| Contacts .....   | 8  |
| Publication .....  | 8  |
| Changes from last version of this guidance .....   | 8  |
| Introduction .....   | 9  |
| Relevant EEA family permit case.....   | 11 |
| Applications to switch from pre-settled to settled status .....  | 11 |
| Validity requirements.....   | 13 |
| Section 1: Overview of eligibility requirements .....  | 14 |
| Who is a ‘person with a Zambrano right to reside’? .....   | 14 |
| Example .....  | 16 |
| Primary carer cases.....   | 16 |
| Dependant of the primary carer cases.....  | 17 |
| Resident for a continuous qualifying period in the UK which began before the specified date and throughout which the relevant criteria are met.....  | 17 |
| Relevant period.....   | 18 |
| Who is a ‘person who had a derivative or Zambrano right to reside’? .....  | 18 |
| Section 2: All applications: initial eligibility requirements .....  | 20 |
| Exempt person .....  | 20 |
| Leave to enter or remain in the UK.....  | 21 |
| Subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect ..... | 22 |
| Section 3: Eligibility – Zambrano primary carer .....  | 24 |
| Stage 1: assessing British citizenship and UK residence .....  | 25 |
| Assessing British citizenship.....   | 25 |
| Persons not considered British citizens .....  | 25 |
| Assessing UK residence.....  | 26 |
| Conclusion on stage 1 .....  | 26 |
| Stage 2: primary carer.....  | 27 |
| Primary carer .....  | 27 |
| Stage (a): Assessing ‘direct relative’ or ‘legal guardian’ .....   | 27 |
| Direct relative.....   | 27 |

|  |    |
|--|----|
| Legal guardian.....  | 29 |
| Stage (b): Assessing primary carer responsibility .....  | 30 |
| Primary carer responsibility for a child by a parent.....  | 30 |
| Other parent.....  | 30 |
| Deceased parent.....   | 30 |
| Other direct relative or legal guardian with primary carer responsibility for a child .....          | 30 |
| Primary carer responsibility for an adult .....  | 31 |
| University-age British citizens .....  | 32 |
| Sole primary carer responsibility.....   | 32 |
| Sharing equal primary carer responsibility.....  | 32 |
| Evidence of shared primary carer responsibility.....   | 33 |
| Financial support.....   | 34 |
| Two primary carers .....   | 34 |
| Conclusion on stage 2 .....  | 34 |
| Stage 3: British citizen unable to reside in the UK, the EEA or Switzerland .....                    | 35 |
| Assessing whether a British citizen would be unable to reside in the UK, the EEA or Switzerland..... | 35 |
| 'In the alternative' assessment .....  | 36 |
| Could the British citizen live in the UK? .....  | 37 |
| The British citizen is a child.....  | 37 |
| 1 The circumstances of the other primary carer .....   | 38 |
| Unsuitable care arrangements .....   | 38 |
| 2 The child's age .....  | 39 |
| 3 The child's physical and emotional development.....  | 39 |
| 4 The extent of the child's emotional ties to the applicant and to the other primary carer .....     | 39 |
| 5 The risks which separation from the applicant might entail for that child's equilibrium .....      | 41 |
| 6 Any other factors raised or implied in the application .....                                       | 41 |
| Conclusion.....  | 41 |
| The British citizen is an adult (over the age of 18) .....   | 42 |
| Sole primary carer .....   | 42 |
| Primary carer who shares responsibility with another person.....                                     | 43 |
| The applicant is not a primary carer .....   | 43 |
| Conclusion.....  | 43 |
| Could the British citizen live in an EEA Member State or Switzerland? .....                          | 44 |
| Lawful residence in an EEA Member State or Switzerland .....   | 44 |

|  |    |
|--|----|
| If the applicant is an EEA citizen / has a right to reside in an EEA Member State or Switzerland .....               | 45 |
| If the British citizen has a right to reside in an EEA Member State or Switzerland .....                             | 45 |
| The British citizen is a child and the applicant is the sole primary carer .....                                     | 46 |
| The British citizen is a child and the applicant shares primary responsibility with another appropriate person ..... | 46 |
| The British citizen is an adult .....  | 47 |
| What would happen in practice.....   | 48 |
| If neither the applicant nor the British citizen has a right to reside in an EEA Member State or Switzerland .....   | 48 |
| Conclusion on stage 3 .....  | 48 |
| Overall conclusion .....   | 48 |
| Section 4: Eligibility: dependant of the primary carer .....   | 50 |
| Stage 1: applicant under the age of 18.....  | 52 |
| Age .....  | 52 |
| Conclusion on stage 1 .....  | 52 |
| Stage 2: primary carer with a Zambrano right to reside.....  | 53 |
| Primary carer .....  | 53 |
| Stage (a): Assessing ‘direct relative’ or ‘legal guardian’ .....   | 53 |
| Direct relative.....   | 53 |
| Legal guardian.....  | 54 |
| Stage (b): Assessing primary carer responsibility .....  | 55 |
| Primary carer responsibility for a child by a parent .....   | 56 |
| Other parent.....  | 56 |
| Deceased parent.....   | 56 |
| Other direct relative or legal guardian with primary carer responsibility for a child .....                          | 56 |
| With a Zambrano right to reside .....  | 57 |
| Conclusion on stage 2 .....  | 58 |
| Stage 3: primary carer prevented from residing in the UK.....  | 59 |
| Assessing whether a primary carer would be unable to reside in the UK .....  | 59 |
| ‘In the alternative’ assessment .....  | 59 |
| Could the primary carer live in the UK? .....  | 60 |
| 1 The circumstances of the other primary carer .....   | 61 |
| Unsuitable care arrangements.....  | 62 |
| 2 The applicant’s age .....  | 62 |
| 3 The applicant’s physical and emotional development .....   | 62 |

|  |    |
|--|----|
| 4 The extent of the applicant's emotional ties to the British citizen's primary carer and to the other primary carer .....                             | 62 |
| 5 The risks which separation from the British citizen's primary carer might entail for the applicant's equilibrium.....                                | 65 |
| 6 Any other factors raised or implied in the application .....   | 65 |
| Conclusion.....  | 65 |
| Conclusion on stage 3 .....  | 66 |
| Overall conclusion .....   | 66 |
| Section 5: Person who had a derivative or Zambrano right to reside .....   | 67 |
| Stage 1: applicant met the definition of a 'person with a Zambrano right to reside' ..   | 68 |
| Consideration .....  | 68 |
| Conclusion on stage 1 .....  | 68 |
| Stage 2: Applicant then immediately switched to another qualifying category and remained in such a category .....                                      | 69 |
| Consideration .....  | 69 |
| Conclusion on stage 2 .....  | 69 |
| Overall conclusion .....   | 70 |
| Section 6: All applications not so far concluded .....   | 71 |
| Continuous qualifying period .....   | 71 |
| Indefinite leave to enter or remain as a 'person with a Zambrano right to reside' or a 'person who had a derivative or Zambrano right to reside' ..... | 71 |
| Limited leave to enter or remain as a 'person with a Zambrano right to reside' or a 'person who had a derivative or Zambrano right to reside' .....    | 72 |
| Evidence.....  | 72 |
| Decision.....  | 72 |
| Suitability requirements.....  | 72 |
| Indefinite leave to enter (ILE) or remain (ILR) .....  | 72 |
| Limited leave to enter (LTE) or remain (LTR).....  | 73 |
| Refusal.....   | 73 |
| Section 7: Applications to switch from pre-settled to settled status .....   | 74 |
| How to approach the consideration .....  | 74 |
| Previous application .....   | 74 |
| Example 1.....   | 75 |
| Example 2.....   | 75 |
| Current application .....  | 76 |
| Eligibility (from the date of the first application to the relevant date) .....  | 76 |
| Stage 1: Alternative leave to enter or remain .....  | 76 |

|  |    |
|--|----|
| Scenario 1: Valid Appendix FM and Appendix EU applications both made before 6 April 2021 .....   | 78 |
| Scenario 2: One valid application, or both valid applications, made on or after 6 April 2021 (and both were pending at the same time) .....  | 78 |
| Scenario 3: Valid Appendix FM application made after the applicant's Appendix EU application as a 'person with a Zambrano right to reside' was granted .....   | 79 |
| Scenario 4: Valid Appendix FM application made after the applicant's Appendix EU application as a 'person with a Zambrano right to reside' was refused and before their Appendix EU appeal was allowed ..... | 80 |
| Applicant is a primary carer .....   | 81 |
| Stage 2: Assessing British citizenship and UK residence .....  | 81 |
| Assessing British citizenship.....   | 81 |
| Assessing UK residence.....  | 81 |
| Stage 3: Primary carer .....   | 81 |
| Stage 4: British citizen unable to reside in the UK, the EEA or Switzerland .....  | 82 |
| Applicant is a dependant of a primary carer .....  | 82 |
| Stage 2: Applicant under the age of 18 .....   | 82 |
| Stage 3: Child of a primary carer with a Zambrano right to reside .....  | 82 |
| Stage 4: Primary carer prevented from residing in the UK .....   | 82 |
| Decision.....  | 82 |
| Suitability requirements .....   | 83 |
| Indefinite leave to enter (ILE) or remain (ILR) .....  | 83 |
| Refusal.....   | 83 |

# About this guidance

This guidance tells you how, from 01 April 2025, to consider whether an applicant to the EU Settlement Scheme is a ‘person with a Zambrano right to reside’ as defined in the Immigration Rules for the scheme contained in [Appendix EU to the Immigration Rules](#).

The EU Settlement Scheme closed on 8 August 2023 to those applying as a ‘person with a Zambrano right to reside’, except where:

- an application was made as a ‘person with a Zambrano right to reside’ by 8 August 2023
- they entered the UK with an EU Settlement Scheme family permit granted on the basis they were a Zambrano ‘specified EEA family permit case’ and applied for pre-settled status before the expiry of the leave to enter granted by virtue of having arrived in the UK with that entry clearance (and that leave to enter must not have been cancelled, curtailed or invalidated), or later where they can show evidence of ‘reasonable grounds’ for their delay in making their application
- they have pre-settled status as a ‘person with a Zambrano right to reside’ and are making a further application, usually for settled status

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

## The best interests of the child

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

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

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

agencies in order to develop arrangements that protect children and reduce the risk of trafficking and exploitation.

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

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

## Contacts

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

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

## Publication

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

- version **9.0**
- published for Home Office staff on **01 April 2025**

## Changes from last version of this guidance

Changes have been made to reflect *Akinsanya & Anor, R (On the Application Of) v Secretary of State for the Home Department* [2024] EWHC 469 (Admin) (11 March 2024) and *Maisiri (EUSS; Zambrano; 'Realistic Prospect') Zimbabwe* [2024] UKUT 235 (IAC) (14 June 2024) and to add a new section 7 setting out how to consider applications to switch from pre-settled to settled status.

