



Home Office

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

Version 7.0

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# About this guidance

This guidance tells you how, from 28 January 2026, to consider whether an applicant to the EU Settlement Scheme is a 'person with a derivative right to reside' as defined in the Immigration Rules for the scheme contained in [Appendix EU to the Immigration Rules](#).

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

## The best interests of the child

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

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

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

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

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

## Contacts

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

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

## Publication

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

- version **7.0**
- published for Home Office staff on **28 January 2026**

## Changes from last version of this guidance

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

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

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

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

# Introduction

A 'person with a derivative right to reside' can apply to the EU Settlement Scheme: also referred to in this guidance as 'the scheme'.

Such persons are often described as 'Chen' or 'Ibrahim and Teixeira' cases. A derivative right to reside in such cases was derived from wider EU law rather than the Free Movement Directive 2004/38/EC and was confirmed by the Court of Justice of the European Union (CJEU) judgments of those names: [Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#), [Ibrahim C-310/08](#) and [Teixeira C-480/08](#). In summary, Chen cases concern the primary carer of a self-sufficient European Economic Area (EEA) citizen child in the UK (and under-18 dependants of the primary carer) and Ibrahim and Teixeira cases concern a child in education in the UK of an EEA citizen former worker (or, in line with the citizens' rights agreements, self-employed person) in the UK and the child's primary carer (and under-18 dependants of the primary carer).

Derivative rights to reside in the UK ceased to exist at the end of the post-EU exit transition period at 11pm Greenwich Mean Time (GMT) on 31 December 2020. However, Chen and Ibrahim and Teixeira cases are covered by the Withdrawal Agreement with the EU and the citizens' rights agreements with the other EEA countries and Switzerland. Those agreements protect their previous right to reside under EU law, which did not include the right to acquire the right of permanent residence. Nevertheless, the UK decided as a matter of more generous domestic provision to provide those with such a right to reside in the UK by the end of the transition period with access to the EU Settlement Scheme, which includes the scope for them to obtain indefinite leave to enter or remain in the UK.

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

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 derivative right to reside', is the required paper application form)
- the required proof of identity and nationality (or of entitlement to apply from outside the UK, where the application is made outside the UK) has been provided
- the required biometrics have been provided
- the application has been made by the required date, where the date of application is on or after 9 August 2023

- the applicant, if they rely on being a joining family member of a relevant sponsor and where the date of application is on or after 9 August 2023, is not a specified enforcement case

To consider the eligibility requirements for an application as a 'person with a derivative right to reside', see:

- [overview of the eligibility requirements](#)
- [All applications - initial eligibility requirements](#) for initial eligibility requirements for all applicants
- [Eligibility - Chen primary carer](#) where the applicant is applying as a primary carer of a Chen child
- [Eligibility - Ibrahim and Teixeira child](#) where the applicant is applying as an Ibrahim and Teixeira child
- [Eligibility - Ibrahim and Teixeira primary carer](#) where the applicant is applying as a primary carer of an Ibrahim and Teixeira child
- [Eligibility - dependant of the primary carer](#) where the applicant is applying as a dependant of the primary carer of a Chen or Ibrahim and Teixeira child
- [Person who had a derivative or Zambrano right to reside](#) where the applicant is applying as a person who had a derivative or Zambrano right to reside

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

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

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

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

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

- the person has been absent from the UK and Islands for a period of more than 5 consecutive years at any point since they last either:
  - completed a continuous qualifying period of 5 years
  - acquired the right of permanent residence in the UK under regulation 15 of the EEA Regulations

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

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

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

EEA and Swiss citizens (defined, together with certain others, such as certain dual British and EEA citizens, in [Annex 1 to Appendix EU](#), and referred to in this guidance, as an 'EEA citizen') resident in the UK by the specified date can rely on their own continuous qualifying period of residence in order to qualify for leave under the EU Settlement Scheme. As a result, an applicant who needs to rely on the derivative rights provisions is likely to be a non-EEA citizen.

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

## Relevant EEA family permit case

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

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

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

Please see [Applications to switch from pre-settled to settled status](#) for guidance.

### Related content

#### [Contents](#)

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

### Related external links

[Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#)

[Ibrahim C-310/08](#)

[Teixeira C-480/08](#)

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

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

[Appendix EU to the Immigration Rules](#)

# Overview of eligibility requirements

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

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

- (a) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)
  - they are the [primary carer](#) of a European Economic Area (EEA) citizen
  - the EEA citizen is under the age of 18 years and resides in the UK as a self-sufficient person
  - the EEA citizen would in practice be unable to remain in the UK if the person (or both primary carers, where the role of [primary carer](#) is shared with another person in accordance with the definition of 'primary carer' in [Annex 1 to Appendix EU](#)) in fact left the UK for an indefinite period
  - they are not [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect
- (b) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)
  - they are in education in the UK
  - any of the person's parents ("PP") is an EEA citizen who resides or has resided in the UK
  - both the person and PP reside or have resided in the UK at the same time and during such a period of residence PP has been a worker or self-employed person in the UK
  - they are not [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect
- (c) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)
  - they are the primary carer of a person who meets the requirements of subparagraph (b) of the definition of a 'person with a derivative right to reside' ("PPP"), summarised in the second main bullet above
  - PPP would in practice be unable to continue to be educated in the UK if the person (or both primary carers, where the role of [primary carer](#) is shared with another person in accordance with the definition of 'primary carer' in [Annex 1 to Appendix EU](#)) in fact left the UK for an indefinite period
  - they are not [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the EEA Regulations](#), unless that decision has been set aside or otherwise no longer has effect
- (d) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:
  - they are not an [exempt person](#)

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

In addition:

- [relevant period](#) means here the continuous qualifying period in which the person relies on meeting this definition
- unless the applicant relies on being a [person who had a derivative or Zambrano right to reside](#) or a [relevant EEA family permit case](#), the relevant period must have been continuing at 11pm GMT on 31 December 2020
- ‘EEA citizen’ means in accordance with sub-paragraph (a)(i) of that definition in [Annex 1 to Appendix EU](#) and, where they are also a British citizen, the EEA citizen falls within sub-paragraphs (c) and (d) of the definition there of ‘relevant naturalised British citizen’
- ‘self-sufficient person’ means a person with sufficient resources not to become a burden on the social assistance system of the UK, regardless of whether they hold comprehensive sickness insurance cover in the UK
- ‘education in the UK’ excludes nursery education but does not exclude education received before the compulsory school age where that education is equivalent to the education received at or after the compulsory school age

This definition covers so-called ‘Chen’ primary carers and their dependants under the age of 18 and ‘Ibrahim and Teixeira’ children, primary carers and those carers’ dependants under the age of 18. It excludes ‘Zambrano carers’ and their dependants under the age of 18, for whom separate provision is made in Appendix EU as a ‘person with a Zambrano right to reside’.

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

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

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

## Chen primary carer cases

In the case of Chen, the CJEU found that the primary carer of a self-sufficient EEA citizen child is entitled to a right to reside under EU law, if refusing such a right prevents the child from continuing to reside in the UK. Appendix EU does not require the EEA citizen child to hold, or have held, comprehensive sickness insurance. The conditions for this derivative right to reside are set out in sub-paragraph (a) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#).

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

- the applicant must not be an [exempt person](#)
- the applicant must be the [primary carer](#) of a child, by both:
  - being their [direct relative](#) or [legal guardian](#)
  - having primary responsibility for their care or sharing equally the responsibility for their care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or

remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

- the child:
  - must be an EEA citizen under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as a ‘person with a derivative right to reside’ and were under the age of 18 at the date of application for that leave
  - must be resident in the UK
  - must hold sufficient resources to prevent them becoming a burden on the UK’s social assistance system during the period of residence, regardless of whether they meet (or, as the case may be, met) the requirement in regulation 4(1)(c)(ii) of the EEA Regulations for comprehensive sickness insurance cover in the UK
  - would in practice be [unable to remain in the UK if the primary carer \(or both primary carers, where the role of primary carer is shared with another person\) in fact left the UK for an indefinite period](#)
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

## Ibrahim and Teixeira children and primary carer cases

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

- the child of a former EEA citizen worker (or, in line with the Withdrawal Agreement) self-employed person where the child is in education in the UK
- their primary carer where requiring them to leave the UK for an indefinite period would prevent the child from continuing their education in the UK

The conditions for the child are set out in sub-paragraph (b) of the definition of a ‘person with derivative right to reside’ in [Annex 1 to Appendix EU](#).

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

- the applicant must not be an [exempt person](#)
- the applicant is in education in the UK
- the applicant is the child of a former EEA citizen worker or self-employed person who resides or has resided in the UK
- the applicant lived in the UK while their EEA citizen parent worked or was self-employed in the UK
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

The conditions for the child's primary carer are set out in sub-paragraph (c) of the definition of 'person with derivative right to reside' in [Annex 1 to Appendix EU](#).

