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Ruiz Zambrano update

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This information sheet provides supplementary updating information to the information given in the “European Citizenship Judgment (Zambrano) 11 March 2011” information sheet

<http://www.ilpa.org.uk/data/resources/4063/11.03-European-Citizenship-Judgment.pdf>

Overview

The case of *Ruiz Zambrano* was handed down by the Court of Justice of the European Union in March 2011 and concerned the rights of third country nationals to reside and work in Belgium where their children were Belgian nationals. Using broad principles of European Union law, the Court delivered its judgment putting significant emphasis on Article 20 of the Treaty on the Functioning of the European Union, as set out in the above information sheet.

In essence the Court decided that because the *Ruiz Zambrano* children were Belgian nationals, they were by default also citizens of the European Union, which conferred on them additional rights. As citizens of the European Union, the member state, Belgium, was obliged to enable the children to continue to enjoy their rights as European Union citizens and prohibited from acting to deny the children those rights. In this case that meant granting residence and permission to work to the children’s parents. Without this it would have been likely that the family would have had to leave the European Union and the children would have been denied their rights as its citizens.

The Court’s decision in *Ruiz Zambrano* was important because it looked at rights of “European citizens” whether or not they moved between member States.

Derivate rights of residence

To give effect to *Ruiz Zambrano* and similar cases about the rights of ‘primary carers of British Citizens’ (*Chen* [2004], *Ibrahim* [2010] and *Teixera* [2010]), the UK has created what it calls a “derivative” right of residence. In respect of *Zambrano*, the definition of a person that may acquire derivative rights of residence ‘the primary carer of a British citizen’ where ‘the relevant British citizen is residing in the United Kingdom’ and ‘would be unable to reside in the UK or in another EEA State if [the person] were required to leave (Regulation 15A (4A) of the Immigration (European Economic Area Regulations) 2006, SI 2006/1003).

The changes to give effect to the decision in *Ruiz Zambrano* were made on 8 November 2012. They give quite a narrow interpretation to *Ruiz Zambrano* and it may be that future cases will result in more people having rights as carers of British citizen.

Social Assistance and Permanent Residence

Also on 8 November 2012 the Government have introduced the Social Security (Habitual Residence) Amendment Regulations 2012 which are designed to prevent people successful in a derivate rights application, from making a new claim for many benefits on or after that date.

Benefits affected are: income support, income based JSA, pension credit, housing benefit, council tax benefit and income related employment and support allowance, child benefit, child tax credit, homelessness assistance and housing allocation.

There are transitional provisions in place which mean that those who have claimed for homelessness assistance or housing assistance before 8 November 2012 will not lose their entitlement. There may be possible challenges to these provisions for people claiming after 8 November 2012. People falling under this category are advised to seek legal assistance.

Immigration Rules Appendix FM

There has been some discussion about the relationship between derivative rights of residence and leave granted under the new family immigration rules, not least because the Home Office guidance to caseworkers mentions *Ruiz Zambrano*. The new rules include a category in which people may be given leave to remain in the UK, as an 'exception,' (EX1) for a number of groups including the parents of British citizen children. Under EX 1 a person must show that it would not be reasonable to expect the child to leave to United Kingdom. The Home Office guidance (the Immigration Directorate Instructions) acknowledges that in cases where a child is a British Citizen, this will not normally be possible and this guidance would appear to be in line with the judgment in *Ruiz Zambrano*.

The Home Office guidance suggests that it may refuse applications from parents of British Citizen children in some cases involving criminality. Lawyers are likely to make two types of argument against this. First arguments based on *Ruiz Zambrano* and the child's enjoyment of his/her rights as a citizen of the European Union. Second arguments based on/or Article 8 of the European Convention on Human Rights, the right to private and family life: the child's right to be with his/her parent and the parent's right to be with his/her child. Thus the argument goes, the child must stay in the UK because this is their right as a European citizen and if arguments under *Ruiz Zambrano* alone are not held to be enough, then lawyers will argue the right to family life between parent and child.

In Practice

Unlike applications under the immigration rules, no fee is charged for applications on the basis of European Union law and rights of free movement.