

Summary: The rights of parents of Irish citizen children to reside in the State is an emerging area of law. Until recently, such applicants could rely on domestic law only. In March 2011, the European Court of Justice issued the seminal Zambrano judgment, which changed the legal platform of such cases by bringing them within the ambit of EU Law. We are now working on many applications for parents of Irish citizen children to enter, reside and work in the State with their Irish citizen child.

The situation in Ireland regarding the rights of Irish citizen children to reside in the State with their children is an emerging area of law, and continues to be somewhat uncertain.

Domestically, there is no legislation dealing directly with this issue, and we therefore are guided by judgements from the High Court and Supreme Court assessing the lawfulness of pending deportations of parents of Irish citizen children. Currently, the presiding judgements from the courts in respect of the entitlement of leave to remain applicants who are parents of Irish citizen children to be granted residency in the State, is the Supreme Court decision of May 2008 in the case of – Dimbo and Oguekwe and The Minister for Justice, Equality and Law Reform and the subsequent High Court judgement in the case of Alli v. Minister for Justice, Equality and Law Reform and Asibor v. Minister for Justice, Equality and Law Reform of December 2009. These cases set high legal thresholds, which were difficult for many applicants to meet, and therefore resulted in many deportations of parents on Irish citizen children

Recently, major changes have occurred in this area following the European Court of Justice judgement in the case of Ruiz Zambrano v Office National De L'Emploi, Case C-34/0, delivered on the 8th March 2011. In this case, the Court of Justice held that two Union Citizen children who had not exercised free movement rights could rely on European Law deriving directly from the Treaty of the Functioning of the European Union (“the TFEU”), to render unlawful the deportation of their parents. The Court of Justice relied on Article 20 (2) of the TFEU, which lists four rights of Union Citizens, including the right to move and reside freely within the territory of the Member States. The Court of Justice accepted that in order to “freely reside” in a Member State, a child must be entitled to the company of both parents. Thus, a whole new body of EU Law was opened to Irish citizen children in respect of their right to reside in the State in the company of their parents. The Department of Justice and Equality has set up a special unit to deal specifically with these cases.

We also act for many clients who are seeking to acquire rights to reside in the State on the basis of their parentage of Irish citizen children. Depending on our clients' factual situation, the application may take the form of a Humanitarian Leave to Remain Application, a Change of Status application or a Visa Application. The applications are grounded on legal submissions that are of the most novel kind. We have been successful on many of these applications, and continue to await the determination of others. We make every effort to put our client's strongest case forward in substantial submissions with the most up to date case law. We also make every effort to obtain determinations of the applications in the shortest timeframe possible.