Under sub-paragraph (c), the applicant will be a 'person with a derivative right to reside' where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a derivative right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an [exempt person](#)
- the applicant is the [primary carer](#) of a child who meets the conditions of sub-paragraph (b) above, by both:
  - being their [direct relative](#) or [legal guardian](#)
  - having primary responsibility for their care or sharing equally the responsibility for their care with one other person, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility
- the child would in practice be unable to continue to be educated in the UK if the primary carer in fact left the UK for an indefinite period
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

## Dependant of the primary carer cases

Sub-paragraph (d) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#) sets out the requirements for a dependant under the age of 18 of a primary carer who meets the definition of a 'person with a derivative right to reside'.

Under sub-paragraph (d), the applicant will be 'a person with a derivative right to reside' where they are and for the relevant period have been (or, as the case may be, for the relevant period in which they rely on having been a 'person with a derivative right to reside' they were) resident for a continuous qualifying period in the UK which began before the specified date and throughout which all the following criteria are met:

- the applicant must not be an [exempt person](#)
- the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain under rule EU3 of Appendix EU as 'a person with a derivative right to reside' and were under the age of 18 at the date of application for that leave
- the applicant does not have leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the

Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix

- their primary carer meets the requirements of sub-paragraph (a) or (c) of the definition of 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#)
- their primary carer would in practice be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period
- the applicant is not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect

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

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

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

## **Relevant period**

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

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

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

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

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

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

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

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

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

## Making an application: deadline

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

### Related content

#### [Contents](#)

EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members  
EU Settlement Scheme: family member of a qualifying British citizen

### Related external links

[Chen and others \(Free movement of persons\) \[2004\] EUECJ C-200/02](#)

[Ibrahim C-310/08](#)

[Teixeira C-480/08](#)

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

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

[Appendix EU to the Immigration Rules](#)

# All applications – initial eligibility requirements

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

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

- must not be an [exempt person](#)
- must not be [subject to a decision made under regulation 23\(6\)\(b\), 24\(1\), 25\(1\), 26\(3\) or 31\(1\) of the European Economic Area \(EEA\) Regulations](#), unless that decision has been set aside or otherwise no longer has effect

## Exempt person

To be considered eligible as a ‘person with a derivative right to reside’, the applicant must not for the relevant period be an ‘exempt person’.

An ‘exempt person’ (as defined in [Annex 1 to Appendix EU](#)) is a person who:

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

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

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

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

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

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

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

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

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

### **Related content**

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EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members  
EU Settlement Scheme: family member of a qualifying British citizen

### **Related external links**

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

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

[Appendix EU to the Immigration Rules](#)

# Eligibility – Chen primary carer

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

Where the applicant relies on being a Chen primary carer and meets the initial eligibility requirements in [All applications - initial eligibility requirements](#) of this guidance, you must then consider the following 4 additional stages:

- [stage 1: primary carer](#): assessing whether the applicant is the primary carer of the EEA citizen child
- [stage 2: EEA citizen child under 18](#): assessing whether the child is an EEA citizen and under the age of 18
- [stage 3: EEA citizen child resides in the UK as a self-sufficient person](#): assessing whether the EEA citizen child resides in the UK as a self-sufficient person
- [stage 4: EEA citizen child unable to remain in the UK](#): assessing whether, in practice, the EEA citizen child would be unable to remain in the UK if the applicant was in fact required to leave the UK for an indefinite period

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a ‘person with a derivative right to reside’ for them to be eligible for leave under the scheme as such a person.

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

## Related content

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# Stage 1: Primary carer

The first additional stage is to assess whether the applicant is the primary carer of the relevant European Economic Area (EEA) citizen child.

## Primary carer

A primary carer is defined in [Annex 1 to Appendix EU](#) 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, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations, or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

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

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

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

### Direct relative

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

- a parent
- a grandparent
- a brother or sister

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

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

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

You must be satisfied of the claimed family relationship between the direct relative and the EEA citizen child.

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

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

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

Durable partners are not within the definition of 'direct relative' for the purposes of assessing whether they are a primary carer, unless there is also a lawful guardianship order, as described below, in place.

## Legal guardian

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

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

- they were the EEA citizen child's legal guardian
- the EEA citizen child was under the age of 18

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

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

An alternative court order transferring parental responsibility, or otherwise establishing primary carer responsibility, for the child is most likely to be made in the context of family proceedings. The most common court orders seen during family proceedings are:

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

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

## **Stage (b): Assessing primary carer responsibility**

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

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

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

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

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

## Other parent

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

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

## Deceased parent

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

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

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

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

## Sole primary carer responsibility

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

## Sharing equal primary carer responsibility

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

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.

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

Circumstances must be considered on a case-by-case basis.

## Evidence of shared primary carer responsibility

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

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

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

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

## Financial support

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

## Two primary carers

If there are 2 primary carers of the same EEA citizen child, they can, subject to the rest of this guidance, both be considered a 'person with a derivative right to reside'

for the purposes of Appendix EU, even if they apply under the scheme at different times.

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

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

## Conclusion on stage 1

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

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

### Related content

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

### Related external links

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

## Stage 2: EEA citizen child under 18

The second additional stage is to consider whether the relevant child is an European Economic Area (EEA) citizen and under the age of 18.

### EEA citizenship

For the purposes of this assessment, an 'EEA citizen' is a person who is either:

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

A 'McCarthy dual national' and a 'relevant person of Northern Ireland' are not considered an 'EEA citizen' for the purpose of this assessment because a primary carer of such a person did not have a right to reside in the UK as a Chen primary carer.

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

### Age

To satisfy you that, before the specified date and at the date of application, the child is under the age of 18, the applicant can, for example, provide the valid passport or valid national identity card of the child; the child's in-date residence document issued under the EEA Regulations; the child's birth certificate; or the EU Settlement Scheme application number of the child where they have applied for or been granted leave under the scheme.

Where the applicant provides a child's in-date residence document issued under the EEA Regulations, it does not matter that the child 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 2

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

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

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

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## Stage 3: EEA citizen child resides in the UK as a self-sufficient person

The third additional stage is to assess whether the European Economic Area (EEA) citizen child resides in the UK as a self-sufficient person, meaning that they have sufficient resources not to become a burden on the social assistance system of the UK.

### Resides in the UK

You must be satisfied that the EEA citizen child resides in the UK and you must work flexibly with the applicant to help them evidence this by the best means available to them. For further information see the section on 'Evidence of residence' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

### Income from the primary carer

The applicant can show that the EEA citizen child is self-sufficient by relying on the income of the applicant.

In addition, in light of the Court of Justice of the European Union (CJEU) judgment in Bajratari, the primary carer may rely on funds accrued from 'unlawful employment', such as employment without permission, provided that it did not involve engaging in a criminal activity.

### Income from other sources

If the applicant is not working in the UK, or does not earn enough income to demonstrate that the EEA citizen child and they are self-sufficient, you may accept other evidence which may include:

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

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

### Comprehensive sickness insurance

An individual applying as a 'person with a derivative right to reside' based on Chen does not need to show that the EEA citizen child holds comprehensive sickness insurance. You therefore must not seek evidence of this.

## An unreasonable burden on the UK's social assistance system?

You must consider whether the EEA citizen child is a beneficiary of the UK's social assistance system, directly or via the primary carer, and whether, in light of the CJEU judgment in Bajratari, that makes the child an unreasonable burden on that system during the period of residence.

Where funds of the primary carer are from the UK's social assistance system, irrespective of the fact that the child is not themselves the claimant, the child can, in principle, be considered an unreasonable burden on that system if the amount of funds claimed is of sufficient magnitude that it is unreasonable for the UK to shoulder.

For these purposes, Asylum Support paid by the Home Office for the benefit of the child is to be considered part of the UK's social assistance system.

To assess whether the EEA citizen child has sufficient resources to cover their essential needs – accommodation, food, clothing, school supplies, etc – for them not to become an unreasonable burden on the UK's social assistance system during the period of residence, you must consider:

1. Does the child have sufficient resources in their own right without having recourse to social assistance?
2. If not, and together with (1), does the child have sufficient resources provided by the primary carer, without either the child or the primary carer having recourse to social assistance?
3. If not, has the child had recourse to social assistance directly or via the primary carer?
4. In light of (2) and (3), will the child (or have they) become an unreasonable burden on the UK's social assistance system during the period of residence?

You must make an individualised assessment in each case, looking at (i) the amount of social assistance received by the child and / or the primary carer and over what period; (ii) whether the child is a primary beneficiary of those funds; and (iii) whether it would be reasonable and proportionate to refuse the application on that basis in light of all the circumstances.

