



Home Office

EU Settlement Scheme: person with a Zambrano right to reside

Version 4.0

Contents

Contents.....	2
About this guidance.....	5
The best interests of the child.....	5
Contacts	5
Publication	6
Changes from last version of this guidance	6
Introduction	7
Who is a ‘person with a Zambrano right to reside’?	9
Zambrano cases – regulation 16(5)	10
Dependant of the primary carer – regulation 16(6)	10
Making an application: deadline	11
Eligibility requirements	12
Exempt person	12
Leave to enter or remain in the UK, other than leave granted under Appendix EU	13
Indefinite leave to enter or remain	14
Limited leave to enter or remain	15
Evidence.....	15
Eligibility – Zambrano carers	17
Stage 1: assessing British citizenship	19
Assessing British citizenship.....	19
Persons not considered British citizens	19
Conclusion.....	19
Stage 2: direct relative or legal guardian	21
Assessing ‘direct relative’ or ‘legal guardian’	21
Conclusion.....	21
Stage 3: primary carer.....	22
Primary carer	22
Conclusion.....	22
Stage 4: British citizen unable to reside in the UK, the EEA or Switzerland	23
Assessing whether a British citizen would be unable to reside in the UK, the EEA or Switzerland.....	23
ECHR Article 8.....	24
Can the British citizen live in an EEA Member State or Switzerland?.....	25
Alternative care arrangements.....	25

Conclusion on stage 4	25
Overall conclusion	26
Decision	27
Suitability requirements	27
Indefinite leave to enter or remain (ILE) or (ILR)	27
Limited leave to enter or remain (LTE) or (LTR)	27
Refusal	27
Eligibility: dependant of the primary carer	29
Stage 1: applicant under the age of 18.....	31
Age	31
Conclusion on stage 1	31
Stage 2: primary carer with a Zambrano right to reside.....	32
Primary carer	32
Consideration	32
Conclusion on stage 2	32
Stage 3: primary carer prevented from residing in the UK.....	34
Alternative care arrangements.....	34
Conclusion on stage 3	34
Overall conclusion	35
Decision	36
Suitability requirements	36
Indefinite leave to enter or remain	36
Limited leave to enter or remain	36
Refusal	36
Direct relatives and legal guardians	38
Direct relatives	38
Adoption orders	38
Legal guardian.....	38
Primary carer.....	39
Primary responsibility for a child by a parent	39
Other direct relative or legal guardian with primary carer responsibility.....	39
Court orders	39
Primary responsibility for adults	40
Sharing equal primary carer responsibility	40
Evidence of shared primary carer responsibility.....	41
Financial support.....	41
Two primary carers	42

Alternative care arrangements	43
Alternative care arrangements – British citizen children	43
Other parent.....	43
Deceased parent.....	44
Direct relatives and legal guardians	44
Unsuitable care arrangements	44
Alternative care arrangements: dependant of a primary carer	44
Alternative care arrangements: adults	45
Alternative care	45
Conclusion	45
Assessing whether alternative care arrangements are appropriate	47
Dependency	47
Living arrangements	48
Level of dependency.....	48
Dependants of a primary carer	48
The child’s best interests	49
Conclusion	50
Physical or mental impairment	51
Physical or mental impairment.....	51

About this guidance

This guidance tells you how, from 27 April 2021, 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 best interests of the child

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

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

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

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

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

Contacts

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

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

Publication

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

- version 4.0
- published for Home Office staff on 27 April 2021

Changes from last version of this guidance

Amendments have been made to reflect the changes to Appendix EU made in Statements of Changes in Immigration Rules, up to HC 1248, laid on 4 March 2021.

Related content

[Contents](#)

Related external links

[Statement of Changes in Immigration Rules: HC 1248, 4 March 2021](#)

[Appendix EU to the Immigration Rules](#)

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

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

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

Introduction

From 1 May 2019, a ‘person with a Zambrano right to reside’ has been able to apply for settled status (indefinite leave to enter or remain in the UK) or pre-settled status (limited leave to enter or remain in the UK) under the EU Settlement Scheme: also referred to in this guidance as ‘the scheme’.

Persons with a Zambrano right to reside are described as such after the Court of Justice of the European Union (CJEU) judgment of that name: [Ruiz Zambrano \(European citizenship\) \[2011\] EUECJ C-3409](#).

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, by a relevant process for this set out in that form
- the required biometrics have been provided, by a relevant process for this set out in that form

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

- completed a continuous qualifying period of 5 years in any, or any combination of, qualifying category covered by condition 3 of rule EU11 (or, where relevant, of EU12) of Appendix EU and so are to be considered for indefinite leave to enter or remain
- completed a continuous qualifying period of less than 5 years in any qualifying category covered by condition 1 (or, where relevant, of condition 2) of rule EU14 of Appendix EU and so are to be considered for limited leave to enter or remain

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

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

Where this guidance refers to the 'specified date', this means (as defined in Annex 1 to Appendix EU and where the applicant does not fall within certain sub-paragraphs of the definition there of 'family member of a qualifying British citizen') 2300 Greenwich Mean Time (GMT) on 31 December 2020.

