



Zambrano carers: local authority duties and access to public funds

Local authorities have obligations to provide accommodation and/or financial support to vulnerable migrants who are destitute and are unable to access welfare benefits, homelessness assistance or council housing, i.e. they have no recourse to public funds (NRPF). This factsheet sets out information about local authority duties towards migrants who have an EU derivative right to reside in the UK as a Zambrano carer and are restricted from accessing such benefits.

The right to reside as a primary carer of a British Citizen

The 2011 European Court of Justice's determination of the case of *Ruiz Zambrano (European citizenship)* [2011] [EUECJ C-34/09](#) set out the right to reside for primary carers of European Union citizens, which is derived from Article 20 of the Treaty on the Functioning of the European Union [2012/C 326/0](#).

Eligibility requirements

On 8 November 2012, the UK government amended the Immigration (European Economic Area) [Regulations](#) 2006 to set out the criteria that non-EEA nationals must meet in order to acquire the right to reside in the UK in line with the *Zambrano* judgment, as follows:

- the applicant must be the **primary carer** of a British citizen who is residing in the UK, *and*
- that British citizen would be unable to reside in the UK or in another EEA State if the applicant were required to leave.

The Regulations also specify that:

- A **primary carer** is a direct family member or legal guardian of the person from whom they would claim a derivative right, who:
 - has primary responsibility for that person's care, or
 - shares the responsibility for that person's care equally with one other person (who must not have a right to reside on another basis, indefinite leave to remain or the right of abode in the UK e.g. a British Citizen)

- A person who is only providing financial assistance with no day to day caring responsibilities for the British Citizen is excluded from these provisions.
- There is no requirement for the British Citizen to be a child, so the applicant could be the carer of an adult British Citizen.

Primary carers of non-British EEA nationals

Since the Zambrano judgement was incorporated into domestic law, the courts have established that the primary carer of a non-British EEA national would have a right to reside on this basis if the person being cared for would have to leave the EEA if their primary carer is forced to do so - *Ahmed (Amos; Zambrano; reg 15A(3) (c) 2006 EEA Regs) Pakistan* (Rev 1) [2013] [UKUT 89](#).

Limitations of Zambrano carers' right to reside

Those who acquire a derivative right of residence cannot:

- rely on their status as a basis for bringing other family members to the UK
- acquire permanent residence in the UK
- rely on the public policy protection against removal or deportation from the UK that is given to those exercising free movement rights

For more information see the Home Office [European Casework Instruction](#), *Derivative rights of residence: Ruiz Zambrano cases* (December 2012):

Evidencing a Zambrano carer's right to reside: EEA derivative residence card

The Court of Appeal has confirmed that the *Zambrano* right to reside arises as soon as a non-EEA national becomes the primary carer of an EEA citizen. This means that such a person automatically acquires the right to reside and to work in the UK, even if this has not been recognised by the Home Office - *Sanneh & Ors v Secretary of State for Work and Pensions* [2015] [EWCA Civ 49](#).

However, it will be difficult for a Zambrano carer to access employment or other services without evidence of this right, so an application can be made to the Home Office for an **EEA derivative residence card** using form DRF1. The current application fee is £65. The card is issued for a period of five years.

A Zambrano carer may have been admitted to the UK on the basis of their right to reside, in which case they would have been issued with an EEA Family Permit valid for six months. Once in the UK, they may then apply for an EEA Derivative Residence Card, although there is no requirement for them to do so.

For further information see: Home Office [information](#) on the rights of Zambrano carers and the [DRF1 application form](#).

Right to work

A person who has the right to reside as a Zambrano carer can work.

If an **EEA derivative residence card** application has been submitted to the Home Office, then the applicant should receive a 'certificate of application' in the form of a letter, which will confirm that the applicant is entitled to work. The letter is usually valid for six months.

Access to benefits

A person with the right to reside as a Zambrano carer is not subject to the condition of no recourse to public funds (NRPF) that is imposed on certain migrants under section 115 Immigration and Asylum Act 1999. There will not be any reference to public funds on the documentation issued to a Zambrano carer.

However, on 8 November 2012, amendments were made to benefit regulations, excluding 'Zambrano carers' from being eligible for the following public funds:

- Income Support
- Income based Jobseeker's Allowance
- State Pension Credit
- Housing Benefit
- Local authority housing allocation (except in Scotland; excluded since 31 October 2014 in Wales)
- Local authority homelessness assistance (except in Scotland; excluded since 31 October 2014 in Wales)
- Child Benefit
- Child Tax Credit
- Universal Credit
- Council Tax Benefit
- Income related Employment and Support Allowance

Exceptions to this exclusion

Some benefits, such as Child Benefit, may be received by nationals of certain countries where reciprocal arrangements exist. See the Home Office [Modernised Guidance](#) on public funds for more information.

