

European Operational Policy Team Operational Policy and Rules Unit PO Box 306 Department 45 Liverpool L2 0QN

22<sup>nd</sup> May 2013

Dear Mr Pearsall

#### FOI Reference 27354

Thankyou for your email of 28<sup>th</sup> April in which you have requested the following information:

I note that section 3.2.7b states the following: 'Where caseworkers consider there may be a Zambrano right they should refer to the following guidance which sets out how Zambrano and the Article 8 ECHR right to private and family life interact:

\*Link to internal guidance removed\*'

Can I either have a link to the guidance in the public domain (which i cannot obviously find, as I dont see any reference to what guidance it refers to), or can you provide me with the guidance referenced in this file...

Your request is being handled as a request for information under the Freedom of Information Act 2000.

I am unable to provide you with a link to this information on the Home Office website. However, I am able to disclose a copy of the information requested as set out in Annex A. This guidance was issued on 1 August 2012.

If you are dissatisfied with this response you may request an independent internal review of our handling of your request by submitting a complaint within two months to the address below, quoting reference FOI 27354. If you ask for an internal review, it would be helpful if you could say why you are dissatisfied with the response.

Information Access Team Home Office Ground Floor, Seacole Building 2 Marsham Street London SW1P 4DF

e-mail: FOIRequests@homeoffice.gsi.gov.uk



As part of any internal review the Department's handling of your information request will be reassessed by staff who were not involved in providing you with this response. If you remain dissatisfied after this internal review, you would have a right of complaint to the Information Commissioner as established by section 50 of the Freedom of Information Act.
Yours Sincerely
European Operational Policy Team

#### Annex A: Guidance on Zambrano and Article 8

### Interim Guidance on ECHR Article 8 and Zambrano

Following the European Court of Justice judgment in 'Ruiz Zambrano', the UK is now required to grant EU law rights of entry and residence to the **primary carer** of a British citizen who would be forced to leave the EEA if a right of entry to or residence in the UK was not granted to their primary carer.

The threshold is high: the judgment will normally only apply to a person who is the primary carer (usually a parent) of:

- A child who is a British citizen; or
- A disabled adult who is a British citizen, and who relies on the non-EU citizen to provide them with essential care.

Full guidance on Zambrano will be forthcoming in the next couple of months.

In the meantime, there is a need to clarify how Zambrano and the Article 8 ECHR right to private and family life interact with each other in cases where we are **refusing** to recognise Zambrano rights.

# (a) Cases where the primary carer is being removed or deported to a country outside the EEA, but a Zambrano right is refused on the basis that the British citizen will be able to continue to live in the EEA with another parent

In some circumstances the case worker will refuse to recognise that the adult migrant has a right to residence here on the basis of Zambrano because the child or disabled adult could remain in the UK with another parent or carer and would not therefore be compelled to leave the EEA. Where a refusal is made on this basis, and the case worker is then considering the Article 8 rights of the primary carer, they **cannot** conclude that there will be no interference with family life because the family can live together as a family unit in a country outside the EEA. To do so would directly conflict with the basis upon which recognition of the Zambrano right had been refused.

(b) Cases where the primary carer is being removed or deported to a country within the EEA

In contrast with the position set out above, where the Zambrano claim is being refused on the basis that the primary carer is being removed to an EEA country in which the British citizen can also reside it **will in principle** be possible to assess the Article 8 claim on the basis that there will be no interference with family life because the family can continue their family life in the EEA country to which the primary carer is to be removed.

## (c) Cases where the test for denying a Zambrano right on non-conducive grounds has been met

Where the test for denying a Zambrano right on non-conducive grounds has been met and we are seeking deportation of the adult migrant, the case worker considering Article 8 **can** use the argument that family life could continue in a country outside the EEA because the British citizen could accompany their primary carer. This is because in such cases UKBA's position is that the public interest in deportation will ordinarily outweigh the right of the British citizen to remain in the EEA, and therefore there will be no contradiction between refusing to recognise a Zambrano right of residence for the primary carer and arguing that the British citizen can continue their family life in a country outside the EEA.