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 the specified date) the Immigration (European Economic Area) Regulations 2016 (as they have effect immediately before that date)
- (where relevant to something done after the specified date and before 1 July 2021) the Immigration (European Economic Area) Regulations 2016 (as, despite the revocation of those Regulations, they continue 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') can rely on their own continuous qualifying period of residence in order to qualify for indefinite leave to enter or indefinite leave to remain or limited leave to enter or limited leave to remain. An applicant who needs to rely on the Zambrano provisions is more likely to be a non-EEA citizen (defined in Annex 1 to Appendix EU as a person who is not an EEA citizen and is not a British citizen), but they may be an EEA citizen.

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

Who is a ‘person with a Zambrano right to reside’?

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 CJEU judgments.

A ‘person with a Zambrano right to reside’ is defined in Annex 1 to Appendix EU as a person:

- who has satisfied the Secretary of State, including (where applicable) by the required evidence of family relationship, that, by the specified date, they are (and for the relevant period have been), or (as the case may be) for the relevant period in which they rely on having been a person with a Zambrano right to reside (before they then became a person who had a derivative or Zambrano right to reside) they were, resident for a continuous qualifying period in the UK with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations, by satisfying the criterion in paragraph (1)(a) of that regulation (that is, they must not be, or for the relevant period have been, an [‘exempt person’](#) as defined in regulation 16(7)(c)) and the criteria in either:
 - paragraph (5) of that regulation
 - paragraph (6) of that regulation where that person’s primary carer is, or (as the case may be) was, entitled to a derivative right to reside in the UK under paragraph (5), regardless (where the person was previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a person with a Zambrano right to reside and was under the age of 18 at the date of application for that leave) of whether, in respect of the criterion in regulation 16(6)(a) of the EEA Regulations, they are, or (as the case may be) were, under the age of 18 years

In addition, the person must be (or for the relevant period have been) without leave to enter or remain in the UK, unless this was granted under Appendix EU.

In Annex 1 to Appendix EU, a ‘person who had a derivative or Zambrano right to reside’ is defined – including as a qualifying category under condition 3 of rule EU11– as a person who both:

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

Zambrano cases – regulation 16(5)

In the case of Zambrano, the CJEU found that a European Union (EU) Member State cannot refuse a person the right to reside in that State, where to do so would deprive their dependent EU citizen children (who reside and are nationals of that State) of genuine enjoyment of the substance of their EU citizenship rights by forcing them to leave the European Economic Area (EEA).

The primary carer of a British citizen will have a derivative right to reside in the UK based on Zambrano if both the following apply:

- the British citizen is also residing in the UK
- the British citizen would be unable to reside in the UK or in an EEA Member State or Switzerland, if the primary carer left the UK for an indefinite period

The conditions to be satisfied for a derivative right to reside based on Zambrano are set out in regulation 16(5) of the EEA Regulations. As set out above, Appendix EU refers partly to the relevant provisions of the EEA Regulations when defining a ‘person with a Zambrano right to reside’.

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

- they must not be (or for the relevant period have been) an ‘[exempt person](#)’ (as defined in regulation 16(7)(c))
- being the primary carer (and the direct relative or legal guardian) of a British citizen and that British citizen both:
 - is (or, as the case may be, for the relevant period was) resident in the UK
 - would be (or, as the case may be, for the relevant period would have been) unable to reside in the UK or the EEA if the primary carer left (or had left) the UK for an indefinite period

In addition, the applicant must not have (or for the relevant period have had) leave to enter or remain in the UK, unless this was granted under Appendix EU.

Dependant of the primary carer – regulation 16(6)

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

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

continuous qualifying period in the UK with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the following criteria:

- they must not be (or for the relevant period have been) an '[exempt person](#)' (as defined in regulation 16(7)(c))
- they are (or, as the case may be, were) under the age of 18 (save where the person was previously granted limited leave to enter or remain under rule EU3 of Appendix EU as 'a person with a Zambrano right to reside' and was under the age of 18 years at the date of application for that leave)
- they do not (or, as the case may be, did not) have leave to enter or remain in the UK under the Immigration Act 1971, unless this was granted under Appendix EU
- their primary carer (who is also their direct relative or legal guardian) is (or, as the case may be, was) entitled to a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(5)
- the primary carer would be (or, as the case may be, for the relevant period would have been) prevented from residing in the UK if the child left (or, as the case may be, had left) the UK for an indefinite period

In addition, the applicant must not have (or for the relevant period have had) leave to enter or remain in the UK, unless this was granted under Appendix EU.