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

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

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

# Introduction

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

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

A Zambrano right to reside in the UK ceased to exist at the end of the post-EU exit transition period at 11pm Greenwich Mean Time (GMT) on 31 December 2020. Such cases are not covered by the Withdrawal Agreement with the EU or the citizens’ rights agreements with the other European Economic Area (EEA) countries and Switzerland. However, the UK decided as a matter of more generous domestic provision to provide those with such a right to reside in the UK by the end of the transition period with access to the EU Settlement Scheme, until the route closed to new applications on 8 August 2023.

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

- the application has been made using the required application process (which, in the case of a ‘person with a Zambrano right to reside’, is the required paper application form)
- the required proof of identity and nationality (or of entitlement to apply from outside the UK, where the application is made outside the UK) has been provided
- the required biometrics have been provided
- the application has been made by the required date, where the date of application is on or after 9 August 2023
- the applicant, if they rely on being a joining family member of a relevant sponsor and where the date of application is on or after 9 August 2023, is not a specified enforcement case

For further guidance, see ‘Making an application: validity’.

To consider the eligibility requirements for an application as a ‘person with a Zambrano right to reside’, see:

- [section 1](#) for an overview of the eligibility requirements

- [section 2](#) for initial eligibility requirements for all applicants
- [section 3](#) where the applicant is applying as a primary carer of a British citizen
- [section 4](#) where the applicant is applying as a dependant under the age of 18 of a primary carer of a British citizen
- [section 5](#) where the applicant is applying as a person who had a derivative or Zambrano right to reside

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

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

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

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

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

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

- an Islands deportation order
- an Islands exclusion decision

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

- (where relevant to something done before 11pm GMT on 31 December 2020) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately before that date and time)
- (where relevant to something done after 11pm GMT on 31 December 2020 and before 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as, despite the revocation of those Regulations, they continued to have effect, with specified modifications, by virtue of the Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020)
- (where relevant to something done on or after 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as they had effect immediately before they were revoked and, where the context requires it, on the basis that those Regulations had not been revoked)

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

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

## Relevant EEA family permit case

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

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

## Applications to switch from pre-settled to settled status

Please see [section 7](#) for guidance.

**Related content**

[Contents](#)

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

**Related external links**

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

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

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

[Appendix EU to the Immigration Rules](#)

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

# Validity requirements

This section tells you about the requirements for validity as a ‘person with a Zambrano right to reside’. This section is to be read in conjunction with EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, ‘Making an application: validity’.

From 9 August 2023, rule EU9(e) states that a valid application can only be made under Appendix EU where it has been made by the required date. Where an applicant is relying on being a ‘person with a Zambrano right to reside’, the deadline to apply was 8 August 2023 unless the following exceptions apply.

Where the applicant has pre-settled status as a ‘person with a Zambrano right to reside’ which has not lapsed or been cancelled, revoked or invalidated, there is no deadline for them to apply for further status under the scheme. This is in accordance with paragraph (b) of the ‘required date’ definition in Annex 1 to Appendix EU.

Where they have been granted an EU Settlement Scheme family permit on the basis they were a Zambrano ‘specified EEA family permit case’, they can apply under the scheme before the expiry of the leave to enter granted to them by virtue of having arrived in the UK with that entry clearance or after the expiry of that leave to enter where there are ‘reasonable grounds’ for their delay in making their application.

This means that where the applicant is relying on being a ‘person with a Zambrano right to reside’ to apply to the scheme and does not have valid leave to enter from an EU Settlement Scheme family permit on that basis (or reasonable grounds for their delay in making an application after the expiry of such leave) or pre-settled status issued on that basis, applications made after 8 August will be rejected as invalid.

For further guidance on reasonable grounds, refer to EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members, ‘Making an application: validity’.

## **Related content**

[Contents](#)

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

## **Related external links**

[Appendix EU to the Immigration Rules](#)

# Section 1: Overview of eligibility requirements

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

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

- resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an exempt person
  - they are the primary carer of a British citizen who resides in the UK
  - the British citizen would in practice be unable to reside in the UK, the European Economic Area or Switzerland if the person (or both primary carers, where the role of primary carer is shared with another person in accordance with the definition of ['primary carer'](#) in Annex 1 to Appendix EU) in fact left the UK for an indefinite period
  - they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix
  - they are not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect
- resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an exempt person
  - they are under the age of 18 years (unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a person with a Zambrano right to reside and were under 18 at the date of application for that leave)
  - their primary carer meets the requirements of sub-paragraph (a) of the definition of a 'person with a Zambrano right to reside' (summarised in the first main bullet point, above)
  - the primary carer would in practice be prevented from residing in the UK if the person in fact left the UK for an indefinite period
  - they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix

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

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

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

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

For the purposes of a continuous qualifying period in the UK as a 'person with a Zambrano right to reside', the applicant **cannot** rely on any period in which they held non-Appendix EU leave (unless such leave was in effect by virtue of section 3C of the Immigration Act 1971 or was leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met subparagraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix).

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

## Example

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

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

- primary carers
- certain dependants of the primary carer

## Primary carer cases

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

- the applicant must not be an '[exempt person](#)'
- the applicant must be the '[primary carer](#)' of a British citizen who resides in the UK, by both:
  - being their [direct relative](#) or [legal guardian](#)
  - having primary responsibility for their care or sharing equally the responsibility for their care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility
- that [British citizen would in practice be unable to reside in the UK, the EEA or Switzerland](#) if the primary carer in fact left the UK for an indefinite period

- the applicant does not have leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in Annex 1 to that Appendix
- the applicant must not be subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

## Dependant of the primary carer cases

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

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

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

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

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

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

## Relevant period

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

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

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

## Who is a 'person who had a derivative or Zambrano right to reside'?

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

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

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

Where an applicant relies on meeting this definition, the continuous qualifying period in which they rely on doing so must have been continuing at 11pm GMT on 31 December 2020. However, it does not matter whether at that point they were a

'person with a Zambrano right to reside' or were in one of the other categories referred to above.

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

### **Related content**

[Contents](#)

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

EU Settlement Scheme: family member of a qualifying British citizen

### **Related external links**

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

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

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

[Appendix EU to the Immigration Rules](#)

## Section 2: All applications: initial eligibility requirements

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

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

- must not be an '[exempt person](#)'
- must not have [leave to enter or remain in the UK](#), unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix
- must not be [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect

### Exempt person

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

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

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

leave to enter or remain under the scheme under condition 2 of rule EU11 of Appendix EU

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

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

## Leave to enter or remain in the UK

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

Following that judgment, the SSHD reconsidered her policy in this area and, as announced on 13 June 2022, decided to maintain the provision in the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU which means that an applicant cannot meet that definition if they have (or, as the case may be, for the relevant period they had) leave to enter or remain in the UK, unless this was granted under Appendix EU or, as below, in effect by virtue of section 3C of the Immigration Act 1971 or leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix.

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

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

met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix).

Section 3C of the Immigration Act 1971 extends limited leave pending the outcome of an in-time application where the leave would otherwise expire before the in-time application has been decided. The broad aim of section 3C is to prevent a person's existing leave expiring while that application is pending. Leave extended by section 3C will not generally be relevant to an applicant's eligibility as a 'person with a Zambrano right to reside', because under rules EU11 and EU14 of Appendix EU, eligibility is assessed at the date of the application. Therefore, the assessment of eligibility will generally take place prior to the leave being extended by section 3C.

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

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

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

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

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

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

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

- under [regulation 23\(6\)\(b\)](#), to remove on grounds of public policy, public security or public health in accordance with regulation 27
- under [regulation 24\(1\)](#), to refuse to issue, to revoke or to refuse to renew residence documentation on grounds of public policy, public security or public health, or on grounds of misuse of rights in accordance with regulation 26(3)
- under [regulation 25\(1\)](#), to cancel a right of residence
- under [regulation 26\(3\)](#), on grounds of misuse of rights
- under [regulation 31\(1\)](#), to revoke admission

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

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

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

### **Related content**

[Contents](#)

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

EU Settlement Scheme: family member of a qualifying British citizen

### **Related external links**

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

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

[Appendix EU to the Immigration Rules](#)

[Leave outside the Immigration Rules](#)

## Section 3: Eligibility – Zambrano primary carer

Throughout this section, ‘the applicant’ means a person who has applied as a ‘person with a Zambrano right to reside’ based on being a primary carer of a British citizen (sub-paragraph (a) of the definition in Annex 1 to Appendix EU).

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

These are:

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

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

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

### Related content

[Contents](#)

### Related external links

[Appendix EU to the Immigration Rules](#)

# Stage 1: assessing British citizenship and UK residence

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

## Assessing British citizenship

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

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

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

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

## Persons not considered British citizens

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

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

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

## Assessing UK residence

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

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

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

Where there is reason to believe that the British citizen has had one or more absence from the UK during the continuous qualifying period on which the applicant relies, you must consider the length and nature of each absence to determine whether or not, on the balance of probabilities, the British citizen ceased residing in the UK for that period of time.

If the British citizen ceased residing in the UK, then the applicant's continuous qualifying period will have been broken, even if the applicant did not leave the UK and even if the British citizen started residing in the UK again at a later date. If the British citizen did not cease residing in the UK (for example, the length of the absence was 2 weeks and for the purpose of a holiday), then the applicant's continuous qualifying period will not have been broken.

## Conclusion on stage 1

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

Where you are not satisfied of this, you must move on to the next stage to consider whether there are additional reasons for refusing the application as a 'person with a Zambrano right to reside'.

### Related content

[Contents](#)

[EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)  
[Nationality instructions](#)

### Related external links

[Appendix EU to the Immigration Rules](#)

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

## Stage 2: primary carer

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

### Primary carer

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

- has primary responsibility for that person's care
- shares equally the responsibility for that person's care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

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

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

### Stage (a): Assessing 'direct relative' or 'legal guardian'

#### Direct relative

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

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

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

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

Where the applicant has not been issued with such a document, you must be satisfied from information or evidence provided by the applicant that they are the direct relative of the relevant British citizen and were so before the specified date.

You must be satisfied of the claimed family relationship between the direct relative and the relevant British citizen.

The following evidence is acceptable to show that the applicant is related as claimed to the British citizen. Where other evidence is provided, you must assess it on a case-by-case basis to determine whether it is more likely than not that the relationship is as claimed.

| <b>Claimed relationships</b> | <b>Evidence</b>   |
|------------------------------|---|
| Parent                       | <p>The British citizen's birth certificate showing that the applicant is their mother or father.</p> <p>Where a recognised adoption has taken place, an adoption order showing that the applicant adopted the British citizen.</p>  |
| Grandparent                  | <p>The British citizen's birth certificate and their relevant parent's birth certificate.</p> <p>Where a recognised adoption has taken place, an adoption order showing that the parent adopted the British citizen or that the grandparent adopted the British citizen's parent.</p> |
| Brother or sister            | <p>The applicant's birth certificate (or adoption certificate) and the British citizen's birth certificate (or adoption certificate) showing that they share one parent or both parents.</p>  |
| Spouse or civil partner      | <p>The marriage certificate or civil partnership certificate confirming a marriage or civil partnership recognised under UK law.</p>  |
| Child                        | <p>The applicant's birth certificate or recognised adoption certificate confirming that they were born to or adopted by the British citizen.</p>  |
| Grandchild                   | <p>The applicant's birth certificate or recognised adoption certificate confirming that they were born to or adopted by their parent and the parent's birth certificate or recognised adoption certificate confirming that they were born to or adopted by the British citizen.</p>   |

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

Children of a durable partner are not within the definition of ‘direct relative’ for the purposes of assessing whether they are a primary carer, unless there is also a lawful guardianship order, as described below, in place.

