



Rt Hon Dame Diana Johnson MP
Chair
Home Affairs Select Committee
House of Commons
7 Millbank
London
SW1P 3JA

13 June 2022

EU Settlement Scheme – Zambrano primary carers

Dear Dame Diana,

I am writing to inform you that I have reconsidered the provisions of the EU Settlement Scheme (EUSS) for those relying on being a ‘person with a Zambrano right to reside’ under the relevant Immigration Rules in Appendix EU. This follows the Court of Appeal judgment in *Akinsanya v SSHD* [2022] EWCA Civ 37 (25 January 2022).¹

‘Zambrano’ is an EU law concept which provided a right to reside in the UK to a direct relative or legal guardian who was the primary carer of a British citizen, where refusing that right to reside would have compelled the British citizen to leave the UK and the EU, in breach of their rights as (then) an EU citizen. Zambrano primary carers did not have a right under EU law to acquire permanent resident status in the UK and are not covered by the Citizens’ Rights Agreements. They were included in the EUSS from 1 May 2019 as more generous national provision. As set out in the Explanatory Memorandum to the relevant Immigration Rules changes (HC 1919),² the intention was to protect those lawfully resident in the UK by the end of the transition period on 31 December 2020 by virtue of a Zambrano right to reside, based on EU law.

The Court of Appeal judgment in *Akinsanya* held that the Home Office had erred in its understanding of regulation 16(7) of the Immigration (European Economic Area)

¹ <http://www.bailii.org/ew/cases/EWCA/Civ/2022/37.html>

² <https://www.gov.uk/government/publications/statement-of-changes-to-the-immigration-rules-hc-1919-7-march-2019>

Regulations 2016³ in defining 'a person with a Zambrano right to reside' in Appendix EU.⁴ However, the Court of Appeal found that, as a matter of EU law, a Zambrano right to reside does not arise where a person holds leave to remain.

I have carefully considered the Court of Appeal judgment and have decided that definition in Appendix EU should no longer reflect the scope of the 2016 Regulations (which have now been revoked) but should reflect the scope of those who, by the end of the transition period, had an EU law right to reside in the UK as a Zambrano primary carer, as per the originally stated policy intention. I therefore intend to maintain the requirement in sub-paragraph (b) of the definition that the applicant did not, by the end of the transition period and during the relevant period relied upon, have leave to enter or remain in the UK (unless this was under the EUSS).

From 13 June 2022, for a period of six weeks until 25 July 2022, people will be able to apply or re-apply to the EUSS as a 'person with a Zambrano right to reside' and be deemed to have reasonable grounds for having missed the deadline to apply, which was 30 June 2021.

Applicants will be eligible for EUSS status in this category where, by the end of the transition period and during the relevant period relied upon, they met the relevant requirements of regulation 16 of the 2016 Regulations and did not have leave to enter or remain in the UK (unless this was under the EUSS).

Where a person applies after 25 July 2022, they will need to show there are reasonable grounds why they missed the 30 June 2021 deadline. Non-exhaustive examples of these are set out at:

www.gov.uk/settled-status-eu-citizens-families/eligibility.

I am placing a copy of this letter in the Libraries of both Houses of Parliament.

w.r.k. and your wishes


Rt Hon Priti Patel MP

³ [The Immigration \(European Economic Area\) Regulations 2016 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

⁴ [Immigration Rules Appendix EU - Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/immigration-rules-appendix-eu)