Making an application: deadline

An application for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU must be made by the required date: see the section on 'Making an application: deadline' in the guidance on [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#), including the scope for an application to be made after the relevant deadline where there are reasonable grounds why the applicant failed to apply by then.

However, where you accept that an applicant has reasonable grounds for failing to apply by the relevant deadline, they will be unable, where they rely on having been a 'person with a Zambrano right to reside' at the specified date, to show that they met the definition of such a person in Annex 1 to Appendix EU where, at the specified date, they had leave to enter or remain in the UK, unless this was granted under Appendix EU.

Related content

[Contents](#)

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: EU, other EEA and Swiss citizens and their family members](#)

[EU Settlement Scheme: family member of a qualifying British citizen](#)

Eligibility requirements

To be 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' (or, as the case may be, as a person who relies on having been 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), the applicant both:

- must not be (or for the relevant period have been) an 'exempt person' under regulation 16(1)(a) of the EEA Regulations
- must not have (or for the relevant period have had) leave to enter or remain in the UK granted, unless this was granted under Appendix EU

Exempt person

As set out in regulation 16(1)(a) of the EEA Regulations, a person who is (or, as the case may be, for the relevant period was) an 'exempt person' cannot have (or have had) a Zambrano right to reside. An exempt person is defined in regulation 16(7)(c) as a person who:

- has (or for the relevant period had) a right to reside in the UK under another provision of the EEA Regulations, for example, as a person who is (or was) already exercising free movement rights as an EEA citizen or who is (or was) the family member of such a person: see [Immigration \(European Economic Area\) Regulations 2016](#) (where the applicant has (or had) a right to reside in the UK under another provision of the EEA Regulations, they will be an exempt person so cannot be considered a 'person with a 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 (or for the relevant period had) the right of abode in the UK under section 2 of the Immigration Act 1971 (the 1971 Act), for example, the person is a British citizen: see [Right of abode](#)
- is (or for the relevant period was) a person to whom section 8 of the 1971 Act, or an order made under section 8(2), applies (or applied): see [persons exempt from control](#)
- has (or for the relevant period had) indefinite leave to enter or remain in the UK, unless this was granted under Appendix EU. You can ascertain this by checking Home Office records. If they do, they may be eligible for indefinite leave to enter or remain under the scheme under condition 2 of rule EU11 of Appendix EU

If the applicant is (or for the relevant period was) an 'exempt person' on the basis that the first or fourth of the bullet points above applies (or for the relevant period

applied), then you must, based on the information available to you, consider their eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU, see: [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

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

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

If the applicant is not (or for the relevant period was not) an 'exempt person', you must then go on to consider whether they have (or for the relevant period had) leave to enter or remain in the UK, other than leave granted under Appendix EU.

Leave to enter or remain in the UK, other than leave granted under Appendix EU

A Zambrano right to reside is only available to a person who has no other means to remain lawfully in the UK as the primary carer of a dependent British citizen, or as a dependant of that primary carer.

As set out in sub-paragraph (b) of the definition of a 'person with a Zambrano right to reside' in Annex 1 to Appendix EU, an applicant cannot meet that definition if they have (or, as the case may be, for the relevant period had) leave to enter or remain in the UK, unless this was granted under Appendix EU.

An applicant cannot therefore meet that definition if they have (or, as the case may be, for the relevant period had) leave to enter or remain granted under another part of the Immigration Rules (such as Appendix FM) or on a discretionary basis outside the Rules.

In the case of [Patel v SSHD \[2017\] EWCA Civ 2028 \(13 December 2017\)](#), the Court of Appeal noted that a person with leave to remain under domestic law cannot benefit from a derivative right to reside on the basis of Zambrano. The Court of Appeal also noted that Zambrano is not a back-door route to residence for those who have a British citizen child without having or acquiring leave to remain.

In its judgment in that case ([Patel v SSHD \[2019\] UKSC 59, 16 December 2019](#)), the Supreme Court was not required to rule on the implications of leave to remain under domestic law for the scope to benefit from a derivative right to reside on the basis of Zambrano, but it confirmed (at paragraph 22 of the judgment) that the test to be met to benefit from that right is one of compulsion: "What lies at the heart of the Zambrano jurisprudence is the requirement that the Union citizen would be compelled to leave Union territory if the third country national, with whom the Union

citizen has a relationship of dependency, is removed". In an application for leave under Appendix EU as a 'person with a Zambrano right to reside', the Secretary of State considers that this test cannot be met where the applicant has leave to enter or remain in the UK (or a realistic prospect of obtaining such leave were they to apply: see [Stage 4: British citizen unable to reside in the UK, the EEA or Switzerland](#)), unless they have leave granted under Appendix EU.