In line with Bajratari, the decision must be necessary and proportionate in order to protect the public finances of the host state.

## Conclusion on stage 3

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

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

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## Stage 4: EEA citizen child unable to remain in the UK

The fourth additional stage is to assess whether, in practice, the relevant European Economic Area (EEA) citizen child would be unable to remain in the UK if the applicant were in fact required to leave the UK for an indefinite period.

This section of the guidance refers throughout to “the applicant” leaving the UK. However, where you have concluded, under stage 1, that there are two primary carers (who are not exempt persons and do not hold alternative leave to enter or remain – see [All applications: initial eligibility requirements](#), and who assumed primary responsibility for the EEA citizen child at the same time – see [Two primary carers](#)), you must read the guidance as if it refers to both the applicant and the other primary carer leaving the UK.

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

### Assessing whether the EEA citizen child would be unable to reside in the UK

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

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

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

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

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

## 'In the alternative' assessment

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

- the applicant is not the primary carer of the EEA citizen child ([stage 1](#))
- the EEA citizen child is not under 18 ([stage 2](#))
- the EEA citizen child does not reside in the UK as a self-sufficient person ([stage 3](#))

you must approach the stage 4 question of whether the primary carer could continue to live in the UK as if those earlier requirements are met. This is known as an 'in the alternative' consideration. In other words, if we are wrong about the earlier requirement or requirements not being met, should the application succeed under stage 4?

The refusal letter must both:

- be clear that these questions have been considered 'in the alternative', without prejudice to the primary position that the earlier requirement is (or requirements are) not met
- state either that:
  - it is accepted that the application would succeed under stage 4 if the requirements considered under stage 1, stage 2 and stage 3 were met
  - the application would not succeed under stage 4 even if the requirements considered under stage 1, stage 2 and stage 3 were met. Where this is the case, you must explain the reasons clearly

## Could the EEA citizen child live in the UK?

You must consider whether, in practice, the EEA citizen child would be unable to reside in the UK if the applicant were in fact required to leave the UK for an indefinite period.

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

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

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

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

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

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

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

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

## Applicant's immigration status

You must check Home Office caseworking systems to confirm whether or not the applicant holds (or held) limited leave to enter or remain (other than under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 or granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme Family Permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix) ('alternative limited leave') either:

- at the specified date (generally, 11pm GMT on 31 December 2020)
- at the date of their application under Appendix EU

If the applicant had alternative limited leave, they will not generally meet the requirements as a 'person with a derivative right to reside' because a person with alternative limited leave would not in fact be (or have been) required to leave the UK and therefore the EEA citizen would in practice be (or have been) able to remain in the UK. This means that the applicant either:

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

If an applicant has included information and evidence in their application that they would in fact be (or have been) compelled to leave the UK even though they had alternative limited leave, and that the EEA citizen would have been unable to remain in the UK, you must consider the credibility of this information and evidence on a case by case basis and, if refusing to accept that this is (or was) the case, explain

the reasons in the decision letter. If you need help with this assessment, you must contact your senior caseworker in the first instance. If multiple applications raise similar claims, information and evidence about this point, you must contact the EEA Citizens' Rights & Hong Kong Unit for advice.

Where the applicant does not (or did not) have alternative leave to enter or remain, you have already accepted, under [stage 1](#), that the applicant is the sole primary carer of the EEA citizen child, and you have determined that the child lives full-time in a single-adult household with the applicant, then you will usually accept that, if the applicant left the UK, the EEA citizen child would be more likely to leave the UK with the applicant than to remain in the UK without them.

Where you concluded, under [stage 1](#), that the applicant is the joint primary carer of the EEA citizen child, you must go on to consider factors 2 to 7, below.

## The circumstances of the other primary carer

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

This includes whether the other primary carer either:

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

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

## Unsuitable care arrangements

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

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

## The child's age

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

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

## The child's physical and emotional development

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Conclusion

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

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

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

## Conclusion on stage 4

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

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

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

## Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 4, you must next go on to [All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a derivative right to reside'.

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# Eligibility – Ibrahim and Teixeira child

Throughout this section, the applicant means a person who has applied as a ‘person with a derivative right to reside’ based on being the child (who may have turned 18) of a European Economic Area (EEA) citizen (sub-paragraph (b) of the definition in Annex 1 to Appendix EU). The child must be in education in the UK and must have lived in the UK while their EEA citizen parent was a worker or self-employed person in the UK.

Where the applicant relies on being an Ibrahim and Teixeira child (who may have turned 18) and meets the initial eligibility requirements in [All applications - initial eligibility requirements](#) of this guidance, you must then consider the following 3 additional stages:

- [stage 1: child in education in the UK](#): assessing whether the applicant is in education in the UK
- [stage 2: child of an EEA citizen](#): assessing whether the applicant is the child of an EEA citizen who resides or resided in the UK
- [stage 3: child in the UK when the EEA citizen parent was a worker or self-employed person in the UK](#): assessing whether the applicant lived in the UK while the EEA citizen parent was a worker or self-employed person in the UK

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a ‘person with a derivative right to reside’ for them to be eligible for leave under the scheme as such a person.

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

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# Stage 1: Child in education in the UK

The first additional stage is to assess whether the child (who may have turned 18) is in education in the UK.

## Education

Education excludes nursery education but includes education received before the compulsory school age where that education is equivalent to the education received from the compulsory school age. Attending a reception class is not considered nursery education and is therefore included.

To satisfy you that the child is in education in the UK, the applicant can, for example, provide a letter from the relevant education establishment or establishments that confirms the date that they started education at that establishment and, if relevant, the date they completed their education there.

## Conclusion on stage 1

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

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

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## Stage 2: Child of an EEA citizen

The second additional stage is to assess whether the applicant is the child (who may have turned 18) of a European Economic Area (EEA) citizen.

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

### EEA citizenship

For the purposes of this assessment, an 'EEA citizen' is a person who is either:

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

A 'McCarthy dual national' and a 'relevant person of Northern Ireland' are not considered an 'EEA citizen' for the purpose of this assessment because a child of such a person did not have a right to reside in the UK as an Ibrahim and Teixeira child.

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

### Adopted children and step-children

An adopted child (adopted in accordance with a 'relevant adoption decision' as defined in [Annex 1 to Appendix EU](#)) and a step-child of an EEA citizen are to be considered in the same way as if they were the biological child of the EEA citizen with regard to Ibrahim and Teixeira.

A 'relevant adoption decision' is defined in [Annex 1 to Appendix EU](#) as an adoption decision taken either:

- by the competent administrative authority or court in the UK or the Islands
- by the competent administrative authority or court in a country whose adoption orders are recognised by the UK or the Islands
- in a particular case in which that decision in another country has been recognised in the UK or the Islands as an adoption

## Relationship between child and EEA citizen

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

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

## Conclusion on stage 2

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

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

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## Stage 3: Child in the UK when EEA citizen parent was a worker or self-employed person in the UK

The third additional stage is to assess whether the applicant lived in the UK while their European Economic Area (EEA) citizen parent was a worker or self-employed person in the UK.

It is not necessary for the parent to have been a worker or self-employed person in the UK while the applicant was in education in the UK.

### Worker

The EEA citizen parent will be considered a worker in the UK where there is evidence which satisfies you that they are a worker as defined in regulation 4(1) of the EEA Regulations.

There is no minimum period for how long the EEA citizen parent must have been a worker in the UK, as long as the applicant was in the UK at the same time. Work undertaken in line with the EU8 and EU2 worker schemes is acceptable. For more information see: Qualified persons guidance.

A worker does not include the following for these purposes:

- a jobseeker
- a person who is no longer working but who continues to be treated as a worker within the meaning of “qualified person” under regulation 6 of the EEA Regulations

### Self-employed person

The EEA citizen parent will be considered a self-employed person in the UK where there is evidence which satisfies you that they are a self-employed person as defined in regulation 4(1) of the EEA Regulations.

There is no minimum period for how long the EEA citizen parent must have been a self-employed person in the UK, as long as the applicant was in the UK at the same time. For more information see: Qualified persons guidance.

A self-employed person does not include for these purposes a person who is no longer in self-employment but who continues to be treated as a self-employed person within the meaning of “qualified person” under regulation 6 of the EEA Regulations.

## Child in the UK

You must be satisfied that the child was resident in the UK at the same time as their EEA citizen parent was a worker or self-employed person here, and you must work flexibly with the applicant to help them evidence this by the best means available to them. For further information see the section on 'Evidence of residence' in EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

## Conclusion on stage 3

Where you are satisfied that during the [relevant period](#) the applicant has lived in the UK while their EEA citizen parent was a worker or self-employed person in the UK, you must move on to the overall conclusion below.

