

## EU Derivative Rights – Zambrano, Ibrahim/Teixeira and Chen

This fact sheet provides information on EU derivative rights of residence of carers linked to children in the UK. It also explains the arrangements for securing the rights of those with derivative rights, following the vote for the UK to leave the EU.

This fact sheet can only provide an overview of some of the important aspects of the law and potential applications related to derivative EU rights. It is always important to obtain quality legal advice before taking further action as someone exercising EU rights in the UK.

**Please note that, for ease of reference, we are using the terms EU and EU citizens, but these terms will also cover rights of citizens of EEA [1] and Switzerland unless specifically stated otherwise.**

rights that have been established outside of the Directive, such as through case law.

The UK law which reflects the legal rights flowing from both the Citizens Directive and other sources is contained in the Immigration (EEA) Regulations 2016. [3] Regulation 16 relates to derivative rights. There is also Home Office guidance. [4]

Derivative rights are, in most cases, for adult carers and are linked to the rights of residence of a British or EU citizen child. A person who claims derivative rights is categorised as not qualifying for a right of residence under the Directive, and in some situations better rights under the Directive might be arguable. It is therefore advisable to get legal advice before deciding to claim derivative rights.

The types of derivative residence rights are as

- Zambrano carers [Regulation 16(5)]
- Chen carers [Regulation 16(2)]
- Ibrahim and Teixeira cases [Regulations 16 (3) and (4)]

A non-British/non-EU dependent child of a Zambrano, Chen, Ibrahim or Teixeira carer may also have a derivative right of residence [Regulation 16(6)].

### What are EU derivative rights?

EU rights refer to the free movement rights that exist for countries within the EU. Please see our factsheet on EU rights generally for further information here:

[www.childrenslegalcentre.com/resources](http://www.childrenslegalcentre.com/resources).

If an individual does not qualify for a right of residence under the 2004 Citizens/Free Movement Directive [2] – for example as a worker, job-seeker or student – they may qualify through rights derived from other sorts of EU law. These are

Derivative residence documentation (biometric residence card) is normally issued for a 5 year period and shows that the holders are legally residing in UK and have permission to work.

Someone who has derivative rights:

- Will not qualify for EU permanent residence after 5 years. **[5]**
- Cannot include time spent in the UK with derived rights towards continuous residence for the purposes of settlement under the long residence immigration route. **[6]**
- May lose their right of residence when children turn 18 or become independent.

However, those with derivative rights of residence can make an application under the EU Settlement Scheme (please see below), which could lead to settled status.

### **Who are Zambrano Carers?**

A Zambrano carer is the primary carer of a British citizen who is residing in the UK, and has a right to reside if their removal from the UK would require the British citizen to leave the UK and the EU. **[7]**

This fact sheet only deals with British citizen children but can also apply to dependent adults in certain circumstances.

Although derivative rights of residence are rights rather than something which must be applied for,

in practical terms (such as housing, work, etc.) it will be necessary to confirm these rights and apply for a derivative residence card.

When applying for a derivative residence card as a Zambrano carer, the most important issues will be:

- Proving the British citizenship of the child,
- Showing that the carer is a direct relative or legal guardian,
- Showing that the carer is the primary carer,
- Showing that the British citizen child would be forced to leave the EU area if residence rights were not granted to the primary carer,
- Showing that there are no other means to remain lawfully in the UK, and
- Showing that there are no grounds of public policy, security or public health which suggest that a right of residence should not be accepted.

There has been a recent case which has extended the rights relating to Zambrano: the case of Chavez-Vilchez. **[8]** This was a Dutch case where mothers had been refused Zambrano rights of residence on the basis that the fathers of the children could care for the children in the Netherlands.

The Court of Justice of the European Union (CJEU) found that it is not simply enough to find that another parent can care for the child – there must be an assessment of the best interests of the child and all the specific circumstances (such as age, physical/emotional development, ties to the parents and the risk of separation).

The applicant should provide evidence of this, but the CJEU also highlighted that the Netherlands (and any other member state of the EU) is under a duty to make enquiries regarding the circumstances.

Zambrano carers do not have the right to reside for the purposes of accessing public funds and cannot apply to have access to those public funds. **[9]**

New Home Office guidance indicates that applications based on Zambrano will be refused if leave could be granted under the Immigration Rules. **[10]** Therefore if it is possible for the parent to make an application under the Immigration Rules, on the basis of being the primary carer of a British child, then a Zambrano application is likely to be refused.

This means that although in theory a derivative residence card can be provided to those who are primary carers of British children, it is difficult to identify circumstances when such an application would be successful. Someone who can make an application either on the basis of their Zambrano derivative rights or under the Immigration Rules should seek specialist legal advice.

### **Who are Chen Carers?**

A Chen carer is a primary carer of a self-sufficient EU citizen child. **[11]** The child must have sufficient resources to prevent them becoming a burden on the social assistance system, and have comprehensive sickness insurance. The child is entitled to be accompanied by their primary carer who will have a derivative right of residence. The child must be under the age of 18.

The child can show that they are self-sufficient by relying on the income of their primary carer, although that income should come from lawful employment. This can lead to complicated circumstances – if a primary carer has lawful status in the UK already, there is not an issue. However, if the parent or carer seeks to rely on income, it may depend on whether the child was self-sufficient before the work started.

Other sources of income can be taken into account, including bank statements showing income from family or friends, or savings accounts. **[12]** However, an individual relying on the right to reside as a Chen carer will not be able to rely on public funds, as they must show they are self-sufficient in order to be a Chen carer.