If the applicant does (or for the relevant period did) have leave to enter or remain in the UK, other than leave granted under Appendix EU, 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, generally without going on to consider the other eligibility stages in this guidance.

However, if the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date, then, though you will be refusing the application, you must still move on to consider whether they meet other relevant eligibility criteria set out below for leave under the scheme as a 'person with a Zambrano right to reside' and reflect that consideration in the decision letter refusing the application.

Indefinite leave to enter or remain

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' who relies on having been 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 3 of rule EU11 of Appendix EU.

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

- the applicant is (or, as the case may be – as described above, for the relevant period was) 'a person with a Zambrano right to reside': see [Eligibility - Zambrano carers](#) and [Eligibility - Dependants of the primary carer](#) below
- the applicant has completed a continuous qualifying period in the UK of 5 years as a 'person with a Zambrano right to reside' (or in any combination of the categories covered by condition 3, which, in some of those other categories, can include residence in the Islands as well as in the UK): see 'continuous qualifying period' in the section on 'Qualifying residence' in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) (and see the paragraph below about rule EU13 of Appendix EU)

- since completing the continuous qualifying period of 5 years, no supervening event has occurred: see ‘supervening event’ in the section on ‘Consideration of applications: ILE or ILR’ in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#)

Rule EU13 of Appendix EU provides that the continuous qualifying period under condition 3 in rule EU11 can also include a period during which the applicant was a family member of a qualifying British citizen or a family member who has retained the right of residence by virtue of a relationship with a qualifying British citizen before becoming (as the case may be) a relevant EEA citizen, a family member of a relevant EEA citizen (or thereafter a family member who has retained the right of residence by virtue of a relationship with a relevant EEA citizen), a ‘person with a derivative right to reside’ or a ‘person with a Zambrano right to reside’.

Limited leave to enter or remain

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

- the applicant is (or, as the case may be – as described above, for the relevant period was) a ‘person with a Zambrano right to reside’: see [Eligibility - Zambrano carers](#) and [Eligibility - Dependants of the primary carer](#) below
- 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

Evidence

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

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

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

Eligibility – Zambrano carers

Where the applicant is (or for the relevant period was) not an ‘exempt person’ and does not (or for the relevant period did not) have leave to enter or remain in the UK, other than leave granted under Appendix EU, there are 4 stages you must consider when assessing whether, by the specified date, the applicant is (or, as the case may be, for the relevant period was) resident with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(5):

- [stage 1: assessing British citizenship](#): assessing whether the person for whom the applicant claims to be (or, as the case may be, for the relevant period to have been) the primary carer of is (or, as the case may be, was) a British citizen
- [stage 2: direct relatives or legal guardians](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) the direct relative or legal guardian of the British citizen
- [stage 3: primary carer](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) the primary carer of the British citizen
- [stage 4: British citizen unable to reside in the UK, the EEA or Switzerland](#): assessing whether the British citizen would be (or, as the case may be, for the relevant period would have been) unable to reside in the UK, the EEA or Switzerland if the applicant was (or, as the case may be, had been) required to leave the UK for an indefinite period

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

Where the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date, you will still proceed to consider stages 1 to 3, but you will not consider stage 4. This is because it will not be possible for the applicant to meet the requirements of stage 4 as they will not have been required to leave the UK for an indefinite period. You must also, 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 the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU. The decision letter refusing the application must reflect your consideration of whether they meet stages 1 to 3 of the eligibility criteria for leave under the scheme as a ‘person with a Zambrano right to reside’, set out in the sections immediately following.

If the applicant needs to provide more information or evidence than the application contains of their eligibility as a ‘person with a Zambrano right to reside’: see the

section on 'Consideration of applications: eligibility' in [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

Related content

[Contents](#)

Related external links

[Ruiz Zambrano \(European citizenship\) \[2011\] EUECJ C-34/09](#)

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

[Appendix EU to the Immigration Rules](#)

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

Stage 1: assessing British citizenship

The first stage is to consider whether the person for whom the applicant claims to be (or for the relevant period to have been) the primary carer is (or, as the case may be, for the relevant period was) a British citizen.

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' will depend on whether the child was born before or after 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.

Persons not considered British citizens

Persons with the following forms of status are not considered British citizens and will not come within scope of regulation 16(5)(a) of the regulations:

- 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.

Conclusion

Where you are satisfied that the relevant person is (or, as the case may be, for the relevant period was) a British citizen, you must move on to the next stage.

Where you are not satisfied of this, you must not (unless the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date) move on to the next stage, but must instead consider the applicant's eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

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

Stage 2: direct relative or legal guardian

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

Assessing ‘direct relative’ or ‘legal guardian’

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

Where the applicant has not been issued with such a document or has been issued with one based on legal guardianship, you must be satisfied from information or evidence provided by the applicant that they are the direct relative of the relevant British citizen or that they are (or, as the case may be, for the relevant period were) the British citizen’s legal guardian.