## Legal guardian

If the applicant is not a direct relative of the British citizen, they must be the British citizen’s legal guardian. If they are not, they do not meet the definition of a ‘primary carer’.

Where the applicant has not been issued with a residence card or a family permit under the EEA Regulations based on legal guardianship, you must be satisfied from information or evidence provided by the applicant that throughout the continuous qualifying period relied upon which began before the specified date both:

- they were the British citizen’s legal guardian
- the British citizen was under the age of 18

If they had been issued with a residence card or a family permit under the EEA Regulations based on legal guardianship, you must be satisfied that they continued to be the British citizen’s legal guardian after the residence card or family permit was issued.

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

An alternative court order transferring parental responsibility, or otherwise 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 whether 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, for example

Such court orders must be considered on a case-by-case basis to determine whether they establish that the person is the child's legal guardian with primary carer responsibility.

## Stage (b): Assessing primary carer responsibility

### Primary carer responsibility for a child by a parent

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

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

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

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

### Other parent

In all cases in which only one parent is applying to the scheme as a 'person with a Zambrano right to reside', you must establish the whereabouts and immigration status of the British citizen child's other parent. If this information is not held, you must ask the applicant to provide it.

Where there is evidence to suggest that the applicant did not have permission to take the child out of another jurisdiction (for example, where a court in another country has ordered that the child live with the other parent or that neither parent may take the child abroad without the consent of each other or the court), you must contact the British Embassy or High Commission in that other country before deciding the application. The British Embassy or High Commission would then need to contact the relevant authorities to determine whether the child needs to return to the other country.

### Deceased parent

If the applicant claims the other parent has died, the applicant can satisfy you of this by, for example, providing the death certificate of that parent.

### Other direct relative or legal guardian with primary carer responsibility for a child

Where the person claiming to be the primary carer of a relevant British citizen child is not their parent, you must establish the whereabouts and immigration status of both of the British citizen child's parents, currently and for the relevant period. If this

information is not held, you must ask the applicant to provide it. If the applicant claims the parents have died, the applicant can satisfy you of this by, for example, providing the death certificates of the parents.

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 carer responsibility for an adult

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

Where the relevant British citizen is over the age of 18 years, you can generally assume that they are capable of meeting their own needs.

Primary responsibility for the relevant British citizen's care will be established in cases involving adults where the applicant can show that both:

- the British citizen adult is not capable of meeting the majority of their own care needs
- the applicant is responsible for meeting the majority of the British citizen adult's care needs

The level of evidence required to demonstrate the dependency of the relevant British citizen, and primary responsibility for meeting the majority of their care needs, will be higher in cases involving an adult than in those involving a child. In cases involving an adult, evidence which shows that the British citizen's dependency on the applicant is due to a severe physical or mental disability or impairment, or a serious long-term illness, will generally be required to satisfy you that the British citizen requires 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.

Evidence the applicant can provide in such cases may include for example, medical evidence from a registered consultant or specialist who is involved in the dependant's care outlining the medical condition, the reasons why the nature of the condition means that the dependant is unable to meet the majority of their own care needs and (therefore) the level of care required, and who is providing the care for the dependent adult. This may be provided by the applicant, and any evidence of this nature must be:

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

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

- when the applicant assumed caring responsibilities for the dependant
- if appropriate, who cared for the dependant before this time and why that care cannot resume
- what sort of care is being provided
- whether and, if so, what other care is being provided by another person, a medical professional, a local authority or a private care provider
- if no other care is being provided, what enquiries have been made by the applicant 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 or evidence to establish the medical condition and care needs of the dependent adult.

### University-age British citizens

You may see applications from primary carers of British citizens who are adults, but only just – for example, aged 18 to 21. You can generally assume that the British citizen is capable of, and is in fact, meeting their own care needs, even where they are:

- away attending university, but return to their parent's (or parents') home between term-time
- attending university but still live with their parent or parents for convenience or for financial reasons
- not attending university and still live with their parent or parents
- unemployed but seeking work

unless there is clear and compelling evidence to the contrary.

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

### Sole primary carer responsibility

Where no other person provides any care to, or has responsibility for, the British citizen, you can accept that the applicant has sole primary carer responsibility.

### Sharing equal primary carer responsibility

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

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

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

Two people who spend different amounts of time with a British citizen adult (for example, where the British citizen lives with one adult child, but another adult child is also heavily involved in the British citizen's medical or physical 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 either:

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

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

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

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

## Financial support

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

## Two primary carers

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

In line with the definition of ‘primary carer’ in Annex 1 to Appendix EU, a person does not have a Zambrano right to reside as a co-primary carer where, before they assumed equal care responsibility, the person with whom care responsibility is shared had already acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of ‘primary carer’ as defined in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix.

This means you must ascertain whether the 2 primary carers assumed primary care responsibility for the British citizen, and met the rest of the relevant requirements, at the same time. Where one primary carer did so first, and the other later, only the first may be eligible under the scheme as a ‘person with a Zambrano right to reside’ (on the condition that all other relevant requirements continue to be met).

## Conclusion on stage 2

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

Where you are not satisfied of this, you must move on to the next stage to consider whether there are additional reasons for refusing the application as a ‘person with a Zambrano right to reside’.

### Related content

[Contents](#)

### Related external links

[Appendix EU to the Immigration Rules  
Immigration \(European Economic Area\) Regulations 2016](#)

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

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

This section of the guidance refers throughout to “the applicant” leaving the UK. However, where you have concluded, under stage 2, that there are 2 primary carers (who are not exempt persons and do not hold alternative leave to enter or remain – see [Section 2: All applications: initial eligibility requirements](#), and who assumed primary responsibility for the British citizen at the same time – see [Two primary carers](#)), you must read the guidance as if it refers to both the applicant and the other primary carer leaving the UK.

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

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

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

You will have already established that the applicant cannot be considered a ‘person with a Zambrano right to reside’ where they have leave to enter or remain in the UK, other than leave granted under Appendix EU, in effect by virtue of section 3C of the Immigration Act 1971 or leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in Annex 1 to that Appendix.

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

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

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

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

The guidance below sets out how to assess the most common relevant factors for each of the 2 questions set out above, depending on whether the British citizen is a child or an adult.

As you consider each factor, you must think about:

- what the applicant claims is the factual position
- whether the applicant's claims are credible
- whether the applicant's claims are supported by any other evidence
- whether that other evidence is credible
- what weight to give the evidence in the balancing exercise

Once you have considered each factor below, and any additional factors the applicant has raised, you must consider them in the round to determine what is more likely than not to happen in practice.

## **'In the alternative' assessment**

If you have already decided that the application will be refused for any (or all) of the following reasons:

- the cared-for person is not a British citizen (stage 1)
- the British citizen is not, or has ceased to be, resident in the UK (stage 1)
- the applicant is not the British citizen's sole or joint primary carer (stage 2)

you must approach the stage 3 questions of whether the British citizen could continue to live in the UK, or could live in the EEA or Switzerland, as if those earlier requirements are met. This is known as an 'in the alternative' consideration. In other words, if we are wrong about the earlier requirements not being met, should the application succeed under stage 3?

The refusal letter must both:

- be clear that these questions have been considered 'in the alternative', without prejudice to the primary position that the earlier requirement is (or requirements are) not met
- state either that:
  - it is accepted that the application would succeed under stage 3 if the requirements considered under stage 1 and stage 2 were met
  - the application would not succeed under stage 3 even if the requirements considered under stage 1 and stage 2 were met - where this is the case, you must explain the reasons clearly

## Could the British citizen live in the UK?

The first stage is to consider whether, in practice, the relevant British citizen would be unable to reside in the UK if the applicant were in fact required to leave the UK for an indefinite period.

To assess this, you must consider whether, if the applicant left the UK, the British citizen would be more likely either:

- to remain in the UK
- to leave the UK

As you follow the guidance in this section, it is important to remember that you are considering the position both:

- for the continuous qualifying period relied upon
- (where the applicant has not completed a continuous qualifying period of at least five years) at the date of the application under consideration

You are not considering the position as at the date you are deciding the application.

## The British citizen is a child

Where you have already accepted, under [stage 2](#), that the applicant is the sole primary carer of the relevant British citizen child, and you have determined that the child lives full-time in a single-adult household with the applicant, then you will usually accept that, if the applicant left the UK, the child would be more likely to leave the UK with the applicant than to remain in the UK without them.

Where this is the case, you must go on to consider [Could the British citizen live in an EEA Member State or Switzerland?](#) before deciding the application.

Where you concluded, under [stage 2](#), that the applicant is the joint primary carer of the relevant British citizen child, you must consider whether, if the applicant left the UK, the British citizen would be more likely to leave the UK with the applicant, or to remain in the UK with the other primary carer.

In Chavez-Vilchez, the Court of Justice of the European Union ruled that when assessing whether there is a relationship of dependency between a third country national parent and a child such that the child would be compelled to leave the territory of the EU as a whole if the third country national parent were refused a right of residence, the child's best interests require that all the specific circumstances are taken into account, including the following factors:

- the age of the child
- the child's physical and emotional development
- the extent of the child's emotional ties both to the EU citizen parent and to the third country national parent

- the risks which separation from the third country national parent might entail for the child's equilibrium

The guidance below sets out how to ensure that all the specific circumstances, including these factors (adapted, as appropriate, for the range of circumstances you may see in applications), are taken into account when you consider whether, in practice, the relevant British citizen would be unable to reside in the UK if the applicant were in fact required to leave the UK for an indefinite period.

## 1 The circumstances of the other primary carer

To consider whether the child would be more likely to leave the UK with the applicant or to remain in the UK with the other primary carer, you must first consider the circumstances of the other primary carer.

This includes whether the other primary carer:

- is resident in the UK and, if so, whether they are lawfully resident
- is resident in another country and, if so, whether:
  - they would be able to reside lawfully in the UK
  - they have confirmed they will relocate to the UK to care for the child here

Examples of persons who reside, or are able to reside, lawfully in the UK are where they:

- are a British citizen or otherwise have the right of abode in the UK
- are an Irish citizen
- have indefinite or limited leave to enter or remain in the UK
- are exempt from immigration control

You must not conclude that the child is more likely to remain in the UK with the other primary carer if, at the relevant time, the other primary carer either:

- is in the UK unlawfully
- resides outside the UK and has no lawful basis to reside in the UK

## Unsuitable care arrangements

There may be instances where there is a joint primary carer, but they are considered unsuitable. For example, where there are child protection issues which would prevent the child being placed with them. In such cases it would not be appropriate to expect the child to live with that person.