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

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

## Overall conclusion

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

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# Eligibility – Ibrahim and Teixeira primary carer

Throughout this section, the applicant means a person who has applied as a ‘person with a derivative right to reside’ based on being the primary carer of a [child who relies on being an Ibrahim and Teixeira case](#) (sub-paragraph (c) of the definition in Annex 1 to Appendix EU).

Where the applicant relies on being an Ibrahim and Teixeira primary carer and meets the initial eligibility requirements in [All applications - initial eligibility requirements](#) of this guidance, you must then consider the following 3 additional stages:

- [stage 1: primary carer](#): assessing whether the applicant is the primary carer of the child
- [stage 2: Ibrahim and Teixeira child](#): assessing whether the relevant child (who may have turned 18) meets the requirements as an Ibrahim and Teixeira child
- [stage 3: child unable to continue to be educated in the UK](#): assessing whether, in practice, the child would be unable to continue to be educated in the UK if the applicant was in fact required to leave the UK for an indefinite period

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a ‘person with a derivative right to reside’ for them to be eligible for leave under the scheme as such a person.

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

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# Stage 1: Primary carer

The first additional stage is to assess whether the applicant is the primary carer of the child.

## Primary carer

A primary carer is defined in [Annex 1 to Appendix EU](#) 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, unless that other person had acquired a derivative right to reside in the UK as a result of regulation 16 of the European Economic Area (EEA) Regulations or relied on meeting the definition of 'primary carer' in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix, before the person assumed equal care responsibility

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

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

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

### Direct relative

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

- a parent
- a grandparent
- a brother or sister

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

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

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

You must be satisfied of the claimed family relationship between the direct relative and the child.

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

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

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

Durable partners are not within the definition of 'direct relative' for the purposes of assessing whether they are a primary carer, unless there is also a lawful guardianship order, as described below, in place.

## Legal guardian

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

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

- they were the child's legal guardian
- the child was under the age of 18

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

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

An alternative court order transferring parental responsibility, or otherwise establishing primary carer responsibility, for the child is most likely to be made in the context of family proceedings. The most common court orders seen during family proceedings are:

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

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

## **Stage (b): Assessing primary carer responsibility**

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

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

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

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

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

## Other parent

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

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

## Deceased parent

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

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

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

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

## Sole primary carer responsibility

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

## Sharing equal primary carer responsibility

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

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.

Two people who spend different amounts of time with the child (for example where the child lives with one parent during the week and the other at weekends) may still have equal primary carer responsibility for the child. Where the 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.

Circumstances must be considered on a case-by-case basis.

## Evidence of shared primary carer responsibility

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

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

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

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

## Financial support

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

## Two primary carers

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

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

assumed equal care responsibility, the person with whom care responsibility is shared had already acquired a derivative right to reside in the UK as a result of regulation 16 of the EEA Regulations or relied on meeting the definition of 'primary carer' as defined in Annex 1 to Appendix EU in being granted the indefinite leave to enter or remain or limited leave to enter or remain they hold under that Appendix.

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

## Conclusion on stage 1

Where you are satisfied that the applicant is the primary carer of the child, you must move on to the next stage.

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

### Related content

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

### Related external links

[Appendix EU to the Immigration Rules](#)

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

## Stage 2: Ibrahim and Teixeira child

The second additional stage is to consider whether the relevant child meets the requirements as an Ibrahim and Teixeira child as set out in sub-paragraph (b) of the definition in [Annex 1 to Appendix EU](#) of a 'person with derivative right to reside'. See [Eligibility – Ibrahim and Teixeira child](#).

The child, who may have turned 18, must meet those criteria throughout the continuous qualifying period in the UK in which the applicant relies on having been a 'person with a derivative right to reside'.

### Conclusion on stage 2

Where you are satisfied that the relevant child meets and for the relevant period has met (or, as the case may be, for the relevant period they met) the requirements as an Ibrahim and Teixeira child as set out in sub-paragraph (b) of the definition of a 'person with derivative right to reside' in [Annex 1 to Appendix EU](#), you must move on to the next stage.

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

#### Related content

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[Appendix EU to the Immigration Rules](#)

## Stage 3: Child unable to continue to be educated in the UK

The third additional stage is to assess whether, in practice, the relevant child would be unable to continue to be educated in the UK if the applicant were in fact required to leave the UK for an indefinite period.

This section of the guidance refers throughout to “the applicant” leaving the UK. However, where you have concluded, under stage 1, that there are two primary carers (who are not exempt persons and do not hold alternative leave to enter or remain – see [All applications - initial eligibility requirements](#), and who assumed primary responsibility for the British citizen at the same time – see [Two primary carers](#)), you must read the guidance as if it refers to both the applicant and the other primary carer leaving the UK.

As held by the Court of Appeal in *Velaj v SSHD* [2022] EWCA Civ 767, this assessment requires a fact-based enquiry looking at whether, in practice, the child would be unable to continue to be educated in the UK if the applicant was in fact required to leave the UK for an indefinite period.

### Assessing whether the EEA citizen child would be unable to continue to be educated in the UK

An applicant can only be considered a ‘person with a derivative right to reside’ where, in practice, the relevant child would be unable to continue their education in the UK if the applicant were in fact required to leave the UK for an indefinite period (because, where that is so, the child would be compelled to leave the UK).

The Court of Appeal confirmed in *Velaj v SSHD* [2022] EWCA Civ 767 that the assessment of whether or not the child would be unable to continue to be educated in the UK must be based on what would happen in practice. The assessment is not to be based on a hypothetical, assumed or counter-factual premise.

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

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

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

## 'In the alternative' assessment

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

- the applicant is not the primary carer of the relevant child ([stage 1](#))
- the relevant child (who may have turned 18) does not meet the requirements as an Ibrahim and Teixeira child ([stage 2](#))

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

The refusal letter must both:

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

## Could the relevant child continue to be educated in the UK?

You must consider whether, in practice, the relevant child would be unable to continue their education in the UK if the applicant were in fact required to leave the UK for an indefinite period (because, where that is so, the child would be compelled to leave the UK).

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

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

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

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

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

Where you have already accepted, under [stage 1](#), that the applicant is the sole primary carer of the relevant child, and you have determined that the child lives full-time in a single-adult household with the applicant, then you will usually accept that, if the applicant left the UK, the child would be more likely to leave the UK with the applicant than to remain in the UK without them and therefore would be unable to continue their education in the UK.

Where you concluded, under [stage 1](#), that the applicant is the joint primary carer of the relevant child, you must consider whether, if the applicant left the UK, the child would be more likely to leave the UK with the applicant or to remain in the UK to continue their education with the other primary carer.

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

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

The guidance below sets out how to ensure that all the specific circumstances, including these factors (adapted, as appropriate, for the range of circumstances you may see in applications), are taken into account when you consider whether, in practice, the relevant child would be prevented from continuing their education in the UK if the applicant in fact left the UK for an indefinite period (because, where that is so, the child would be compelled to leave the UK).

## Applicant's immigration status

You must check Home Office caseworking systems to confirm whether or not the applicant holds (or held) limited leave to enter or remain (other than under Appendix EU or in effect by virtue of section 3C of the Immigration Act 1971 or granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme Family Permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix) ('alternative limited leave') either:

- at the specified date (generally, 11pm GMT on 31 December 2020)
- at the date of their application under Appendix EU

If the applicant had alternative limited leave, they will not generally meet the requirements as a 'person with a derivative right to reside' because a person with

alternative limited leave would not in fact be (or have been) required to leave the UK and therefore the relevant child would in practice be (or have been) able to continue to reside – and, therefore, continue their education – in the UK. This means that the applicant either:

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

If an applicant has included information and evidence in their application that they would in fact be (or have been) compelled to leave the UK even though they had alternative limited leave, and that the relevant child would have been unable to remain (and, therefore, unable to continue to be educated) in the UK, you must consider the credibility of this information and evidence on a case by case basis and, if refusing to accept that this is (or was) the case, explain the reasons in the decision letter. If you need help with this assessment, you must contact your senior caseworker in the first instance. If multiple applications raise similar claims, information and evidence about this point, you must contact the EEA Citizens' Rights & Hong Kong Unit for advice.

Where the applicant does not (or did not) have alternative leave to enter or remain, you have already accepted, under [stage 1](#), that the applicant is the sole primary carer of the relevant child, and you have determined that the child lives full-time in a single-adult household with the applicant, then you will usually accept that, if the applicant left the UK, the relevant child would be more likely to leave the UK with the applicant than to remain in the UK without them – and, therefore, be (or have been) unable to continue their education in the UK.

Where you concluded, under [stage 1](#), that the applicant is the joint primary carer of the relevant child, you must go on to consider factors 2 to 7, below.