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

Conclusion

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

Where you are not satisfied of this, you must not (unless the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date) move on to the next stage, but must instead consider the applicant’s eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

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

Related content

[Contents](#)

Related external links

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

Stage 3: primary carer

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

Primary carer

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

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

Where the applicant has been issued with a residence card or an EEA 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 (or, as the case may be, for the relevant period remained) the primary carer of the relevant British citizen.

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

Conclusion

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

Where you are not satisfied of this, you must not (unless the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date) move on to the next stage, but must instead consider the applicant's eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

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

Related content

[Contents](#)

Related external links

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

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

The fourth stage is to assess whether the British citizen would be (or, as the case may be, for the relevant period 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) required to leave the UK for an indefinite period.

If the applicant either:

- has (or, as the case may be, for the relevant period had) limited leave to enter or remain in the UK (unless this was granted under Appendix EU)
- has not made (or, as the case may be, for the relevant period did not make) any attempt to apply for limited leave to enter or remain in the UK under Appendix FM to the Immigration Rules or otherwise to rely upon ECHR Article 8 (the right to respect for private and family life), where there is (or was) a realistic prospect that such an application would succeed (or would have succeeded)

then the relevant British citizen would be (or would have been) able to reside in the UK because the applicant was not (or would not have been) required to leave the UK.

Where the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date, you will not consider stage 4. This is because it will not be possible for the applicant to meet the requirements of that stage as they will not have been required to leave the UK for an indefinite period. 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 the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU. The decision letter refusing the application must reflect your consideration of whether they meet stages 1 to 3 above of the eligibility criteria for leave under the scheme as a 'person with a Zambrano right to reside'.

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

In line with regulation 16(5)(c) of the EEA Regulations, an applicant must only be considered a 'person with a Zambrano right to reside' where the relevant British citizen would be (or, as the case may be, for the relevant period would have been) unable to reside in the UK, the EEA or Switzerland if the applicant was (or, as the case may be, had been) required to leave the UK for an indefinite period.

You will already have established that the applicant cannot be considered a 'person with a Zambrano right to reside' where they have (or, as the case may be, for the relevant period had) leave to enter or remain in the UK, other than leave granted under Appendix EU.

Before you can decide in other cases whether the British citizen would be (or, as the case may be, for the relevant period would have been) unable to reside in the UK, the EEA or Switzerland, you must consider all of the following:

ECHR Article 8

As a Zambrano case centres on a person seeking to remain in the UK with a dependent British citizen, there is significant overlap with the right to respect for private and family life which is protected by Article 8 of the European Convention on Human Rights (ECHR).

You must consider whether there is (or, as the case may be, for the relevant period, was) a realistic prospect that an application by the applicant for leave to enter or remain under Appendix FM to the Immigration Rules, or otherwise relying on ECHR Article 8, would succeed (or would have succeeded).

Where a person wishes to remain in the UK on the basis of family life with a British citizen, they should first make an application for leave to remain under Appendix FM to the Immigration Rules or otherwise rely upon ECHR Article 8, if there is a realistic prospect that this would succeed. If the applicant has made an application under Appendix FM to the Immigration Rules or any other ECHR Article 8 claim, which was refused, then – unless their circumstances have changed since that decision was made such that there is now a realistic prospect that a further such application would succeed – you must consider whether they are a 'person with a Zambrano right to reside' by following this guidance.

An Appendix FM application, or ECHR Article 8 claim, will be considered to have (or to have had) a realistic prospect of success where the applicant has family life in the UK with a British citizen and there is no apparent reason why such an application would be refused.

Where the applicant does not (or, as the case may be, for the relevant period did not) have leave to enter or remain in the UK, other than leave granted under Appendix EU, this means that they cannot be considered a 'person with a Zambrano right to reside' if they:

- have never made an application under Appendix FM to the Immigration Rules or any other ECHR Article 8 claim, but where there is (or, as the case may be, for the relevant period was) a realistic prospect that, had they done so, this would succeed (or, as the case may be, would have succeeded)
- have been refused leave under Appendix FM or otherwise under ECHR Article 8 but their circumstances have changed since that decision was made such that there is now a realistic prospect that a further such application would succeed – for example, the applicant applied on the basis of their

relationship with a British citizen spouse, but the couple now have a British citizen child

Where the applicant has been issued with a residence card under the EEA Regulations on the basis of their relationship with the relevant British citizen, unless there is evidence that the card was issued in error or is otherwise invalid, you must accept this as evidence that there is not (or, as the case may be, for the relevant period was not) a realistic prospect that an application by them for leave to enter or remain under Appendix FM to the Immigration Rules, or otherwise relying on ECHR Article 8, would succeed (or would have succeeded).