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

## 2 The child's age

You must consider the age (or age range) of the child at the relevant time and, taking into account the evidence and information provided by the applicant, how this impacts on whether the child would be more likely to leave the UK with the applicant or remain in the UK with the other primary carer.

Age-related factors include whether the child is a baby, attending nursery or primary school or preparing for examinations.

## 3 The child's physical and emotional development

You must consider the child's physical and emotional development at the relevant time and, taking into account the evidence and information provided by the applicant, how this impacts on whether the child would be more likely to leave the UK with the applicant or remain in the UK with the other primary carer.

Factors relating to physical development include things like physical health and whether the child is going through puberty.

Factors relating to emotional development include mental health, feeling safe, healthy relationships and attachments and whether the child has suffered any abuse or trauma.

## 4 The extent of the child's emotional ties to the applicant and to the other primary carer

You must consider the extent of the child's emotional ties to the applicant, and to the other primary carer, at the relevant time and, taking into account the information and evidence provided by the applicant, how this impacts on whether the child would be more likely to leave the UK with the applicant or remain in the UK with the other primary carer.

You may find it helpful to make a list, based on the information and evidence provided by the applicant (and, where applicable, by the other primary carer and the child), of the child's emotional ties to the applicant, and a list of the child's emotional ties to the other primary carer, and then compare the 2 lists to draw a conclusion about whether the child has stronger emotional ties to one or equal emotional ties to both.

The starting point of this factor will usually be the child's living arrangements. For example, does the child live:

- in a household with the applicant and the other primary carer
- mostly with the applicant and sometimes with the other primary carer
- sometimes with the applicant and mostly with the other primary carer
- full-time with the other primary carer and not at all with the applicant

In general, the more time the child spends living with the applicant, the more this factor will weigh in favour that it is more likely the child would leave the UK with the applicant than remain in the UK with the other primary carer.

If the child lives full-time with the other primary carer and does not live with the applicant at all, then you will usually conclude that the child would remain in the UK with the other primary carer if the applicant leaves the UK.

However, it will always depend on the child's specific factual circumstances. For example, if the evidence shows that a 7 year-old child lived with their British citizen mother until 3 months ago, when they went to live with the applicant, you will need to consider whether the evidence suggests that this was for a good reason or for the purpose of strengthening the applicant's application to remain in the UK, and whether it is more likely than not that the child would return to live with their mother if the applicant left the UK.

Where the British citizen lives in a household with the applicant and the other primary carer, you will normally accept that the British citizen has equal emotional ties to, and is equally dependent on, the applicant and the other primary carer. However, if either the applicant or the other primary carer has only lived with the British citizen for a short time, you must consider their relationship with the British citizen before they started living together to establish the level of emotional ties and dependence.

Where the British citizen child divides their time between the applicant and the other primary carer, you must consider whether the other adult is an appropriate primary carer or whether the evidence raises any welfare concerns. If you have any concerns about the child's welfare, you must follow local procedures to raise them with the relevant authorities.

You must also consider the best interests of the child. The child's best interests are not on their own determinative of whether requiring the applicant to leave the UK for an indefinite period would mean that the child would be unable to continue living in the UK. They are a primary consideration and must be considered as such, together with all the other information and evidence before you. You must consider any evidence provided in support of the application, which may include the child's own views.

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

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

- would they be able to keep in contact with their friends and family

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

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

In addition to the points referred to in this section, you must also consider any other points in relation to the extent of the child's emotional ties to, and dependence on, the applicant and the other primary carer raised in the information and evidence provided by the applicant, the other primary carer and the child.

## **5 The risks which separation from the applicant might entail for that child's equilibrium**

You must consider the level of disruption that would be caused to the child's life in the UK if the applicant left the UK and whether it would be such a disruption that the child would be more likely to leave the UK with the applicant than to remain in the UK with the other primary carer.

You must base this assessment on the information and evidence provided by the applicant (and, where applicable, by the other primary carer and the child) rather than assumptions or hypotheticals.

The information and evidence provided may cover the anticipated disruption to aspects of the child's life, such as their physical or mental health, primary or secondary education, relationships beyond the applicant and the other primary carer (such as siblings, extended family and friendships) and any other ties to the UK (for example, where the child is an older teenager, work or further education).

## **6 Any other factors raised or implied in the application**

If the applicant, the other primary carer or the child provide (whether explicitly or implicitly) information and evidence about any factor not covered by the first 5 factors above, you must consider whether each such factor is relevant to the question of whether the child would be more likely to leave the UK with the applicant or to remain in the UK with the other primary carer.

If any such factor is relevant, you must assess its credibility and strength and then go on to weigh it in the balance alongside all the other relevant factors.

## **Conclusion**

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

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

When you have considered the British citizen's level of dependency on the applicant and on the other primary carer, you must draw an overall conclusion about whether, in practice, the British citizen would be (or would have been) compelled to leave the UK, the EEA and Switzerland if the applicant in fact left (or had left) the UK for an indefinite period.

Where, in practice, the British citizen would be (or would have been):

- able to continue living in the UK if the applicant in fact left (or had left) the UK for an indefinite period, the applicant will not be a 'person with a Zambrano right to reside', but you must go on to consider whether the British citizen could live (or could have lived) in the EEA or Switzerland if the applicant left (or had left) the UK for an indefinite period (see ['In the alternative' assessment](#))
- unable to continue living in the UK (if the applicant in fact left (or had left) the UK for an indefinite period), you must go on to consider whether the British citizen could live (or could have lived) in the EEA or Switzerland if the applicant left (or had left) the UK for an indefinite period (see ['In the alternative' assessment](#))

## The British citizen is an adult (over the age of 18)

Where the relevant British citizen is an adult (over the age of 18), you must consider whether, if the applicant left the UK, the British citizen would be more likely to leave the UK with the applicant or to remain in the UK.

As set out above, this assessment is not to be based on a hypothetical, assumed or counter-factual premise. It is also not to be based on the relevant British citizen's preference or choice; it is a question of whether the British citizen would be compelled, in practice, to leave the UK with the applicant.

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

### Sole primary carer

Where you have already accepted, under [stage 2](#), that the applicant is the sole primary carer of the relevant British citizen adult, you must consider:

- what level of care the applicant is providing
- whether others are also providing care and, if so, who they are and what their relationship is to the British citizen (for example, if they are a direct relative)
- where others are also providing care, what level of care they are providing

You must also consider whether:

- there is another direct relative who could become the British citizen's primary carer
- there is a local authority care provider or private care provider who could provide appropriate care to the British citizen such that they would not be compelled to leave the UK
- the British citizen is in receipt of medical care in the UK and, if so:
  - whether this means they are unable, or unlikely to be able, to travel
  - whether the medical care is such that they would be more likely to remain in the UK to continue receiving it, rather than to relocate to another country where the available medical care may be different

Once you have gathered all the above information, and any other available information which is relevant, you must balance all of these considerations to ascertain whether the British citizen is more likely to remain in the UK without the applicant or to leave the UK with them.

### Primary carer who shares responsibility with another person

Where you have already accepted, under [stage 2](#), that the applicant is a primary carer of the relevant British citizen adult, but that they share primary carer responsibility for the British citizen with another person (who is not reliant on being a 'person with a Zambrano right to reside'; for example, a British citizen), you must consider whether, if the applicant left the UK, the British citizen would be more likely to leave the UK with the applicant, or to remain in the UK with the other primary carer. In considering whether they would be more likely to remain in the UK, you must also take into account the factors set out under [Sole primary carer](#), above.

### The applicant is not a primary carer

If you decided, under stage 2, that the applicant is not the relevant British citizen's primary carer, you must conduct an 'in the alternative' assessment in line with this guidance. See ['In the alternative' assessment](#).

### Conclusion

Where, in practice, the adult British citizen would be (or would have been):

- able to continue living in the UK if the applicant in fact left (or had left) the UK for an indefinite period, the applicant will not be a 'person with a Zambrano right to reside', but you must go on to consider whether the British citizen could live (or could have lived) in the EEA or Switzerland if the applicant left (or had left) the UK for an indefinite period (see ['In the alternative' assessment](#))

- unable to continue living in the UK (if the applicant in fact left (or had left) the UK for an indefinite period), you must go on to consider whether the British citizen could live (or could have lived) in the EEA or Switzerland if the applicant left (or had left) the UK for an indefinite period (see [‘In the alternative’ assessment](#))

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

The second stage is to consider whether, if the applicant left the UK, the British citizen would be more likely to live with the applicant in either:

- an EEA Member State or Switzerland
- a third country (outside the UK, the EEA and Switzerland)

It is important to remember that, under Appendix EU, you are considering the position both:

- for the continuous qualifying period relied upon
- (where the applicant has not completed a continuous qualifying period of at least five years) at the date of the application under consideration

You are not considering the position as at the date you are deciding the application.

Broadly, there are 4 possible scenarios when considering this part of the assessment:

- the British citizen and the applicant both have a right to live in an EEA Member State or Switzerland
- the applicant has a right to live in an EEA Member State or Switzerland (in which case you must consider whether the British citizen could live there with them)
- the British citizen has a right to live in an EEA Member State or Switzerland (in which case you must consider whether the applicant could derive a right to reside from them or whether the British citizen would be more likely than not to live there with someone else)
- neither the British citizen nor the applicant has a right to reside in an EEA Member State or Switzerland

## Lawful residence in an EEA Member State or Switzerland

You must consider whether the British citizen and the applicant have (or had) a right to reside in an EEA Member State or Switzerland.

You can accept that the British citizen or the applicant has (or had) a right to reside in an EEA Member State or Switzerland if either:

- they hold the citizenship of an EEA Member State or Switzerland

- they have a valid Article 10 (of the Free Movement Directive) residence card as the family member or extended family member of an EEA citizen
- they have a document confirming they have a right to reside, or the new residence status, under Article 18 of the Withdrawal Agreement (or the equivalent provisions of the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement)
- they have a document confirming that they are exempt from immigration control, or have immigration status under domestic law, in the EEA Member State or Switzerland

## If the applicant is an EEA citizen / has a right to reside in an EEA Member State or Switzerland

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

The burden of proof is on the applicant to satisfy you, on the balance of probabilities, that either:

- the British citizen would not be able to live lawfully with them there
- the British citizen could live lawfully with them there, but in practice it is more likely that the British citizen would live with them in a third country

You must consider all the information and evidence provided.