## The circumstances of the other primary carer

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

This includes whether the other primary carer either:

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

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

- are a British citizen or otherwise have the right of abode in the UK
- are an Irish citizen

- have indefinite or limited leave to enter or remain in the UK
- are exempt from immigration control

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

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

## Unsuitable care arrangements

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

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

## The child's age

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

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

## The child's physical and emotional development

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

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

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

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

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

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

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

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

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

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

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

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

Where the child divides their time between the applicant and the other primary carer, you must consider whether the other adult is an appropriate primary carer or whether

the evidence raises any welfare concerns. If you have any concerns about the child's welfare, you must follow local procedures to raise them with the relevant authorities.

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

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

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

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

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

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

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

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

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

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

## Any other factors raised or implied in the application

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

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

## Conclusion

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

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

When you have considered the relevant child's level of dependency on the applicant and on the other primary carer, you must draw an overall conclusion about whether, in practice, the child would be (or would have been) unable to continue their education in the UK if the applicant in fact left (or had left) the UK for an indefinite period (because, where that is so, the child would be compelled to leave the UK with the applicant).

## Conclusion on stage 3

Where you are satisfied that, in practice, the relevant child would be and for the relevant period would have been (or, as the case may be, for the relevant period they would have been) unable to continue to be educated in the UK 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 on another basis under rule EU11 (and, where relevant, EU12) and EU14 of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

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

## Overall conclusion

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

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

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[Appendix EU to the Immigration Rules](#)

# Eligibility – dependant of the primary carer

Throughout this section, ‘the applicant’ means a person who has applied as a ‘person with a derivative right to reside’ based on being a dependant of a primary carer of a European Economic Area (EEA) citizen child (Chen) or child in education in the UK (Ibrahim and Teixeira) (sub-paragraph (d) of the definition in Annex 1 to Appendix EU).

The applicant’s primary carer (on whom the applicant is dependent) must also be the primary carer of the EEA citizen child or child in education in the UK by meeting the requirements of sub-paragraph (a) or (c) of the definition of a ‘person with a derivative right to reside’ in Annex 1 to Appendix EU, guidance which is in [Eligibility – Chen primary carer](#) and [Eligibility – Ibrahim and Teixeira primary carer](#) of this guidance. This section refers to such a person as the ‘applicant’s primary carer’ and ‘the relevant child’s primary carer’ (where ‘the relevant child’ means either the EEA citizen child if you are considering a Chen application, or the child in education in the UK if you are considering an Ibrahim and Teixeira application), depending on the nature of the assessment to be undertaken.

Where the applicant relies on being a dependant of the primary carer and meets the initial eligibility requirements in [All applications - initial eligibility requirements](#) of this guidance, you must then consider the following 3 additional stages:

- [stage 1: applicant under the age of 18](#): assessing whether the applicant is under the age of 18, unless they were previously granted limited leave to enter or remain as ‘a person with a derivative right to reside’ and were under the age of 18 at the date of application for that leave
- [stage 2: applicant without leave to enter or remain](#): assessing whether the applicant already has leave to enter or remain in the UK, unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met sub-paragraph (a)(ii) of the definition of ‘specified EEA family permit case’ in Annex 1 to that Appendix
- [stage 3: applicant’s primary carer a ‘person with a derivative right to reside’](#): assessing whether the relevant person is the applicant’s primary carer and whether that person meets the requirements of sub-paragraph (a) or (c) of the definition of a ‘person with a derivative right to reside’ in [Annex 1 to Appendix EU](#)
- [stage 4: primary carer prevented from residing in the UK](#): assessing whether, in practice, the applicant’s primary carer would be prevented from residing in the UK if the applicant in fact left the UK for an indefinite period

These criteria must be met throughout the continuous qualifying period in the UK, which began before the specified date, in which the applicant relies on having been a

'person with a derivative right to reside' for them to be eligible for leave under the scheme as such a person.

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

#### **Related content**

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

#### **Related external links**

[Appendix EU to the Immigration Rules](#)

# Stage 1: Applicant under the age of 18

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

## Age

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

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

## Conclusion on stage 1

Where you are satisfied that the applicant is (or, 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 move on to the next stage to consider whether there are additional reasons for refusing the application as a 'person with a derivative right to reside'.

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## Stage 2: Applicant without leave to enter or remain

The second additional stage is to consider whether the applicant has leave to enter or remain in the UK, unless it is of a permitted type.

### Consideration

To satisfy yourself that the applicant does not have leave to enter or remain in the UK (unless this was granted under Appendix EU, is in effect by virtue of section 3C of the Immigration Act 1971 or is leave to enter granted by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit granted under Appendix EU (Family Permit) on the basis they met subparagraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix), you must check Home Office records to ascertain whether they have previously been granted such leave and, if they have, whether there is evidence that it has lapsed or been curtailed, cancelled or revoked.

### Conclusion on stage 2

Where you are satisfied that the applicant does not have (or, as the case may be, for the relevant period did not have) leave to enter or remain in the UK, unless it is of a permitted type, you must move on to the next stage.

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

### Related content

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## Stage 3: Applicant's primary carer a 'person with a derivative right to reside'

The third additional stage is to consider whether the relevant child's primary carer is also the applicant's primary carer and whether the relevant child's primary carer has been (or is being) granted limited or indefinite leave to enter or remain as a 'person with a derivative right to reside' (based on sub-paragraph (a) or sub-paragraph (c) of that definition) under paragraph EU2 or paragraph EU3 of Appendix EU or otherwise meets the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#).

### Primary carer

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

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

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

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

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

#### Direct relative

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

- a parent
- a grandparent
- a brother or sister

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

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

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

You must be satisfied of the claimed family relationship between the direct relative and the applicant.

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

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

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

Durable partners are not within the definition of 'direct relative' for the purposes of assessing whether they are a primary carer, unless there is also a lawful guardianship order, as described below, in place.

## Legal guardian

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

Where the applicant has not been issued with a residence card or a family permit under the EEA Regulations based on the relevant child's primary carer being their legal guardian, you must be satisfied from information and evidence provided by the applicant that this remained the case throughout the continuous qualifying period relied upon which began before the specified date.

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

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

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

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

An alternative court order transferring parental responsibility, or otherwise establishing primary carer responsibility, for the applicant is most likely to be made in the context of family proceedings. The most common court orders seen during family proceedings are:

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

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

## Stage (b): Assessing primary carer responsibility

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

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

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

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

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

### Other parent

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

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

### Deceased parent

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

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

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

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

## Chen or Ibrahim & Teixeira primary carer

To consider whether the applicant's primary carer meets the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#), you must ascertain whether they have been (or are being) granted indefinite or limited leave to enter or remain under paragraph EU2 or paragraph EU3 of Appendix EU on that basis (based on sub-paragraph (a) or sub-paragraph (c) of that definition) and otherwise whether they meet the initial eligibility requirements in [All applications – initial eligibility requirements](#) of this guidance and, if they do, whether the additional eligibility requirements in either [Eligibility – Chen primary carer](#) (Chen primary carer) or [Eligibility – Ibrahim and Teixeira primary carer](#) (Ibrahim and Teixeira primary carer) of this guidance are met.

To satisfy you of this, the applicant can, for example, provide the EU Settlement Scheme application number of their primary carer where they have been granted leave under the scheme. If the applicant does not provide the primary carer's application number, you must check Home Office caseworking systems using the information available or, if necessary, request further information from the applicant. However, there is no requirement for the primary carer to apply first under the scheme and, where they have not been granted leave under the scheme, the applicant will need to satisfy you that the primary carer meets the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#).

## Chen or Ibrahim & Teixeira primary carer's EUSS status

You must, where applicable, check the primary carer's Home Office unique application number on the relevant caseworking system to confirm that they have been granted indefinite leave to enter or remain (settled status) or limited leave to enter or remain (pre-settled status) under the EU Settlement Scheme (EUSS), under, as the case may be, paragraph EU2 or EU3 of Appendix EU, based on being a 'person with a derivative right to reside'.

## Relevant EEA citizen's EUSS status was granted in error

If, following the check of the relevant caseworking system, you have reason to believe that the primary carer's EUSS status was granted in error, you must first contact the applicant in line with the standard contact process to give them a reasonable opportunity to provide relevant further information or evidence.

Where you are satisfied by the further information or evidence provided by the applicant that the primary carer's EUSS status was granted correctly, you must consider the application in line with the rest of this guidance.

Where you are not satisfied by the further information or evidence provided by the applicant that the primary carer's EUSS status was granted correctly (or where the applicant fails to respond or provide the information or evidence requested within the relevant timeframe), you must write to the primary carer to request the information or evidence required to confirm that they meet the definition set out in Appendix EU. You must give the primary carer 14 calendar days to provide the relevant further information or evidence.

Where you are satisfied by the further information or evidence provided by the primary carer that their EUSS status was granted correctly, you must consider the application in line with the rest of this guidance.