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

You must consider whether the relevant British citizen could go (or, as the case may be, for the relevant period could have gone) to live in an EEA Member State or Switzerland.

If the applicant is (or, as the case may be, for the relevant period was) an EEA citizen, or has (or had) a right to reside in an EEA Member State or Switzerland (either as the family member of an EEA citizen or under the domestic immigration system of that country), you must consider whether the British citizen would be (or, as the case may be, for the relevant period would have been) able to reside in that country with the applicant. Where this is (or was) so, the applicant will not be a 'person with a Zambrano right to reside'.

Alternative care arrangements

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

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

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

Conclusion on stage 4

Where you are satisfied that the British citizen would be (or, as the case may be, for the relevant period 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) 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 under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

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

Overall conclusion

Where you are satisfied that the application meets the requirements of stages 1 to 4, you must then use [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) to establish whether (as a 'person with a Zambrano right to reside' or in any combination of that and other relevant qualifying categories) the applicant has completed a continuous qualifying period of 5 years and so is to be considered for indefinite leave to enter or remain under rule EU11 (or, where relevant, EU12) of Appendix EU, or has completed a continuous qualifying period of less than 5 years and so is to be considered for limited leave to enter or remain under rule EU14 of Appendix EU.

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

Decision

Suitability requirements

Before you decide the application, you must consider the suitability requirements. See [EU Settlement Scheme: suitability requirements](#).

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

Where you are satisfied that:

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

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

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

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

Where you are satisfied that:

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

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

Refusal

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

Where the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28

days until its expiration date, then the decision letter refusing the application must reflect your consideration of whether they meet stages 1 to 3 above of the eligibility criteria for leave under the scheme as a 'person with a Zambrano right to reside'.

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

[EU Settlement Scheme: suitability requirements](#)

Eligibility: dependant of the primary carer

Where the applicant is (or for the relevant period was) not an 'exempt person' and does not (or for the relevant period did not) have leave to enter or remain in the UK, other than leave granted under Appendix EU, there are 3 stages you must consider when assessing whether, by the specified date, the applicant is (or, as the case may be, was) resident with a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(6) on the basis that they are (or were) under the age of 18 and their primary carer has (or had) a Zambrano right to reside:

- [stage 1: applicant under the age of 18](#): assessing whether the applicant is (or, as the case may be, for the relevant period was) under the age of 18 (save where the person was previously granted limited leave to enter or remain under rule EU3 of Appendix EU as 'a person with a Zambrano right to reside' and was under the age of 18 years at the date of application for that leave)
- [stage 2: applicant's primary carer with a Zambrano right to reside](#): assessing whether the relevant person is (or, as the case may be, for the relevant period was) the applicant's primary carer and whether that person has (or, as the case may be, for the relevant qualifying period had) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(5).
- [stage 3: primary carer prevented from residing in the UK](#): assessing whether the applicant's primary carer would be (or, as the case may be, for the relevant period would have been) prevented from residing in the UK if the applicant left (or had left) the UK for an indefinite period

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

Where the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date, you will still proceed to consider stages 1 to 3. You must also, 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 the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU. The decision letter refusing the application must reflect your consideration of whether they meet stages 1 to 3 of the eligibility criteria for leave under the scheme as a 'person with a Zambrano right to reside', set out in the sections immediately following.

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

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

Stage 1: applicant under the age of 18

The first stage is to consider whether the applicant is (or, as the case may be, for the relevant period was) under the age of 18 (save where the person was previously granted limited leave to enter or remain under rule EU3 of Appendix EU as ‘a person with a Zambrano right to reside’ and was under the age of 18 years at the date of application for that leave).

Age

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

Where the applicant provides a residence document issued under the EEA Regulations, it does not matter, for the purposes of assessing the validity of the document, 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, as the case may be, for the relevant period was) under the age of 18, you must move on to the next stage.

Where you are not satisfied of this, you must not (unless the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date) move on to the next stage, but must instead consider the applicant’s eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

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

Stage 2: primary carer with a Zambrano right to reside

The second stage is to consider whether the relevant person is (or, as the case may be, for the relevant period was) the primary carer of the applicant, and whether they are entitled to (or, as the case may be, for the relevant period were entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(5).

Primary carer

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

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

Where the applicant has been issued with a residence card or an EEA family permit under the EEA Regulations on the basis the relevant person was their primary carer, you must assess whether the applicant remains (or, as the case may be, for the relevant period remained) the primary carer of the relevant British citizen.

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

Consideration

To satisfy yourself that the applicant's primary carer is entitled to (or, as the case may be, for the relevant period was entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(5), you must consider whether they meet the eligibility requirements, see [Eligibility - Zambrano carers](#).