In particular, there was scope, before the end of the transition period at 11pm GMT on 31 December 2020, for an EEA citizen and a British citizen family member to reside elsewhere in the EEA or in Switzerland under EU free movement law. The British citizen's right to begin doing so ended at the end of the transition period, unless they could qualify for a right to reside as either:

- a family member of an EEA citizen exercising EU free movement rights in the EEA Member State or Switzerland
- an eligible family member of a British citizen with relevant rights under the Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement

This does not alter the fact that the applicant must meet the criteria as a 'person with a Zambrano right to reside' in a continuous qualifying period which began before the specified date. An EEA citizen applicant is unlikely to do so, given that before the end of the transition period they were able to reside with a British citizen family member elsewhere in the EEA or in Switzerland.

## If the British citizen has a right to reside in an EEA Member State or Switzerland

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

The burden of proof is on the applicant to satisfy you, on the balance of probabilities, that either:

- the applicant would not be able to live lawfully with the British citizen there, and nobody else (such as a British citizen child’s other primary carer, or another direct relative who could assume primary responsibility for an adult British citizen) could live lawfully with the British citizen there
- the applicant, or another appropriate person, could live with the British citizen there, but in practice it is more likely that the British citizen would live with the applicant in a third country than in an EEA Member State or Switzerland with the applicant and/or the other appropriate person

You must consider all the information and evidence provided.

### **The British citizen is a child and the applicant is the sole primary carer**

If the British citizen is a child, and not a citizen of a Member State or Switzerland, they would only have had an EU law right of residence in an EEA Member State or Switzerland for more than 3 months – before the end of the transition period at 11pm GMT on 31 December 2020 – if they were self-sufficient and held comprehensive sickness insurance in accordance with Article 7(1)(b) of the Free Movement Directive. If they were, then they may also have, from the end of the transition period at 11pm GMT on 31 December 2020, a right to reside under the Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens’ Rights Agreement.

You must check if there is any evidence to suggest this may have been the case. If it is, then the applicant may have had in the EEA Member State or Switzerland (until the end of the transition period) a derivative right to reside as a ‘Chen’ primary carer and may have (after the end of the transition period) rights under the Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens’ Rights Agreement.

If the British citizen is a citizen of a Member State or Switzerland, or has a right to reside in one of those countries under domestic law, you are not required to research the relevant country’s domestic immigration law to ascertain the provisions made for family members, but the applicant must satisfy you, on the balance of probabilities, that they would not be eligible for immigration status in the relevant country as the British citizen’s family member.

### **The British citizen is a child and the applicant shares primary responsibility with another appropriate person**

If the applicant shares primary responsibility for the British citizen child with another appropriate person, you must follow the guidance immediately above under [The British citizen is a child and the applicant is the sole primary carer](#) and also consider whether the other appropriate person could reside lawfully with the British citizen in the EEA Member State or Switzerland.

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

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

## The British citizen is an adult

If the British citizen is an adult, and not a citizen of a Member State or Switzerland, they would only have had an EU law right of residence in an EEA Member State or Switzerland for more than 3 months – before the end of the transition period at 11pm GMT on 31 December 2020 – if they were a worker, self-employed, self-sufficient, a student or a jobseeker in accordance with Article 7(1) of the Free Movement Directive.

If you have accepted, under [stage 2](#), that the applicant requires primary care, for example, because of a severe physical or mental impairment, or serious long-term illness, that means they are unable to meet the majority of their own care needs, it is likely that they would have been unable – before the end of the transition period – to exercise their free movement rights as a worker, self-employed person, student or jobseeker.

If they had an Article 7(1) right to reside, then they may also have, from the end of the transition period, a right to reside under the Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement.

You must check if there is any evidence to suggest this may have been the case. If it is, then the applicant may have had in the EEA Member State or Switzerland (until the end of the transition period) a right to reside as an Article 2(2) family member (spouse, civil partner, dependent parent or grandparent, or dependent child or grandchild) and/or may have (after the end of the transition period) rights under the Withdrawal Agreement, the EEA EFTA Separation Agreement or the Swiss Citizens' Rights Agreement.

If the British citizen is also a citizen of a Member State or Switzerland, or has a right to reside in one of those countries under domestic law, you are not required to research the relevant country's domestic immigration law to ascertain the provisions made for family members, but the applicant must satisfy you, on the balance of

probabilities, that they would not be eligible for immigration status in the relevant country as the British citizen's family member.

If the applicant shares primary responsibility for the British citizen adult, or if there is another direct relative who could assume primary responsibility, you must also consider whether that other appropriate person could reside lawfully with the British citizen in the EEA Member State or Switzerland.

### What would happen in practice

If the evidence and information shows that the British citizen and the applicant (or, if appropriate, another person) could reside together lawfully in an EEA Member State or Switzerland, you must go on to consider whether it is more likely in practice that they would do so, or that the British citizen would go and live in a third country with the applicant.

The process for considering this is the same as under [Could the British citizen live in the UK?](#) (and the approach depends on whether the British citizen is a child or an adult) except you are considering the EEA Member State or Switzerland rather than the UK.

### If neither the applicant nor the British citizen has a right to reside in an EEA Member State or Switzerland

If neither the applicant nor the British citizen has a right to reside in an EEA Member State or Switzerland, then the application will not fall for refusal on this basis.

### Conclusion on stage 3

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

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

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

### Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 3, you must next go on to [section 6: All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or

limited leave to enter or remain under Appendix EU as a 'person with a Zambrano right to reside'.

**Related content**

[Contents](#)

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

**Related external links**

[Appendix EU to the Immigration Rules](#)

## Section 4: Eligibility: dependant of the primary carer

Throughout this section, ‘the applicant’ means a person who has applied as a ‘person with a Zambrano right to reside’ based on being a dependant under the age of 18 of a primary carer of a British citizen (sub-paragraph (b) of the definition in Annex 1 to Appendix EU).

The applicant’s primary carer (on whom the applicant is dependent) must also be the British citizen’s primary carer (falling within sub-paragraph (a) of the definition, guidance for which is in [section 3](#) of this guidance). This section refers to such a person as ‘the applicant’s primary carer’ and ‘the British citizen’s primary carer’, depending on the nature of the assessment to be undertaken.

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

These are:

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

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

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

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)  
[Immigration \(European Economic Area\) Regulations 2016](#)

# Stage 1: applicant under the age of 18

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

## Age

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

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

## Conclusion on stage 1

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

Where you are not satisfied of this, you must move on to the next stage to consider whether there are additional reasons for refusing the application as a 'person with a Zambrano right to reside'.

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

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

## Stage 2: primary carer with a Zambrano right to reside

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

### Primary carer

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

- has primary responsibility for that person's care
- shares equally the responsibility for that person's care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

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

Where the applicant has been issued with a residence card or a family permit under the EEA Regulations on the basis that they were the child under the age of 18 of the relevant British citizen's primary carer, you must assess whether the applicant remains in that person's primary care throughout the continuous qualifying period relied upon which began before the specified date.

### Stage (a): Assessing 'direct relative' or 'legal guardian'

#### Direct relative

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

- a parent
- a grandparent
- a brother or sister

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

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

Where the applicant has not been issued with such a document, you must be satisfied from information and evidence provided by the applicant that the relevant British citizen's primary carer is a direct relative of the applicant and was so before the specified date.

You must be satisfied of the claimed family relationship between the direct relative and the relevant British citizen.

The following evidence is acceptable to show that the applicant is related as claimed to the relevant British citizen's primary carer. Where other evidence is provided, you must assess it on a case-by-case basis to determine whether it is more likely than not that the relationship is as claimed.

| Claimed relationship | Evidence   |
|----------------------|--|
| Parent               | <p>The applicant's birth certificate showing that the relevant British citizen's primary carer is their mother or father.</p> <p>Where a recognised adoption has taken place, an adoption order showing that the relevant British citizen's primary carer adopted the applicant.</p> |
| Grandparent          | <p>The applicant's birth certificate and their relevant parent's birth certificate.</p> <p>Where a recognised adoption has taken place, an adoption order showing that the parent adopted the applicant or that the grandparent adopted the applicant's parent.</p>                  |
| Brother or sister    | <p>The applicant's birth certificate (or adoption certificate) and the relevant British citizen's primary carer's birth certificate (or adoption certificate) showing that they share one or both parent or parents.</p>   |

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

## Legal guardian

If the relevant British citizen's primary carer is not a direct relative of the applicant, they must be the applicant's legal guardian. If they are not, they do not meet the definition of a 'primary carer'.

Where the applicant has not been issued with a residence card or a family permit under the EEA Regulations based on the relevant British citizen's primary carer being their legal guardian, you must be satisfied from information and evidence

provided by the applicant that this remained the case throughout the continuous qualifying period relied upon which began before the specified date.

If they had been issued with a residence card or a family permit under the EEA Regulations based on the relevant British citizen's primary carer being their legal guardian, you must be satisfied that they continued to be the British citizen's legal guardian after the residence card or family permit was issued.

Where the applicant has turned 18 since the issue of the legal guardianship order and before completing a 5-year continuous qualifying period as a 'person with a Zambrano right to reside':

- if the applicant was previously granted limited leave to enter or remain under paragraph EU3 of Appendix EU as a person with a Zambrano right to reside and was under 18 at the date of application for that leave, you must disregard the fact that the relevant British citizen's primary carer ceased to be their legal guardian when they turned 18
- if the applicant has not already been granted limited leave to enter or remain as described above, then the applicant will have ceased to meet the 'primary carer' requirement when they turned 18

You must be satisfied, for example by the provision by the applicant of a valid legal guardianship order or special 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 relevant British citizen's primary carer is the legal guardian of the applicant.

An alternative court order transferring parental responsibility, or otherwise establishing primary carer responsibility, for the applicant 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 whether 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, for example

Such court orders must be considered on a case-by-case basis to determine whether they establish that the person is the child's legal guardian with primary carer responsibility.

## Stage (b): Assessing primary carer responsibility

## Primary carer responsibility for a child by a parent

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

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

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

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

## Other parent

In all cases in which only one parent is applying, or has applied, to the scheme as a 'person with a Zambrano right to reside', you must establish the whereabouts and immigration status of the applicant's other parent (where the applicant has the same other parent as the British citizen, this should already have been established in the context of the primary carer's application to the scheme). If this information is not held, you must ask the applicant to provide it.

Where there is evidence to suggest that the relevant British citizen's primary carer did not have permission to take the applicant out of another jurisdiction (for example, where a court in another country has ordered that the child live with the other parent or that neither parent may take the child abroad without the consent of each other or the court), you must contact the British Embassy or High Commission in that other country before deciding the application. The British Embassy or High Commission would then need to contact the relevant authorities to determine whether the applicant needs to return to the other country.

## Deceased parent

If the applicant claims the other parent has died, the applicant can satisfy you of this by, for example, providing the death certificate of that parent.

## Other direct relative or legal guardian with primary carer responsibility for a child

Where the relevant British citizen's primary carer claiming to be the applicant's primary carer is not their parent, you must establish the whereabouts and immigration status of both of the applicant's parents, currently and for the relevant period. If this information is not held, you must ask the applicant to provide it. If the applicant claims the parents have died, the applicant can satisfy you of this by, for example, providing the death certificates of the parents.