Where you are not satisfied by the further information or evidence provided by the primary carer that their EUSS status was granted correctly (or where they fail to respond or provide the information or evidence requested within the relevant timeframe), you must write to the primary carer to inform them that their EUSS status was granted in error and they do not meet the definition set out in Appendix EU and that this means that they cannot sponsor their dependant's EUSS application. Where the primary carer was granted limited leave to enter or remain under paragraph EU3 of Appendix EU (pre-settled status), you must also inform them that their pre-settled status will not be automatically extended and will expire at the end of its validity.

Where the primary carer has been notified that their EUSS status was granted in error, you must refuse the application. You must explain in the decision letter that the application has been refused because the primary carer does not meet the definition set out in Appendix EU and was granted EUSS status in error and is therefore unable to sponsor the application.

## Conclusion on stage 3

Where you are satisfied that the relevant child's primary carer is also the applicant's primary carer and that the applicant's primary carer has been (or is being) granted limited or indefinite leave to enter or remain as a 'person with a derivative right to reside' (based on sub-paragraph (a) or sub-paragraph (c) of that definition) under paragraph EU2 or paragraph EU3 of Appendix EU or otherwise meets and for the relevant period has met (or, as the case may be, for the relevant period they met) the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in [Annex 1 to Appendix EU](#), you must move on to the next stage.

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

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

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

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

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

An applicant can only be considered a 'person with a derivative right to reside' where, in practice, the relevant child's primary carer would be unable to reside in the UK if the applicant were in fact required to leave the UK for an indefinite period (because, where that is so, the relevant European Economic Area (EEA) citizen child would be compelled to leave the UK (Chen) or the child in education would be compelled to leave the UK with the effect that they would not be able to continue their education in the UK (Ibrahim and Teixeira).

You will have already established, under [stage 2](#), that the applicant cannot be considered a 'person with a derivative right to reside' where they have leave to enter or remain in the UK, other than leave granted under Appendix EU, leave in effect by virtue of section 3C of the Immigration Act 1971 or leave to enter granted under Appendix EU (Family Permit) by virtue of having arrived in the UK with an entry clearance in the form of an EU Settlement Scheme family permit on the basis they met sub-paragraph (a)(ii) of the definition of 'specified EEA family permit case' in Annex 1 to that Appendix.

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

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

### 'In the alternative' assessment

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

- the applicant is not under 18 ([stage 1](#))
- the relevant child's primary carer is not the applicant's primary carer ([stage 3](#))
- the applicant's primary carer has not been (and is not being) granted limited or indefinite leave to enter or remain as a 'person with a derivative right to reside'

(based on sub-paragraph (a) or sub-paragraph (c) of that definition) under paragraph EU2 or paragraph EU3 of Appendix EU, and otherwise does not meet the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside' in Annex 1 to Appendix EU ([stage 3](#))

you must approach the stage 4 question of whether the primary carer could continue to live in the UK as if those earlier requirements are met. This is known as an 'in the alternative' consideration. In other words, if we are wrong about the earlier requirement or requirements not being met, should the application succeed under stage 4?

The refusal letter must both:

- be clear that these questions have been considered 'in the alternative', without prejudice to the primary position that the earlier requirement is (or requirements are) not met
- state either that:
  - it is accepted that the application would succeed under stage 4 if the requirements considered under stage 1, stage 2 and stage 3 were met
  - the application would not succeed under stage 4 even if the requirements considered under stage 1, stage 2 and stage 3 were met - where this is the case, you must explain the reasons clearly

## Could the primary carer live in the UK?

You must consider whether, in practice, the relevant child's primary carer would be unable to reside in the UK if the applicant were in fact required to leave the UK for an indefinite period (because, where that is so, the EEA citizen child would be compelled to leave the UK (Chen) or the child in education would be compelled to leave the UK with the effect that they would not be able to continue their education in the UK (Ibrahim and Teixeira)).

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

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

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

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

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

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

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

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

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

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

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

In Chavez-Vilchez, the Court of Justice of the European Union ruled that when assessing whether there is a relationship of dependency between a third country national parent and a child such that the child would be compelled to leave the territory of the EU as a whole (including with the effect that they would not be able to continue their education in the UK) if the third country national parent were refused a right of residence (a test which we can use by analogy here, but limited to the UK), the child's best interests require that all the specific circumstances be taken into account, including the following factors:

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

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

## The circumstances of the other primary carer

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

This includes whether the other primary carer either:

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

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

## Unsuitable care arrangements

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

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

## The applicant's age

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

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

## The applicant's physical and emotional development

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

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

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

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

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

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

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

- in a household with the relevant child's primary carer and the other primary carer?
- mostly with the relevant child's primary carer and sometimes with the other primary carer?
- sometimes with the relevant child's primary carer and mostly with the other primary carer?
- full-time with the other primary carer and not at all with the relevant child's primary carer?

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

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

However, it will always depend on the applicant's specific factual circumstances. For example, if the evidence shows that a seven-year-old applicant lived with their other primary carer (for example, their mother) until three months ago, when they went to live with the relevant child's primary carer (for example, the applicant's father), you

will need to consider whether the evidence suggests that this was for a good reason or for the purpose of strengthening the applicant's application to remain in the UK, and whether it is more likely than not that the applicant's mother would resume the applicant's full-time care if the applicant left the UK, rather than the applicant's father leaving the UK with the applicant.

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

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

You must also consider the best interests of the applicant. The applicant's best interests are not on their own determinative of whether the relevant child's primary carer would be prevented from residing in the UK if the applicant left the UK for an indefinite period. They are a primary consideration and must be considered as such, together with all the other information and evidence before you. You must consider any evidence provided in support of the application, which may include the applicant's own views.

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

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

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

- live in the country to which they have the strongest ties

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

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

### The risks which separation from the relevant child's primary carer might entail for the applicant's equilibrium

You must consider the level of disruption that would be caused to the applicant's life in the UK if the relevant child's primary carer remained in the UK without the applicant and whether it would be such a disruption that, depending on the assessment:

- the relevant EEA citizen child would be more likely to leave the UK (Chen) with the applicant than to remain in the UK without them
- the child in education would be more likely to leave the UK with the applicant than to remain in the UK without them, with the effect that they would not be able to continue their education in the UK (Ibrahim and Teixeira)

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

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

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

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

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

## Conclusion

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

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

When you have considered the applicant's level of dependency on the relevant child's primary carer and on the other primary carer, you must draw an overall conclusion about whether, in practice, the relevant child's primary carer would be (or would have been) prevented from residing in the UK if the applicant in fact left (or had left) the UK for an indefinite period, because, where that is so, the EEA citizen child would be compelled to leave the UK (Chen) or the child in education would be compelled to leave the UK with the effect that they would not be able to continue their education in the UK (Ibrahim and Teixeira).

### Conclusion on stage 4

Where you are satisfied that, in practice, the relevant child'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 in fact left (or had left) the UK for an indefinite period, you must move on to the overall conclusion below.

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

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

### Overall conclusion

Where you are satisfied that the application meets the requirements of the additional stages 1 to 4, you must next go on to [All applications not so far concluded](#) to establish whether the applicant is eligible for indefinite leave to enter or remain or limited leave to enter or remain under Appendix EU as a 'person with a derivative right to reside'.

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# Person who had a derivative or Zambrano right to reside

Where the applicant relies on being a 'person who had a derivative or Zambrano right to reside' and meets the initial eligibility requirements in [All applications - initial eligibility requirements](#) of this guidance in respect of the relevant period in which they rely on having been a 'person with a derivative right to reside', you must then consider the following 2 additional stages:

- [stage 1: applicant met the definition of a 'person with a derivative right to reside'](#): assessing whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been 'a person with a derivative right to reside', the applicant met the additional requirements of that definition set out in the following sections of this guidance
  - [Eligibility - Chen primary carer](#)
  - [Eligibility - Ibrahim and Teixeira child](#)
  - [Eligibility - Ibrahim and Teixeira primary carer](#)
  - [Eligibility - dependant of the primary carer](#)
- [stage 2: applicant then immediately switched to another qualifying category and remained in such a category](#): assessing whether, on ceasing to be a 'person with a derivative right to reside', before or after the specified date, the applicant immediately became a relevant European Economic Area (EEA) citizen, a family member of a relevant EEA citizen, a person with a Zambrano right to reside or a family member of a qualifying British citizen, and has since remained in any of those categories

## Related content

### [Contents](#)

EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members  
EU Settlement Scheme: family member of a qualifying British citizen

## Related external links

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

# Stage 1: Applicant met the definition of a 'person with a derivative right to reside'

The first additional stage is to consider whether, throughout a continuous qualifying period which began before the specified date in which they rely on having been 'a person with a derivative right to reside', the applicant met the additional requirements of that definition set out in the following sections of the guidance:

- [Eligibility - Chen primary carer](#)
- [Eligibility - Ibrahim and Teixeira child](#)
- [Eligibility - Ibrahim and Teixeira primary carer](#)
- [Eligibility - dependant of the primary carer](#)

## Consideration

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

- [Eligibility - Chen primary carer](#)
- [Eligibility - Ibrahim and Teixeira child](#)
- [Eligibility - Ibrahim and Teixeira primary carer](#)
- [Eligibility - dependant of the primary carer](#)

## Conclusion on stage 1

Where you are satisfied that, throughout a continuous qualifying period which began before the specified date in which they rely on having been 'a person with a derivative right to reside', the applicant met the additional requirements of that definition set out in the following sections of this guidance, you must move on to the next stage:

- [Eligibility - Chen primary carer](#)
- [Eligibility - Ibrahim and Teixeira child](#)
- [Eligibility - Ibrahim and Teixeira primary carer](#)
- [Eligibility - dependant of the primary carer](#)

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

### Related content

#### [Contents](#)

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

**Related external links**

[Appendix EU to the Immigration Rules](#)

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

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

### Consideration

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

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

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

### Conclusion on stage 2

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

Where you are not satisfied of this, you must not move on to that stage, but must instead consider the applicant's eligibility for leave on another basis under rule EU11

(and, where relevant, EU12), EU11A, EU14 and EU14A of Appendix EU: see EU Settlement Scheme: EU, other EEA and Swiss citizens and their family members.

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

## Overall conclusion

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

### Related content

[Contents](#)

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

### Related external links

[Appendix EU to the Immigration Rules](#)

# All Applications not so far concluded

## Continuous qualifying period

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

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

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

You must be satisfied that the following requirements are met:

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

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

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

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

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

You must be satisfied that the following requirements are met:

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

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

## Evidence

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

## Decision

### Suitability requirements

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

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

Where you are satisfied that:

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

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

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

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

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

Where you are satisfied that:

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

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

## Refusal

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

### Related content

#### [Contents](#)

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

EU Settlement Scheme: suitability requirements

### Related external links

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

# Applications to switch from pre-settled to settled status

## How to approach the consideration

### Previous application

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

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

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

If the grant of limited leave to enter or remain was incorrect because the person held alternative limited leave at the end of the transition period and / or at the date of the first Appendix EU application, then – absent a conclusion by the decision-maker or a finding by a tribunal or court that either:

- in the case of a primary carer:
  - the European Economic Area (EEA) citizen child would in practice have been unable to remain in the UK
  - the child in education in the UK would in practice have been unable to continue to be educated in the UK
- in the case of a dependant of a primary carer, the primary carer would in practice have been prevented from residing in the UK

notwithstanding the fact that the applicant had alternative leave to remain in the UK, they will not meet the requirements for indefinite leave to enter or remain as a 'person with a derivative right to reside', and the current application must be refused, because either:

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

## Example 1

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

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

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

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

## Example 2

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

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

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

You check Home Office systems and ascertain that on 2 December 2020 Mr. C had been granted limited leave to remain as a partner under Appendix FM until 2 June 2023. Therefore, he had alternative leave at the specified date and at the date of his first Appendix EU application.

You must check whether either the decision-maker expressly concluded, or the tribunal made a factual finding, in the course of the first application or an appeal against the refusal of the first application, that either:

- in the case of a primary carer:
  - the EEA citizen child would in practice have been unable to remain in the UK
  - the child in education in the UK would in practice have been unable to continue to be educated in the UK
- in the case of a dependant of a primary carer, the primary carer would in practice have been prevented from residing in the UK

notwithstanding the fact that the applicant had alternative leave to remain in the UK.

If there was such a conclusion or factual finding, then you must accept that the applicant had a continuous qualifying period at the specified date and at the date of Mr. C's first Appendix EU application.

If there was not such a conclusion or factual finding, then you must consider this for yourself in line with this guidance document.

It is likely that Mr. C's application for indefinite leave to enter or remain will be refused because he does not have a 5-year continuous qualifying period which began before the specified date, unless there is a good reason, in the factual circumstances of the individual case, why the relevant child would have been unable to remain, or unable to continue to be educated, in the UK even though the applicant, or the primary carer, had permission to stay in the UK.

For example, the Court of Appeal said in *Velaj v SSHD* [2022] EWCA Civ 767: "the immigration status of a person with limited leave to remain is precarious; leave is likely to be subject to conditions and it is liable to be withdrawn or truncated. It is possible to conceive of situations in which the conditions attached to a limited leave to remain are such as to make it impossible in practice for the primary carer to remain in the UK and look after the child" (paragraph 68).

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

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

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

## Current application

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

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

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

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

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

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

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

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

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

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

If the applicant was not an 'exempt person', was not subject to a decision made under regulation 23(6)(b), 24(1), 25(1), 26(3) or 31(1) of the EEA Regulations, unless that decision has been set aside or otherwise no longer has effect, and did not have alternative leave to enter to remain (under another part of the Immigration Rules, such as Appendix FM, or outside the Immigration Rules) during the relevant period, go to one of the following:

- [Applicant is a Chen primary carer](#)
- [Applicant is an Ibrahim and Teixeira child](#)
- [Applicant is the primary carer of an Ibrahim and Teixeira child](#)
- [Applicant is the dependant of the primary carer](#)

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

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

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

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

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

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

If for any reason the relevant process described above was not followed, you will need to establish which process should have been followed and ensure that the applicant has not been disadvantaged by the error. Guidance on how to do this is set out below, but if the applicant in an individual case argues that this results in unfairness in their circumstances, consideration must be given to this.

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

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

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

If the Appendix EU application was made first and was granted, this was an error because it had been varied by the later Appendix FM application. If the Appendix FM application was subsequently granted, then the applicant has not been disadvantaged because the error was rectified. As the Appendix EU leave was varied to Appendix FM leave, the current Appendix EU application must be rejected as invalid because it was not made by the 'required date'. This is because sub-paragraph (b) of that definition in Annex 1 to Appendix EU provides that where the applicant has, or, as the case may be, had, limited leave to enter or remain granted under Appendix EU, which has, or had, not lapsed or been cancelled, curtailed or invalidated, the date of application is any date.

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

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

This is because a grant of limited leave to enter or remain under Appendix FM:

- where the applicant is a Chen primary carer or an Ibrahim and Teixeira primary carer, is likely to have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will likely be unable to meet the requirement to demonstrate that, in practice, the EEA citizen child would be unable to reside in the UK (sub-paragraph (a)(iv) of the definition) or the child in education would be unable to continue to be educated in the UK (sub-paragraph (c)(iii) of the definition) (but see the relevant section of this guidance for more information on how to assess this)
- where the applicant is a dependant under the age of 18 of a Chen or an Ibrahim and Teixeira primary carer, would have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will be unable to meet the requirement that they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU or is in effect by virtue of section 3C of the Immigration Act 1971 (sub-paragraph (d)(v) of the definition)

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

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

Where this applies, both applications fell to be considered and, if they both fell to be granted, the applicant should have been asked to confirm which application they wanted to be decided and which they wanted to be treated as withdrawn. If the

applicant did not so confirm within 14 days, the latest application would have been decided and the other treated as withdrawn.

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

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

If limited leave to enter or remain was granted under Appendix FM after limited leave to enter or remain was granted under Appendix EU, the Appendix EU leave was varied to Appendix FM leave and technically the current Appendix EU application is not valid because it was not made by the 'required date'. This is because sub-paragraph (b) of that definition in Annex 1 to Appendix EU provides that where the applicant has, or, as the case may be, had, limited leave to enter or remain granted under Appendix EU, which has, or had, not lapsed or been cancelled, curtailed or invalidated, the date of application is any date.

A grant of limited leave to enter or remain under Appendix FM:

- where the applicant is a Chen primary carer or an Ibrahim and Teixeira primary carer, is likely to have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will likely be unable to meet the requirement to demonstrate that, in practice, the EEA citizen child would be unable to reside in the UK (sub-paragraph (a)(iv) of the definition) or the child in education would be unable to continue to be educated in the UK (sub-paragraph (c)(iii) of the definition) (but see the relevant section of this guidance for more information on how to assess this)
- where the applicant is a dependant under the age of 18 of a Chen or an Ibrahim and Teixeira primary carer, would have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will be unable to meet the requirement that they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU or is in effect by virtue of section 3C of the Immigration Act 1971 (sub-paragraph (d)(v) of the definition)

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

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

Where the applicant was granted limited leave to enter or remain as a 'person with a derivative right to reside' under Appendix EU (whether at the initial decision stage or following an allowed appeal), and then makes a successful application under Appendix FM, the Appendix FM leave varied the Appendix EU leave and the current Appendix EU application must be rejected as invalid because it has not been made by the 'required date'. This is because sub-paragraph (b) of that definition in Annex 1 to Appendix EU provides that where the applicant has, or, as the case may be, had, limited leave to enter or remain granted under Appendix EU, which has, or had, not lapsed or been cancelled, curtailed or invalidated, the date of application is any date.