To satisfy you of this, the applicant can, for example, provide the EU Settlement Scheme application number of the primary carer where they have been granted leave under the scheme. However, there is no need for the primary carer to apply first under the scheme and, where they have not been granted leave under the scheme, the applicant will need to satisfy you that the primary carer meets the criteria of regulation 16(5) of the EEA Regulations.

Conclusion on stage 2

Where you are satisfied that the applicant's primary carer is entitled to (or, as the case may be, for the relevant qualifying period was entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(5), you must move on to the next stage.

Where you are not satisfied of this, you must not (unless the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date) move on to the next stage, but must instead consider the applicant's eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#).

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

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

Stage 3: primary carer prevented from residing in the UK

The third stage is to consider whether the primary carer would be (or, as the case may be, for the relevant period would have been) prevented from residing in the UK if the applicant left (or had left) the UK for an indefinite period.

Alternative care arrangements

To assess whether the primary carer would be (or, as the case may be, for the relevant period would have been) prevented from residing in the UK if the applicant left (or had left) the UK for an indefinite period, you must consider whether there are (or were) alternative care arrangements which could be (or could have been) made for the applicant either in the UK or in another country.

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

Where the applicant has been issued with a residence card under the EEA Regulations on the basis of their relationship with the relevant person, you must assess whether the relevant person would still 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.

Conclusion on stage 3

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

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

In that case, you must not move on to the overall conclusion, but must instead consider the applicant's eligibility for leave 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](#). This will include where the applicant has leave to enter or remain in the UK which is

not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date.

If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU. Where the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date, the decision letter refusing the application must reflect your consideration of whether they meet stages 1 to 3 above of the eligibility criteria for leave under the scheme as a 'person with a Zambrano right to reside'.

Overall conclusion

Where you are satisfied that the application meets the requirements of stages 1 to 3, you must (unless the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date) then use [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#) to establish whether (as 'a person with a Zambrano right to reside' or in any combination of that and other relevant qualifying categories) the applicant has completed a continuous qualifying period of 5 years and so is to be considered for indefinite leave to enter or remain under rule EU11 (or, where relevant, EU12) of Appendix EU, or has completed a continuous qualifying period of less than 5 years and so is to be considered for limited leave to enter or remain under rule EU14 of Appendix EU.

Where the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28 days until its expiration date, you must instead consider the applicant's eligibility for leave under the other eligibility requirements in rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see [EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members](#). If the applicant does not meet any of these other requirements, you must refuse the application under rule EU6 of Appendix EU, and the decision letter refusing the application must reflect your consideration of whether they meet stages 1 to 3 above of the eligibility criteria for leave under the scheme 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](#)

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

Decision

Suitability requirements

Before you decide the application, you must consider the suitability requirements. See [EU Settlement Scheme: suitability requirements](#).

Indefinite leave to enter or remain

Where you are satisfied that:

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

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

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

Limited leave to enter or remain

Where you are satisfied that:

- a valid application has been made in accordance with rule EU9
- the applicant does not meet the eligibility requirements for ILE or ILR in accordance with rule EU11 (or, where relevant, 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.

Where the applicant has leave to enter or remain in the UK which is not leave granted under Appendix EU and which, at the point of decision, has less than 28

days until its expiration date, then the decision letter refusing the application must reflect your consideration of whether they meet stages 1 to 3 of the eligibility criteria for leave under the scheme as a 'person with a Zambrano right to reside', set out in the sections immediately above.

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

EU Settlement Scheme: suitability requirements

Direct relatives and legal guardians

Direct relatives

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

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

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

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

Adoption orders

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

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

Legal guardian

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

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

Primary carer

Primary responsibility for a child by a parent

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

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

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

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

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

Other direct relative or legal guardian with primary carer responsibility

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

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

Court orders

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

- child arrangements orders or (before that) residence orders – used to decide where, and with which parent, a child will live

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

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

Primary responsibility for adults

Where the applicant is claiming to be a ‘person with a Zambrano right to reside’ (or, as the case may be, is relying on having been such a person) on the basis they are (or were) the primary carer of a British citizen dependent adult (over the age of 18), they may be (or have been) the spouse or civil partner of that adult or another direct relative.

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

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

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

Sharing equal primary carer responsibility

Two people must be considered to share equally the primary carer responsibility for a British citizen when they both have responsibility for the care and welfare of the British citizen, in the long-term and on a day-to-day basis.

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

Two people who spend different amounts of time with a British citizen child (for example where the British citizen lives with one parent during the week and the other

at weekends) may still have equal primary carer responsibility for the child. Where a British citizen child lives with 2 parents, the parents will usually be considered to share equal primary carer responsibility for the child, even where one parent works and the other does not.

