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European Citizenship Judgment (Zambrano)

11th March 2011

On 8 March 2011, the Court of Justice of the European Union (formerly known as the European Court of Justice) gave judgment in *Gerard Ruiz Zambrano*. This case concerned a family of five in Belgium. The parents are both Colombian nationals, as is their eldest child. The other two children were born in Belgium. Colombian nationality law does not automatically recognise children born outside the country as nationals. Children born in Belgium who would otherwise be stateless acquire citizenship. The two younger children accordingly acquired Belgian citizenship. Belgium is a member of the European Union; and therefore anyone who is a citizen of Belgium is also a citizen of the European Union. The Court of Justice was concerned with the effect of the children's European citizenship for the family in seeking to remain in Belgium. The judgment is available at: <http://www.bailii.org/eu/cases/EUECJ/2011/C3409.html>

The facts

Gerard Ruiz Zambrano applied for asylum in Belgium in 1999. His wife sought asylum in Belgium the following year. Both are Colombian nationals. Their asylum claims were refused. However, in view of the conflict in Colombia at that time, the Belgian authorities notified them that they would not be forcibly returned to Colombia. The Zambrano's remained in Belgium. They sought by various applications to regularise their stay (that is they sought a formal immigration status to stay in Belgium), but their applications were refused. In 2003, Mrs Zambrano gave birth to their second child (the first of their children born in Belgium); and, in 2005, to their third child. These two children acquired Belgian citizenship. Mr Zambrano had obtained employment, however this was found to be unlawful and his employment was terminated. He sought unemployment benefit, but this was refused. The Zambrano's were essentially refused the means to support themselves and their three children because they had no permission to stay in Belgium.

These matters came before the Belgian courts. The court dealing with the case referred several questions to the Court of Justice. The Court of Justice considered that the questions from the Belgian court could be summarised as follows:

"...whether the provisions of the [Treaty on the Functioning of the European Union] on European Union citizenship are to be interpreted as meaning that they confer on a relative in the ascending line who is a third country national, upon whom his minor children, who are European Union citizens, are dependent, a right of residence in the Member State of which they are nationals and in which they reside, and also exempt him from having to obtain a work permit in that Member State."

Essentially, was Mr Zambrano entitled to reside and work in Belgium to support his two Belgian national children?

Article 20 of the Treaty on the Functioning of the European Union

The key provision on which the Court of Justice's judgment depends is Article 20 of the Treaty on the Functioning of the European Union. Article 20 provides (paragraph 1):

“...Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.”

This provisions means that the two Belgian national children in the *Zambrano* case are European citizens (citizens of the Union), and indicates that this gives them an additional status (and potentially additional rights) to that of their Belgian citizenship.

Article 20 continues (paragraph 2):

“Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have [among other things]: (a) the right to move and reside freely within the territory of the Member States...”

The decision of the Court of Justice of the European Union

The decision of the Court of Justice is set out in six short paragraphs – paragraphs 40-45 of the judgment. In summary, the decision and reasoning of the Court of Justice is as follows:

- Firstly (paragraph 40), Article 20 provides European citizenship to the two Belgian national children.
- Secondly (paragraphs 41-42) Article 20 precludes Member States (such as Belgium or the UK) depriving someone of European citizenship under domestic law. In other words, Belgium was prevented from acting in a way that deprived the two Belgian national children of their European citizenship.
- Thirdly (paragraphs 43-44), refusing to grant residence or permission to work to the adult (parent), on whom the Belgian national children were dependent, would prevent the children from enjoying their rights as European citizens. This was because, if the parent could not stay and support his or her children, this would lead to the situation where he or she would have to leave the European Union and inevitably the children would leave with him or her.
- Therefore (paragraph 45), it was not lawful for the Belgian authorities to refuse to permit the children's parents to remain and support them (by working) in Belgium.

Further comment

This judgment of the Court of Justice is clearly of great importance where, for example, a child with British citizenship (and hence European citizenship) faces having to leave the UK because non-British parent, on whom he or she is dependent, is facing removal or deportation. The judgment also highlights the fundamental importance of European citizenship, and this may have implications stretching far beyond the particular facts of this case. Some of those implications may only be decided in future cases before the UK courts or the Court of Justice.

Those who may be affected by this judgment are strongly advised to seek legal advice. This case and the case of *ZH (Tanzania)* – see the February 2011 “ZH (Tanzania) Supreme Court Judgment” information sheet – mean that there are new matters to consider when parents of British children face removal of deportation.