A grant of limited leave to enter or remain under Appendix FM:

- where the applicant is a Chen primary carer or an Ibrahim and Teixeira primary carer, is likely to have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will likely be unable to meet the requirement to demonstrate that, in practice, the EEA citizen child would be unable to reside in the UK (sub-paragraph (a)(iv) of the definition) or the child in education would be unable to continue to be educated in the UK (sub-paragraph (c)(iii) of the definition) (but see the relevant section of this guidance for more information on how to assess this)
- where the applicant is a dependant under the age of 18 of a Chen or an Ibrahim and Teixeira primary carer, would have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will be unable to meet the requirement that they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU or is in effect by virtue of section 3C of the Immigration Act 1971 (sub-paragraph (d)(v) of the definition)

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

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

- their limited leave to enter or remain granted under Appendix FM will not have been relevant to their Appendix EU appeal (because the relevant date for the Appendix EU appeal was the date of the valid Appendix EU application)
- unless the applicant completed a 5-year continuous qualifying period as a 'person with a derivative right to reside' before they were granted limited leave to enter or remain under Appendix FM, the limited leave to enter or remain granted under Appendix FM will have ended the applicant's continuous

qualifying period as a 'person with a derivative right to reside' even though the allowed appeal will have been implemented with a grant of limited leave to enter or remain under Appendix EU (and which will have varied the Appendix FM limited leave)

- the applicant will not now meet the eligibility requirements for indefinite leave to enter or remain as a 'person with a derivative right to reside'

A grant of limited leave to enter or remain under Appendix FM:

- where the applicant is a Chen primary carer or an Ibrahim and Teixeira primary carer, is likely to have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will likely be unable to meet the requirement to demonstrate that, in practice, the EEA citizen child would be unable to reside in the UK (sub-paragraph (a)(iv) of the definition) or the child in education would be unable to continue to be educated in the UK (sub-paragraph (c)(iii) of the definition) (but see the relevant section of this guidance for more information on how to assess this)
- where the applicant is a dependant under the age of 18 of a Chen or an Ibrahim and Teixeira primary carer, would have ended the applicant's continuous qualifying period as a 'person with a derivative right to reside', because the applicant will be unable to meet the requirement that they do not have leave to enter or remain in the UK, unless this was granted under Appendix EU or is in effect by virtue of section 3C of the Immigration Act 1971 (sub-paragraph (d)(v) of the definition)

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

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

## Applicant is a Chen primary carer

### Stage 1: Primary carer

You must be satisfied, by following the guidance at [Stage 1: primary carer](#), that the applicant continued to be the primary carer of the EEA citizen child between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application).

Where the EEA citizen child has turned 18 years old since the date of the first Appendix EU application, this consideration must include (but is not limited to) whether the applicant is still a direct relative or legal guardian. If the applicant was the legal guardian of the EEA citizen child before they turned 18, it is likely the EEA citizen child is no longer subject to a legal guardian order. See [Stage \(a\): Assessing 'direct relative' or 'legal guardian'](#).

## Stage 2: EEA citizen child under the age of 18

As set out in [Stage 2: EEA citizen child under 18](#), the child needs to continue to be under the age of 18.

## Stage 3: EEA citizen child resides in the UK as a self-sufficient person

The EEA citizen child's continuous qualifying period of residence in the UK will be broken where they have spent more than six months outside the UK, even if:

- they since returned to the UK
- they did not leave the UK

Where the EEA citizen child left (or had left) the UK for less than six months, you must consider on a case-by-case basis whether the EEA citizen child continued to be resident in the UK during the period of absence. For example:

- if the EEA citizen child spent two weeks in another country on holiday, this will not break their continuous qualifying period
- if the EEA citizen child moved to another country with their other parent and has returned to the UK to visit the applicant during a school holiday, the EEA citizen child will no longer be resident in the UK and this will have ended their continuous qualifying period

Where the EEA citizen child has continued to reside in the UK, you must also be satisfied, by following the guidance at [Stage 3: EEA citizen child resides in the UK as a self-sufficient person](#), they have remained self-sufficient between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application).

## Stage 4: EEA citizen child unable to remain in the UK

You must be satisfied, by following the guidance at [Stage 4: EEA citizen child unable to remain in the UK](#), that the EEA citizen child would have been unable to remain in the UK between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application), if the applicant in fact had left the UK for an indefinite period.

## Applicant is an Ibrahim and Teixeira child

### Stage 1: Applicant in education in the UK

You must be satisfied, by following the guidance at [Stage 1: Child in education in the UK](#), that the applicant (who may have turned 18) has been in education in the UK between the date of the first Appendix EU application and the date of the current

Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application).

### **Stage 3: Applicant in the UK when EEA citizen parent was a worker or self-employed person in the UK**

The applicant's continuous qualifying period of residence in the UK will be broken where they have spent more than six months outside the UK, even if:

- they since returned to the UK
- they did not leave the UK

Where the applicant left (or had left) the UK for less than 6 months, you must consider on a case-by-case basis whether the applicant continued to be resident in the UK during the period of absence. For example:

- if the applicant spent 2 weeks in another country on holiday, this will not break their continuous qualifying period
- if the applicant moved to another country with one parent and has returned to the UK to visit their other parent during a school holiday, the applicant will no longer be resident in the UK and this will have ended their continuous qualifying period

Where the applicant has continued to reside in the UK, you must also be satisfied, by following the guidance at [Stage 3: Child in the UK when EEA citizen parent was a worker or self-employed person in the UK](#), that their EEA citizen parent was a worker or self-employed person in the UK between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application).

### **Applicant is the primary carer of an Ibrahim and Teixeira child**

#### **Stage 1: Primary carer**

You must be satisfied, by following the guidance at [Stage 1: primary carer](#), that the applicant continued to be the primary carer of the relevant Ibrahim and Teixeira child between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application).

Where the child has turned 18 years old since the date of the first Appendix EU application, this consideration must include (but is not limited to) whether the applicant is still a direct relative or legal guardian. If the applicant was the legal guardian of the child before they turned 18, it is likely the child is no longer subject to a legal guardian order. See [Stage \(a\): Assessing 'direct relative' or 'legal guardian'](#).

## Stage 2: Primary carer of an Ibrahim and Teixeira child

Where the applicant relies on being the primary carer of an Ibrahim and Teixeira child, you must be satisfied, by following the guidance at [Stage 2: Ibrahim and Teixeira child](#), that the relevant child has continued to meet the requirements as an Ibrahim and Teixeira child from the date of the applicant's first Appendix EU application to the date of their current Appendix EU application.

## Stage 3: Child unable to continue to be educated in the UK

You must be satisfied, by following the guidance at [Stage 3: Child unable to continue to be educated in the UK](#), that the relevant child would have been unable to continue their education in the UK between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application), if the applicant in fact had left the UK for an indefinite period (because, where that is so, the child would be compelled to leave the UK).

## Applicant is the dependant of the primary carer

### Stage 1: Applicant under the age of 18

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

### Stage 2: Applicant without leave to enter or remain

You must be satisfied, by following the guidance at [Stage 2: Applicant without leave to enter or remain](#), that the applicant has not held leave to enter or remain in the UK, unless it is of a permitted type, between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application).

### Stage 3: Applicant's primary carer 'a person with a derivative right to reside'

You must be satisfied, by following the guidance at [Stage 3: applicant's primary carer 'a person with a derivative right to reside'](#), that the applicant's primary carer has continued both:

- to be the applicant's primary carer
- to meet the requirements of sub-paragraph (a) or (c) of the definition of a 'person with a derivative right to reside'

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

## Stage 4: Applicant's primary carer prevented from residing in the UK

You must be satisfied, by following the guidance at [Stage 4: primary carer prevented from residing in the UK](#), that the primary carer would have been unable to reside in the UK between the date of the first Appendix EU application and the date of the current Appendix EU application (or the date they completed a 5-year continuous qualifying period, if this was earlier than the date of the current Appendix EU application), if the applicant in fact had left the UK for an indefinite period.

## Decision

### Suitability requirements

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

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

Where you are satisfied that:

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

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

## Refusal

Where a valid application does not meet the requirements for ILE or ILR, or for LTE or LTR, you must refuse the application under rule EU6 of Appendix EU. You must include all relevant reasons for refusal in the decision.

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

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

**Related content**

[Contents](#)

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

EU Settlement Scheme: suitability requirements

**Related external links**

[Appendix EU to the Immigration Rules](#)

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