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

Circumstances must be considered on a case by case basis.

Evidence of shared primary carer responsibility

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

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

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

Under regulation 16(11) of the EEA Regulations, financial support alone will not bring a person within the definition of primary carer. For example, where a person only provides the British citizen with financial support and has no day-to-day caring

responsibilities, this is not sufficient to demonstrate that they are the British citizen's primary carer.

Two primary carers

If there are 2 primary carers of the same British citizen, they can 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 regulation 16(10) of the EEA Regulations, where one primary carer has a Zambrano right to reside on the basis of shared equal primary carer responsibility, the second primary carer can only have a Zambrano right to reside on that basis if they had shared equal primary carer responsibility for the British citizen with, and at the same time as, the first primary carer.

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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

Alternative care arrangements

Alternative care arrangements – British citizen children

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

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

Other parent

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

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

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

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

Deceased parent

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

Direct relatives and legal guardians

You can accept that there is another direct relative in the UK, the EEA or Switzerland who could care for the British citizen child (or, as the case may be, who for the relevant period could have done so) if that direct relative either:

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

To be satisfied that the child has a legal guardian who could care for them in the UK, the EEA or Switzerland (or, as the case may be, who for the relevant period could have done so) if the primary carer left (or had left) the UK for an indefinite period, you need for example to see evidence that a court has granted that person legal guardianship of the child.

Unsuitable care arrangements

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

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

Alternative care arrangements: dependant of a primary carer

Where an applicant has demonstrated that they are (or, as the case may be, for the relevant period were) a dependant of a primary carer who is entitled to (or for the

relevant period was entitled to) a derivative right to reside by virtue of regulation 16(1) of the EEA Regulations by satisfying the criteria in regulation 16(5), you must consider whether there is (or for the relevant period was) another person living in the UK or elsewhere, for example a direct relative or legal guardian, who can care (or who could have cared) for the child.

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

Alternative care arrangements: adults

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

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

Alternative care

Where an applicant has demonstrated they are a primary carer, you must consider whether there are (or, as the case may be, for the relevant period were) alternative care arrangements for the British citizen. Alternative care may include, but is not limited to:

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

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

Conclusion

Unless there is information that there is another parent, direct relative, legal guardian (or, in the case of an adult, a local authority or private care provider) in the UK, the EEA or Switzerland (or, where relevant, elsewhere) who is currently caring for the relevant British citizen, or is (or, as the case may be, for the relevant period was) able to do so, you can accept that there are (or were) no alternative care arrangements for them. This means that the relevant British citizen would not be able (or, as the case may be, for the relevant period would not have been able) to continue residing in the UK, the EEA or Switzerland if the applicant left (or had left) the UK for an indefinite period. Or, in the case of a dependant of a primary carer, the

primary carer would be prevented from residing in the UK if the applicant left (or had left) the UK for an indefinite period. If you reach this conclusion, you can accept that, in respect of this element, the applicant meets (or, as the case may be, met) the definition of a 'person with a Zambrano right to reside' in Appendix EU.

Related content

[Contents](#)

Related external links

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

Assessing whether alternative care arrangements are appropriate

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

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

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

Dependency

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

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

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

Relevant factors include:

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

Living arrangements

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

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

- whether they have (or had) lived together before – if so, how recently and for how long
- whether they stay (or 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 (or made) to the British citizen's life – for example, making decisions affecting them or providing financial support

Level of dependency

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

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

Dependants of a primary carer

Where alternative care arrangements for a dependant of a primary carer are (or were) available, you must consider what would happen (or in the relevant period would have happened) in practice to the primary carer if the applicant left (or had left) the UK for an indefinite period.

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

- remain in the UK (or in the relevant period would have done so)
- leave the UK with the dependent child (or for the relevant period would have left with the child)

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

The child's best interests

Before deciding on whether the alternative care arrangements for a child under the age of 18 are (or were) appropriate, you must first consider what are (or were) the best interests of the child. The child's best interests are not on their own determinative of whether requiring the applicant (or the applicant child) to leave the UK for an indefinite period would mean (or would have meant) that the child (or the primary carer) would be (or would have been) unable to continue living in the UK. They are a primary consideration and must be considered as such, together with all the other information and evidence before you. You must consider any evidence provided in support of the application, which may include the child's own views.

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

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

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

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

Conclusion

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

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

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

Related content

[Contents](#)

Related external links

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

Physical or mental impairment

This section tells you how to consider applications on the basis that the applicant is (or for the relevant period was) the primary carer of a British citizen adult over the age of 18.

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

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

Physical or mental impairment

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

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

You must also consider the level of support that the applicant is (or for the relevant period was) providing, including:

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

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

Related content

[Contents](#)

Related external links

[Appendix EU to the Immigration Rules](#)

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