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

## **With a Zambrano right to reside**

To consider whether the applicant's primary carer meets the requirements of subparagraph (a) of the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU, you must ascertain whether they have been granted indefinite or limited leave to enter or remain under Appendix EU on that basis.

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. If the applicant does not provide the primary carer's application number, you must check Home Office caseworking systems using the information available or, if necessary, request further information from the applicant.

---

**Official – sensitive: start of section**

The information in this section has been removed as it is restricted for internal Home Office use only.

The information in this section has been removed as it is restricted for internal Home Office use only.

**Official – sensitive: end of section**

---

## Conclusion on stage 2

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

Where you are not satisfied of this, you must move on to the next stage to consider whether there are additional reasons for refusing the application as a 'person with a Zambrano right to reside'.

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

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

## Stage 3: primary carer prevented from residing in the UK

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

### Assessing whether a primary carer would be unable to reside in the UK

An applicant can only be considered a ‘person with a Zambrano right to reside’ where, in practice, the relevant British citizen’s primary carer would be unable to reside in the UK if the applicant were in fact required to leave the UK for an indefinite period (because, where that is so, the British citizen would be compelled to leave the UK, the EEA and Switzerland).

You will have already established that the applicant cannot be considered a ‘person with a Zambrano right to reside’ where they have leave to enter or remain in the UK, other than leave granted under Appendix EU, leave in effect by virtue of section 3C of the Immigration Act 1971 or leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in Annex 1 to that Appendix.

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

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

### ‘In the alternative’ assessment

If you have already decided that the application will be refused for any (or all) of the following reasons:

- the applicant is not under 18 (stage 1)
- the relevant British citizen’s primary carer is not, or has ceased to be, the applicant’s primary carer (stage 2)
- the applicant’s primary carer does not meet the requirements of sub-paragraph (a) of the definition of a ‘person with a Zambrano right to reside’ in Annex 1 to Appendix EU (stage 2)

you must approach the stage 3 question of whether the primary carer could continue to live in the UK as if those earlier requirements are met. This is known as an ‘in the alternative’ consideration. In other words, if we are wrong about the earlier requirements not being met, should the application succeed under stage 3?

The refusal letter must both:

- be clear that these questions have been considered ‘in the alternative’, without prejudice to the primary position that the earlier requirement is (or requirements are) not met
- state either that:
  - it is accepted that the application would succeed under stage 3 if the requirements considered under stage 1 and stage 2 were met
  - the application would not succeed under stage 3 even if the requirements considered under stage 1 and stage 2 were met. Where this is the case, you must explain the reasons clearly

## Could the primary carer live in the UK?

You must consider whether, in practice, the relevant British citizen’s primary carer would be unable to reside in the UK if the applicant were in fact required to leave the UK for an indefinite period.

To assess this, you must consider whether, if the applicant left the UK, the relevant British citizen’s primary carer would be more likely either:

- to remain in the UK without the applicant
- to leave the UK with the applicant

It is important to remember that you are considering the position both:

- for the continuous qualifying period relied upon
- (where the applicant has not completed a continuous qualifying period of at least 5 years) at the date of the application under consideration

You are not considering the position as at the date you are deciding the application.

The guidance below sets out how to assess the most common relevant factors. As you consider each factor, you must think about:

- what the applicant claims is the factual position
- whether the applicant’s claims are credible
- whether the applicant’s claims are supported by any other evidence
- whether that other evidence is credible
- what weight to give the evidence in the balancing exercise

Once you have considered each factor below, and any additional factors the applicant has raised, you must consider them in the round to determine what is more likely than not to happen in practice.

Where you have already accepted, under [stage 2](#), that the relevant British citizen's primary carer is the sole primary carer of the applicant, and you have determined that the applicant lives full-time in a single-adult household with the primary carer, then you will usually accept that, if the applicant left the UK, the primary carer would be more likely to leave the UK with the applicant than to remain in the UK without them.

Where you concluded, under [stage 2](#), that the relevant British citizen's primary carer is the joint primary carer of the applicant, you must consider whether, if the applicant left the UK, the relevant British citizen's primary carer would be more likely to leave the UK with the applicant, or to remain in the UK without the applicant (for example, if the other primary carer either:

- already lives outside the UK
- lives in the UK but is not a 'person with a Zambrano right to reside' and would leave the UK with the applicant to continue as their primary carer)

In Chavez-Vilchez, the Court of Justice of the European Union ruled that when assessing whether there is a relationship of dependency between a third country national parent and a child such that the child would be compelled to leave the territory of the EU as a whole if the third country national parent were refused a right of residence (a test which we can use by analogy here, but limited to the UK), the child's best interests require that all the specific circumstances be taken into account, including the following factors:

- the age of the child
- the child's physical and emotional development
- the extent of the child's emotional ties both to the EU citizen parent and to the third country national parent
- the risks which separation from the third country national parent might entail for the child's equilibrium

The guidance below sets out how to ensure that all the specific circumstances, including these factors (adapted, as appropriate, for the range of circumstances you may see in applications), are taken into account when you consider whether, in practice, the relevant British citizen's primary carer would be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period.

## 1 The circumstances of the other primary carer

To consider whether the British citizen's primary carer would be more likely to leave the UK with the applicant or to remain in the UK without them, you must first consider the circumstances of the other primary carer.

This includes whether the other primary carer either:

- is resident in the UK and, if so, whether they are lawfully resident or liable to removal from the UK

- is resident in another country

Where the other primary carer is lawfully resident in the UK, you must consider factors such as whether they have limited or indefinite leave to enter or remain in the UK and on what basis (or if they are exempt from immigration control), how long they have lived in the UK, how long they lived in the country of their nationality and whether they still have ties to the country of their nationality.

## Unsuitable care arrangements

There may be instances where there is a joint primary carer, but they are considered unsuitable. For example, where there are child protection issues which would prevent the child being placed with them. In such cases it would not be appropriate to expect the child to live with that person.

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

## 2 The applicant's age

You must consider the age (or age range) of the applicant at the relevant time and, taking into account the evidence and information provided by the applicant, how this impacts on whether the British citizen's primary carer would be more likely to leave the UK with the applicant or remain in the UK without the applicant.

Age-related factors include whether the applicant is a baby, attending nursery or primary school or preparing for examinations.

## 3 The applicant's physical and emotional development

You must consider the applicant's physical and emotional development at the relevant time and, taking into account the evidence and information provided by the applicant, how this impacts on whether the British citizen's primary carer would be more likely to leave the UK with the applicant or remain in the UK without the applicant.

Factors relating to physical development include things like physical health and whether the applicant is going through puberty.

Factors relating to emotional development include mental health, feeling safe, healthy relationships and attachments and whether the applicant has suffered any abuse or trauma.

## 4 The extent of the applicant's emotional ties to the British citizen's primary carer and to the other primary carer

You must consider the extent of the applicant's emotional ties to the British citizen's primary carer, and to the other primary carer, at the relevant time and, taking into account the information and evidence provided by the applicant. You must consider how this impacts on whether the British citizen's primary carer would be more likely to leave the UK with the applicant or remain in the UK without the applicant.

You may find it helpful to make a list, based on the information and evidence provided by the applicant (and, where applicable, by the primary carers), of the applicant's emotional ties to the British citizen's primary carer, and a list of the applicant's emotional ties to the other primary carer. You can then compare the 2 lists to draw a conclusion about whether the applicant has stronger emotional ties to one or equal emotional ties to both.

The starting point of this factor will usually be the applicant's living arrangements. For example, does the applicant live:

- in a household with the British citizen's primary carer and the other primary carer
- mostly with the British citizen's primary carer and sometimes with the other primary carer
- sometimes with the British citizen's primary carer and mostly with the other primary carer
- full-time with the other primary carer and not at all with the British citizen's primary carer

In general, the more time the applicant spends living with the British citizen's primary carer, the more this factor will weigh in favour that it is more likely the British citizen's primary carer would leave the UK with the applicant than remain in the UK without the applicant.

If the applicant lives full-time with the other primary carer and does not live with the British citizen's primary carer at all, then you will usually conclude that the British citizen's primary carer would remain in the UK without the applicant if the applicant leaves the UK.

However, it will always depend on the applicant's specific factual circumstances. For example, if the evidence shows that a 7-year-old applicant lived with their other primary carer (for example, their mother) until 3 months ago, when they went to live with the British citizen's primary carer (for example, the applicant's father), you will need to consider whether the evidence suggests that this was for a good reason or for the purpose of strengthening the applicant's application to remain in the UK. You will also need to consider whether it is more likely than not that the applicant's mother would resume the applicant's full-time care if the applicant left the UK, rather than the applicant's father leaving the UK with the applicant.

Where the applicant lives in a household with the British citizen's primary carer and the other primary carer, you will normally accept that the applicant has equal emotional ties to, and is equally dependent on, the British citizen's primary carer and the other primary carer. However, if either the British citizen's primary carer or the other primary carer has only lived with the applicant for a short time, you must

consider their relationship with the applicant before they started living together to establish the level of emotional ties and dependence.

When the applicant divides their time between the British citizen's primary carer and the other primary carer, you must consider whether the other adult is an appropriate primary carer or whether the evidence raises any welfare concerns. If you have any concerns about the child's welfare, you must follow local procedures to raise them with the relevant authorities.

You must also consider the best interests of the applicant. The applicant's best interests are not on their own determinative of whether the British citizen's primary carer would be prevented from residing in the UK if the applicant left the UK for an indefinite period. 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 applicant's own views.

When considering the applicant's best interests, you must consider the consequences on their everyday life if they are separated from the British citizen's primary carer, for example:

- would they be safe and well cared for and have access to any support they need to cope with change
- would they be able to keep in contact with the British citizen's primary carer, for example through letters, telephone calls, instant messaging, and video messaging services such as Zoom and FaceTime, email and/or visits
- would they need to move to a home in another country in which they have, or have not, lived before, and if so, how does the nature, quality and location of their current home compare with where they would live in future
- what would be the degree of disruption to their education by switching from a school in the UK to a school in the other country
- would they be able to keep in contact with their friends and family

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

- live in the country to which they have the strongest ties
- live with both parents or if the parents live apart, to have contact with both parents, unless there are any child welfare concerns
- minimise disruption to their everyday life, unless it is in their best interests to change the current position

In addition to the points referred to in this section, you must also consider any other points in relation to the extent of the applicant's emotional ties to, and dependence on, the British citizen's primary carer and the other primary carer raised in the information and evidence provided by the applicant, the British citizen's primary carer and the other primary carer.

## 5 The risks which separation from the British citizen's primary carer might entail for the applicant's equilibrium

You must consider the level of disruption that would be caused to the applicant's life in the UK if the British citizen's primary carer remained in the UK without the applicant and whether it would be such a disruption that British citizen's primary carer would be more likely to leave the UK with the applicant than to remain in the UK without them.