Zambrano carers who made claims for homelessness or housing assistance prior to 8 November 2012 may still receive such assistance if the claim is continuing.

The Court of Appeal has confirmed that Zambrano carers were eligible for the above benefits up until 8 November 2012 - *Sanneh & Ors v SSWP* [2015]. Those who unsuccessfully applied for any of the benefits listed above prior to 8 November 2012 may seek advice from a welfare benefits specialist for further advice about this.

Local authority duties: support from social services

Duties to support destitute migrants with NRPF arise under the following legislation:

- Families - section 17 Children Act 1989 (England & Wales); section 22 Children (Scotland) Act 1995
- Adults with care needs - the Care Act 2014 (England); section 12 Social Work (Scotland) Act 1968; section 21 National Assistance Act 1948 (Wales)

A person who has the right to reside as a Zambrano carer (whether they have Home Office documentation confirming this or not), is living in the UK lawfully and is not excluded from receiving accommodation and/or financial support under the above legislation.

The Zambrano status is most commonly acquired by single parents. Local authorities will therefore need to consider any single parent family presenting with a British Citizen child as lawfully present, unless they have evidence to the contrary, for example, a Home Office refusal of an **EEA derivative residence card** application.

The Court of Appeal found that local authorities are under a positive duty to provide assistance to families under section 17 Children Act 1989, where the parent is a Zambrano carer, is destitute and therefore their child is in need - *Sanneh & Ors v SSWP* [2015]. Local authorities are now required to undertake a 'basic needs' assessment to ensure 'that the child and the Zambrano carer are both properly looked after'.

The Court also determined that the fact that section 17 'safety net' support exists for such families justified the government's policy to restrict access to mainstream benefits and council housing for Zambrano carers, because the most vulnerable families would be able to receive assistance to alleviate destitution.

Due to the parent's role as a primary carer, it is often the case that Zambrano carers are unable to find employment, and, if they are working, will be unable to receive 'top-up' benefits that workers on a low-income can usually claim. If they are unable to provide for their family's accommodation and/or essential living needs they will be destitute, in which case, the child would be 'in need'.

Accommodation and/or financial support may need to be provided to destitute families until such a time that the parent sufficiently increases their income through employment or has obtained a different type of immigration status which confers recourse to public funds. Support could therefore be open ended, and local authorities will need to take steps to proactively resolve the case, for example:

- Support accessing employment
- Income maximisation
- Support accessing legal advice to obtain a **EEA Derivative Residence Card** (to evidence ability to work) and establish if other immigration applications can be made

Other immigration options

This information is to act as a guide to the alternative immigration options that a Zambrano carer could be seeking advice about.

Note that it is an offence to provide immigration advice to individuals if you are not registered with the OISC or as a Solicitor with the relevant Law Society. Suitable referrals need to be made to a regulated immigration adviser to establish what, if any, options a Zambrano carer would have. See [our website](#) for advice on finding an immigration adviser.

Legal aid is not available for immigration matters. However, if applying under the categories listed below, the application fee may be waived if the applicant is destitute. See the Home Office [fee waiver policy](#).

As non-EEA nationals, it is open to Zambrano carers to apply for leave to remain under the Immigration Rules. The rules referred to below are all 10-year routes to settlement. If successful, 30 months leave to remain will be granted with NRPF, unless the person is destitute, has a low income and there are serious concerns for the welfare of the child, or there are other exceptional circumstances, in which case recourse to public funds may be awarded.

Parent of a child route

- [Appendix FM](#) of the Immigration Rules provides a 10-year route to settlement for the sole parent of a British Citizen child, or child who has lived in the UK for seven years continuously prior to making the application.
- Although the requirements appear to be similar to those that the primary carer of a British child would need to meet under the Immigration (EEA) Regulations 2006 (see above), some barriers to a successful application could include:
 - This rule only applies to someone who is a sole parent.
 - It must be unreasonable to expect the child to leave the UK, so the Home Office will consider this.
 - General grounds of refusal set out in the Immigration Rules will apply. For example, applications could be refused if the applicant has an unpaid NHS debt of £1000 or more.

Other routes

- Under the Immigration Rules based on a person's [private life/long residence](#) in the UK if they have:
 - resided here for at least 20 years, or
 - if they are age 18 to 25 and have resided in the UK for half of their life or
 - if they are 18 or over and there are significant obstacles preventing them from leaving the UK
- The general grounds of refusal will apply, as above.
- Outside of the Immigration Rules raising grounds under Article 8 European Convention on Human Rights.