### **Who are Ibrahim/Teixeira Carers?**

Ibrahim and Teixeira cases involve either the child of an EU citizen worker/former worker where that child is in education in the UK or the primary carer of a child of an EU citizen worker/former worker where that child is in education in the UK, and

where requiring the primary carer to leave the UK would prevent the child from continuing their education in the UK. **[13]**

The child must have lived in the UK when the EU citizen was a worker in the UK – the child does not necessarily have had to be in education while the EU parent was a worker.

The 'child' does not have to be a minor – derivative rights in Ibrahim and Teixeira cases continue for as long as the child or young person is in full-time education.

These rights can also apply to children who are separated from their parents [Regulation 16(3)]. For further information on the definition of worker, see our fact sheet on EU rights here:

[www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

Education does not include nursery education but can include education received before compulsory school age – where a child has entered into the reception class. **[14]**

People relying on Ibrahim and Teixeira rights of residence have recourse to public funds.

### **What about dependent children of Zambrano, Chen or Ibrahim/Teixeira carers?**

Derivative residence rights also cover dependent children of a primary carer, where requiring that child to leave the UK would force the primary carer to leave the UK with them.

### **What happens to derivative rights when the UK leaves the EU?**

The UK is currently in the process of exiting the EU. At present there are no changes to derivative rights but this will change in the future when the UK exits the EU – this is currently set at 31<sup>st</sup> October 2019.

The EU settlement scheme (EUSS) is a new scheme which aims to secure the status, and to document, everyone who is in the UK under EU rights after the UK leaves the EU.

The Government has confirmed that children and carers with derived rights (who do not have leave to remain under the Immigration Rules) will be able to make applications under the EUSS. **[15]** This provides an opportunity to achieve settled status for holders of derivative rights, which did not previously exist.

### **How does the EUSS work?**

Chen and Ibrahim/Teixeira carers have been able to apply under the EUSS since 30<sup>th</sup> March 2019. Those with a Zambrano right of residence have been able to apply under the EUSS since 1<sup>st</sup> May 2019. The application will need to be made on a paper form. Applicants will need to contact the Home Office to ask for a form, which will be provided on a case-by-case basis. **[16]** The application is free.

Applicants who have completed a 'continuous qualifying period' of five years, can apply for indefinite leave to remain (settled status).

Applicants with under five years' residence should be given limited leave to remain (pre-settled status).

Please note that due to the updated Home Office guidance on derivative rights of residence (mentioned in the section on 'Zambrano Carers' above), anyone who does not already have a derivative residence card as a Zambrano carer is likely to struggle to make a successful application under the EUSS.

People who are granted settled status under the EUSS will be entitled to benefits. People who are granted pre-settled status and who do not otherwise qualify for benefits (for example, with a right to reside under the EEA Regulations) are not currently eligible to receive benefits.

Please see our factsheet on the EUSS for further information here:

[www.coramchildrenslegalcentre.com/resources](http://www.coramchildrenslegalcentre.com/resources).

## NOTES

[1] EEA countries: 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 and the United Kingdom.

[2] 2004/38/EC

[3] The Immigration (EEA) Regulations 2016  
<http://www.legislation.gov.uk/ukxi/2016/1052/regulation/16/made>

[4] Home Office, Derivative Rights of Residence, May

2019

<https://www.gov.uk/government/publications/derivative-rights-of-residence>

[5] Regulation 15(2) in [3] above

[6] Page 24, Home Office, Long Residence guidance, April 2017

<https://www.gov.uk/government/publications/long-residence>

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

<http://www.bailii.org/eu/cases/EUECJ/2011/C3409.html>

[8] Chavez-Vilchez and Others v Netherlands C-133/15  
<http://curia.europa.eu/juris/document/document.jsf?text=&docid=190502&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=610302>

[9] Public Funds:

<https://www.gov.uk/government/publications/public-funds>

[10] Pages 52-53 of the Derivative rights of residence guidance at

<https://www.gov.uk/government/publications/derivative-rights-of-residence>

[11] Chen and Others (Free movement of persons)

[2004] EUECJ C-200/02

<http://www.bailii.org/eu/cases/EUECJ/2004/C20002.html>

[12] Page 18 of the Derivative rights of residence guidance (at [10] above)

[13] <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62008CJ0310> & <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:62008CJ0480>

[14] Shabani (EEA - jobseekers; nursery education) [2013] UKUT 315 (IAC)

[http://www.bailii.org/uk/cases/UKUT/IAC/2013/00315\\_uku\\_t\\_iac\\_2013\\_s\\_drc.html](http://www.bailii.org/uk/cases/UKUT/IAC/2013/00315_uku_t_iac_2013_s_drc.html), see also Regulation 16(7) in [4]

[15] Statement of changes to the Immigration Rules: HC 1919, 7 March 2019

<https://assets.publishing.service.gov.uk/government/uploads>

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[16] <https://www.gov.uk/contact-ukvi-inside-outside-uk/y/inside-the-uk/eu-settlement-scheme-settled-and-pre-settled-status>

**This fact sheet should not be used to give legal advice and is for information and guidance only. For advice on individual**

**cases, assistance should be sought from an independent regulated legal adviser.**

**For further assistance contact our advice line: [mcpadvice@coramclc.org.uk](mailto:mcpadvice@coramclc.org.uk).**