You must base this assessment on the information and evidence provided by the applicant (and, where applicable, by the British citizen's primary carer and the other primary carer) rather than assumptions or hypotheticals.

The information and evidence provided may cover the anticipated disruption to aspects of the applicant's life such as their physical health, mental health, primary or secondary education and relationships beyond the British citizen's primary carer and the other primary carer (such as the British citizen, siblings, extended family and friendships).

## 6 Any other factors raised or implied in the application

If the applicant, the British citizen's primary carer or the other primary carer provide (whether explicitly or implicitly) information and evidence about any factor not covered by the first 5 factors above, you must consider whether each such factor is relevant to the question of whether the British citizen's primary carer would be more likely to leave the UK with the applicant or to remain in the UK without the applicant.

If any such factor is relevant, you must assess its credibility and strength and then go on to weigh it in the balance alongside all the other relevant factors.

## Conclusion

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

- entirely dependent on the British citizen's primary carer and not dependent on the other primary carer at all, or vice versa
- much more dependent on the British citizen's primary carer and much less dependent on the other primary carer, or vice versa
- slightly more dependent on the British citizen's primary carer and slightly less dependent on the other primary carer, or vice versa
- equally dependent on the British citizen's primary carer and on the other primary carer

When you have considered the applicant's level of dependency on the British citizen's primary carer and on the other primary carer, you must draw an overall conclusion about whether, in practice, the British citizen's primary carer would be (or would have been) prevented from residing in the UK if the applicant in fact left (or had left) the UK for an indefinite period.

## Conclusion on stage 3

Where you are satisfied that, in practice, the British citizen'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 had left) the UK for an indefinite period, you must move on to the overall conclusion below.

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

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

## Overall conclusion

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

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

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

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

These are:

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

### Related content

#### [Contents](#)

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

EU Settlement Scheme: family member of a qualifying British citizen

### Related external links

#### [Appendix EU to the Immigration Rules](#)

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

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

## Consideration

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

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

## Conclusion on stage 1

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

Where you are not satisfied of this, you must move on to the next stage to consider whether there are additional reasons for refusing the application as a ‘person with a Zambrano right to reside’.

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

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

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

### Consideration

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

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

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

### Conclusion on stage 2

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

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11 (and, where relevant, EU12), EU11A, EU14 and EU14A of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

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

## Overall conclusion

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

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

# Section 6: All applications not so far concluded

## Continuous qualifying period

Where you are satisfied that the application meets the requirements of the relevant additional stages, you must then use EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members to establish whether the applicant has completed a continuous qualifying period of 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.

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

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

You must be satisfied that the following requirements are met:

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

As described above, the applicant’s continuous qualifying period in the UK as a ‘person with a Zambrano right to reside’ must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 11:59pm GMT on the date they arrived in the UK).

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

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

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

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

You must be satisfied that the following requirements are met:

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

As described above, the applicant's continuous qualifying period in the UK as a 'person with a Zambrano right to reside' must have begun before the specified date (11pm GMT on 31 December 2020 or, where the applicant is a [relevant EEA family permit case](#), 11:59pm GMT on the date they arrived in the UK).

## Evidence

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

## Decision

### Suitability requirements

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

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

Where you are satisfied that:

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

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

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

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

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

Where you are satisfied that:

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

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

## Refusal

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

### Related content

#### [Contents](#)

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

EU Settlement Scheme: suitability requirements

### Related external links

#### [Appendix EU to the Immigration Rules](#)

# Section 7: Applications to switch from pre-settled to settled status

## How to approach the consideration

### Previous application

Where a person with limited leave to enter or remain granted under Appendix EU (known as ‘pre-settled status’ under the EU Settlement Scheme) as a ‘person with a Zambrano right to reside’ makes a valid application under Appendix EU for indefinite leave to enter or remain (known as ‘settled status’ under the scheme) as such a person (or as a ‘person who had a derivative or Zambrano right to reside’), you do not generally need to revisit the basis on which that limited leave was granted.

However, you must be satisfied that they did not hold limited leave to enter or remain (other than under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 or granted by virtue of having arrived in the UK with an entry clearance in the form of an EUSS Family Permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in Annex 1 to that Appendix) (‘alternative limited leave’) either:

- at the specified date (generally, 11pm GMT on 31 December 2020)
- at the date of the first application under Appendix EU (following which they were granted limited leave to enter or remain, either by the decision-maker or following a successful appeal against a decision to refuse the Appendix EU application)

The Upper Tribunal reported its decision in *Sonkor (Zambrano and non-EUSS leave)* [2023] UKUT 00276 (20 April 2023) which confirmed that a person with leave to remain at the relevant time could not meet the definition of a ‘person with a Zambrano right to reside.’ In its headnote, the Upper Tribunal said:

1. The EU Settlement Scheme (“EUSS”) makes limited provision for certain Ruiz Zambrano v Office National de l’Emploi [2011] Imm AR 521 carers to be entitled to leave to remain, as a matter of domestic law.
2. A Zambrano applicant under the EUSS who holds non-EUSS limited or indefinite leave to remain at the relevant date is incapable of being a “person with a Zambrano right to reside”, pursuant to the definition of that term in Annex 1 to Appendix EU of the Immigration Rules.
3. Nothing in *R (Akinsanya) v Secretary of State for the Home Department* [2022] 2 WLR 681, [2022] EWCA Civ 37 calls for a different approach.

If the grant of limited leave to enter or remain was incorrect because the person held alternative limited leave at the end of the transition period and / or at the date of the first Appendix EU application, they will not meet the requirements for indefinite leave

to enter or remain as a 'person with a Zambrano right to reside', and the current application must be refused, because either:

- they will not have a continuous qualifying period at all
- they will not have a continuous qualifying period which began before the specified date

### Example 1

Ms A applied under Appendix EU as a 'person with a Zambrano right to reside' on 1 December 2020. She relied on a continuous qualifying period which began when her daughter, Miss B, was born in the UK on 19 February 2019. Miss B acquired British citizenship automatically at birth, through her father. Ms A was granted limited leave to remain on this basis under Appendix EU on 1 March 2021. She made a valid application under Appendix EU for indefinite leave to remain on 22 February 2024.

You check Home Office systems and ascertain that Ms A had entered the UK unlawfully in 2017 and had never applied for, or been granted, leave to enter or remain in the UK other than under Appendix EU. You are therefore satisfied that she had started a continuous qualifying period on 19 February 2019 and that it was continuing at the date of her first Appendix EU application on 1 December 2020.

You go on to consider whether Ms A's continuous qualifying period as a 'person with a Zambrano right to reside' has continued both:

- since 1 December 2020
- until 19 February 2024 (5 years after the start of the continuous qualifying period)

### Example 2

Mr C applied under Appendix EU as a 'person with a Zambrano right to reside' on 30 June 2021. He relied on a continuous qualifying period which began when his 11 year old son, Master D, was registered as a British citizen on 21 June 2019.

Mr C's Appendix EU application was refused on 1 July 2022. The First-tier Tribunal allowed his appeal on 15 January 2023 and the Home Office was refused permission to appeal to the Upper Tribunal. The appeal was implemented by granting Mr C limited leave to remain under Appendix EU on 30 March 2023.

On 24 June 2024, Mr C made a valid application under Appendix EU for indefinite leave to remain on the basis that he had completed a 5 year continuous qualifying period, from 21 June 2019 to 21 June 2024, as a 'person with a Zambrano right to reside'.

You check Home Office systems and ascertain that, on 2 December 2020, Mr C was granted limited leave to remain as a partner under Appendix FM until 2 June 2023. Therefore, it is the case both that:

- he had alternative leave at the specified date and at the date of his first Appendix EU application
- his application for indefinite leave to enter or remain must be refused because he does not have a 5 year continuous qualifying period which began before the specified date

You go on to consider whether the applicant meets the eligibility and suitability requirements relevant to the period from the date of the first Appendix EU application (30 June 2021) to the date of the current Appendix EU application (24 June 2024).

The application for indefinite leave to enter or remain must also be refused for the additional reasons that Mr C both:

- did not have a continuous qualifying period as a ‘person with a Zambrano right to reside’ from 30 June 2021 to 2 June 2023 because he held alternative leave granted under Appendix FM
- did not start a new continuous qualifying period after his Appendix FM leave expired on 2 June 2023 because it is not possible to start a new continuous qualifying period after the specified date (generally, 11pm GMT on 31 December 2020)

## Current application

Once you have considered this, you must go on to consider whether the applicant meets the eligibility and suitability requirements relevant to the period from the date of the first Appendix EU application to whichever is the earlier, either:

- the date of the current Appendix EU application
- the date on which a 5 year continuous qualifying period as a ‘person with a Zambrano right to reside’ could have been completed

For example, if the current Appendix EU application was made on 3 January 2025 and the continuous qualifying period as a ‘person with a Zambrano right to reside’ began on:

- 4 September 2019 – you must consider the period from the date of the first Appendix EU application to 4 September 2024
- 17 January 2020 – you must consider the period from the date of the first Appendix EU application to 3 January 2025

The following guidance will refer to this date as the ‘relevant date’.

## Eligibility (from the date of the first application to the relevant date)

### Stage 1: Alternative leave to enter or remain

As set out in [Section 2: All applications: initial eligibility requirements](#), the applicant for the [relevant period](#):

- must not be an '[exempt person](#)'
- must not have [leave to enter or remain in the UK](#), unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix

If the applicant was not an 'exempt person' and did not have alternative leave to enter to remain (under another part of the Immigration Rules, such as Appendix FM, or outside the Immigration Rules) during the relevant period, go to one of the following:

- [Applicant is a primary carer](#)
- [Applicant is a dependant of a primary carer](#)

There are several possible scenarios where an applicant has been granted alternative leave to enter or remain (under another part of the Immigration Rules (such as, as is most likely, Appendix FM) or outside the Immigration Rules) after the date of their first Appendix EU application.

To work out which scenario applies, it is important that you have a clear chronology for the case you are considering.

This is because, until 5 April 2021, if the applicant made a valid application under:

- Appendix FM and then made a valid application under Appendix EU, the Appendix EU application varied the Appendix FM application (and therefore the Appendix FM application could not be considered)
- Appendix EU and then made a valid application under Appendix FM, the Appendix FM application varied the Appendix EU application (and therefore the Appendix EU application could not be considered)

From 6 April 2021 (as per version 11 of this published guidance and, from 6 April 2022, Appendix EU), if the applicant made a valid application under Appendix FM (or another type of human rights claim) and then a valid application under Appendix EU (or vice versa), both applications fell to be considered.

Where both applications fell to be granted, the applicant would have been informed that they satisfied the relevant criteria in respect of both applications and they were asked to confirm which application they wanted to be decided and which they wanted to be treated as withdrawn. If the applicant did not so confirm within 14 days, the latest application would have been decided and the other treated as withdrawn.

If for any reason the relevant process described above was not followed, you will need to establish which process should have been followed and ensure that the

applicant has not been disadvantaged by the error. Guidance on how to do this is set out below, but if the applicant in an individual case shows that this results in unfairness in their circumstances, consideration must be given as to how best to avoid this.

- Scenario 1: Valid Appendix FM and Appendix EU applications both made before 6 April 2021
- Scenario 2: One valid application, or both valid applications, made on or after 6 April 2021 (and both were pending at the same time)
- Scenario 3: Valid Appendix FM application made after the applicant's Appendix EU application as a 'person with a Zambrano right to reside' was granted
- Scenario 4: Valid Appendix FM application made after the applicant's Appendix EU application as a 'person with a Zambrano right to reside' was refused and before their Appendix EU appeal was allowed

### **Scenario 1: Valid Appendix FM and Appendix EU applications both made before 6 April 2021**

If both applications were made before 6 April 2021, then the second application varied the first, meaning that only the second application fell to be considered.

If the Appendix EU application was made first and was granted, this was an error because it had been varied by the later Appendix FM application. If the Appendix FM application was subsequently granted, then the applicant has not been disadvantaged because the error was rectified. As the Appendix EU leave was varied to Appendix FM leave, the current Appendix EU application must be either:

- rejected as invalid where it was not made by the 'required date' of before 9 August 2023
- where it was made by the 'required date' of before 9 August 2023, refused on the basis that the continuous qualifying period as a 'person with a Zambrano right to reside' ended when the applicant was granted Appendix FM leave

If the Appendix EU application was made first and was refused, this was an error, but the applicant has not been disadvantaged by the error.

If the Appendix FM application was made first and was granted, this was an error because it had been varied by the later Appendix EU application. If the Appendix EU application was subsequently granted, then the Appendix EU leave varied the Appendix FM leave. Where this happened, for the purposes of deciding the current Appendix EU application, to ensure the applicant is not disadvantaged by the error, you must treat the Appendix FM leave as if it had not been granted.

If the Appendix FM application was made first and was refused, this was an error, but the applicant has not been disadvantaged by the error.

### **Scenario 2: One valid application, or both valid applications, made on or after 6 April 2021 (and both were pending at the same time)**

Where this applies, both applications fell to be considered and, if they both fell to be granted, the applicant should have been asked to confirm which application they wanted to be decided and which they wanted to be treated as withdrawn. If the applicant did not so confirm within 14 days, the latest application would have been decided and the other treated as withdrawn.

The guidance immediately below sets out what to do if this process was not followed.

If limited leave to enter or remain was granted under Appendix FM **before** limited leave to enter or remain was granted under Appendix EU, then as a matter of law the Appendix FM leave was varied to Appendix EU leave. Where this happened, we cannot know which application the applicant would have confirmed should be decided, and for the purposes of deciding the current Appendix EU application, you must treat the Appendix FM leave as if it had not been granted.

If limited leave to enter or remain was granted under Appendix FM **after** limited leave to enter or remain was granted under Appendix EU, the Appendix EU leave was varied to Appendix FM leave and technically the current Appendix EU application:

- is not valid where it was not made by the 'required date' of before 9 August 2023
- where it was made by the 'required date' of before 9 August 2023, falls for refusal on the basis that the continuous qualifying period of less than five years as a 'person with a Zambrano right to reside' ended when the applicant was granted Appendix FM leave

Where this happened, you will need to review whether this has already been brought to the applicant's attention or whether they could not have reasonably known that they ceased to have leave under Appendix EU when they were granted leave under Appendix FM. If you consider that the applicant has been disadvantaged by the error, you may decide for the purposes of deciding the current Appendix EU application to treat the Appendix FM leave as if it had not been granted and the Appendix EU leave as if it had not been varied.

### **Scenario 3: Valid Appendix FM application made after the applicant's Appendix EU application as a 'person with a Zambrano right to reside' was granted**

Where the applicant was granted limited leave to enter or remain as a 'person with a Zambrano right to reside' under Appendix EU (whether at the initial decision stage, following an administrative review application or following an allowed appeal), and then made a successful application under Appendix FM, the Appendix FM leave varied the Appendix EU leave and the current Appendix EU application must be either:

- rejected as invalid where it was not made by the 'required date' of before 9 August 2023
- where it was made by the 'required date' of before 9 August 2023, refused on the basis that the continuous qualifying period of less than five years as a

'person with a Zambrano right to reside' ended when the applicant was granted Appendix FM leave

#### **Scenario 4: Valid Appendix FM application made after the applicant's Appendix EU application as a 'person with a Zambrano right to reside' was refused and before their Appendix EU appeal was allowed**

If the applicant's valid Appendix EU application as a 'person with a Zambrano right to reside' was refused, and the applicant made a successful Appendix FM application after the Appendix EU application was refused and before their Appendix EU appeal was eventually allowed under paragraph EU14 of Appendix EU:

- their limited leave to enter or remain granted under Appendix FM will not have been relevant to their Appendix EU appeal (because the relevant date for the Appendix EU appeal was the date of the valid Appendix EU application)
- in some cases, post-decision casework may have contacted the applicant after their appeal was allowed to ask them whether they would like the appeal determination implemented or if they would prefer to continue with their Appendix FM leave
- where the applicant was not so contacted – or if they were contacted and opted to have the appeal determination implemented in full knowledge that they would not be eligible for indefinite leave to enter or remain – unless the applicant completed a 5 year continuous qualifying period as a 'person with a Zambrano right to reside' before they were granted limited leave to enter or remain under Appendix FM, the limited leave to enter or remain granted under Appendix FM will have ended the applicant's continuous qualifying period as a 'person with a Zambrano right to reside' even though the allowed appeal will have been implemented with a grant of limited leave to enter or remain under Appendix EU (and which will have varied the Appendix FM limited leave), and the current Appendix EU application must be either:
  - rejected as invalid where it was not made by the 'required date' of before 9 August 2023.
  - where it was made by the 'required date' of before 9 August 2023, refused on the basis that the continuous qualifying period of less than 5 years as a 'person with a Zambrano right to reside' ended when the applicant was granted Appendix FM leave

If you have a case which falls outside the four scenarios set out above, you must discuss this with your senior caseworker and, if necessary, seek policy advice.

Where the applicant did not have alternative leave to enter or remain at a material time, the guidance below sets out how to consider whether they now meet the requirements for indefinite leave to enter or remain on that basis (if they have applied for indefinite leave to enter or remain as a 'person who had a derivative or Zambrano right to reside', see [Section 5: Person who had a derivative or Zambrano right to reside](#)).

## Applicant is a primary carer

### Stage 2: Assessing British citizenship and UK residence

#### Assessing British citizenship

Where the British citizen is an adult at the date of the current Appendix EU application, you must be satisfied that the British citizen has not lost their British citizenship since the date of the applicant's first Appendix EU application through either:

- renunciation
- a deprivation decision
- a nullification decision

#### Assessing UK residence

You must be satisfied that the British citizen has continued to be resident in the UK since the date of the applicant's first Appendix EU application.

Where there is reason to believe that the British citizen has had one or more absence from the UK during the continuous qualifying period on which the applicant relies, you must consider the length and nature of each absence to determine whether or not, on the balance of probabilities, the British citizen ceased residing in the UK for that period of time.

If the British citizen ceased residing in the UK, then the applicant's continuous qualifying period will have been broken, even if the applicant did not leave the UK and even if the British citizen started residing in the UK again at a later date. If the British citizen did not cease residing in the UK (for example, the length of the absence was two weeks and for the purpose of a holiday), then the applicant's continuous qualifying period will not have been broken.

### Stage 3: Primary carer

You must be satisfied, by following the guidance at [Stage 2: primary carer](#), that the applicant continued to be the British citizen's primary carer between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a five-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application).

Where the British citizen has turned 18 years old since the date of the first Appendix EU application, this consideration must include (but is not limited to) whether:

- the applicant is still a direct relative or legal guardian. If the applicant was the British citizen's legal guardian before they turned 18, it is likely the British citizen is no longer subject to a legal guardian order. See [Stage \(a\): Assessing 'direct relative' or 'legal guardian'](#)

- the British citizen has a severe physical or mental disability or impairment such that they require primary carer. See [Primary responsibility for adults](#)

## Stage 4: British citizen unable to reside in the UK, the EEA or Switzerland

You must be satisfied, by following the guidance at [Stage 3: British citizen unable to reside in the UK, the EEA or Switzerland](#), that the British citizen would have been unable to reside in the UK, the EEA or Switzerland between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5 year continuous qualifying period, if this was earlier than the date of the current Appendix EU application), if the applicant in fact had left the UK for an indefinite period.

## Applicant is a dependant of a primary carer

### Stage 2: Applicant under the age of 18

As set out in [Stage 1: applicant under the age of 18](#), the applicant does not need to continue to be under the age of 18, as long as they were under the age of 18 before the specified date and at the date of their first Appendix EU application (following which they were granted limited leave to enter or remain).

### Stage 3: Child of a primary carer with a Zambrano right to reside

You must be satisfied, by following the guidance at [Stage 2: primary carer with a Zambrano right to reside](#), that the British citizen's primary carer has continued both:

- to be the applicant's primary carer
- to be a person with a Zambrano right to reside

from the date of the applicant's first Appendix EU application to the date of their current Appendix EU application.

### Stage 4: Primary carer prevented from residing in the UK

You must be satisfied, by following the guidance at [Stage 3: primary carer prevented from residing in the UK](#), that the primary carer would have been unable to reside in the UK between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5 year continuous qualifying period, if this was earlier than the date of the current Appendix EU application), if the applicant in fact had left the UK for an indefinite period.

## Decision

## Suitability requirements

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

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

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9
- the applicant meets the eligibility requirements for ILE or ILR in accordance with condition 3 of rule EU11 (or, where relevant, of rule EU12)
- the applicant is not to be refused on grounds of suitability in accordance with rule EU15 or EU16

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

## 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. You must include all relevant reasons for refusal in the decision.

Where the applicant's limited leave to enter or remain expired before you decided the application, section 3C of the Immigration Act 1971 will apply until the applicant exhausts any appeal rights under the Immigration (Citizens' Rights Appeals) (EU Exit) Regulations.

Where the applicant still has limited leave to enter or remain as a 'person with a Zambrano right to reside', see Refusal and cancellation of permission to enter and Cancellation and curtailment of permission for guidance on when and how to refer a case to consider (respectively) cancelling or curtailing leave to enter or remain under Appendix EU on the grounds that the person ceased to meet, or never met, the requirements of Appendix EU.

### Related content

#### [Contents](#)

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

EU Settlement Scheme: suitability requirements

### Related external links

[Appendix EU to the Immigration Rules](#)

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

[Sonkor \(Zambrano and non-EUSS leave\) \[2023\] UKUT 00276 \(20 April 2023\)](#)