The Impact of Brexit on the rights of EU Migrant Children

Shining the Spotlight on Children

Did You Know...?

- 1.2 million UK citizens live in other EU countries (2% of all British citizens), 800,000 of them are workers and have children.
- 3.3 million non-UK EU citizens live in the UK (0.65% of all EU citizens) and contribute £20bn in taxes.

Who are EU migrant children?

Under EU law EU citizens and their family members (including any children they have who are under the age of 21 years old or dependent on them) can move to and reside freely in any EU Member State.

What rights do EU migrant children have?

Children of EU citizen migrants can access public and private education at all levels on the same basis as nationals. They have the right to free language classes both in their mother tongue and in the language of the country in which they are living. They and their families can also access other services such as transport, healthcare, employment and housing on the same terms as nationals.

EU law also states that EU migrants can access family benefits (social security, child credits) on the same basis as nationals. However, the Court of Justice has recently declared that EU migrants can only claim such benefits from their host state if they can demonstrate that they have a ‘right to reside’ there. Non-national EU citizens are legally resident in the UK if they are working, self-employed, or have sufficient resources and comprehensive sickness cover. As a result, applications for child benefit or child tax credit by non-economically active (the unemployed/carers) EU migrants can be rejected in the UK on the basis that they would not pass the ‘right to reside’ test. This places the children of migrants who are most in need of support outside of the scope of State welfare provision.

What impact is Brexit likely to have on EU migrant children?

EU migrant children living in the UK and UK children living in other EU Member States will probably no longer fall under the EU free movement provisions unless a special arrangement is negotiated. This means that EU migrants to and from the UK will possibly be subject to less favourable domestic immigration laws governing third country nationals.

They will no longer benefit from automatic rights of entry and residence. They will not necessarily have equal access to employment and equal pay as they enter adolescence, and their parents may not be able to claim benefits for them, even if they are economically active. They will continue to have a right to access compulsory education in other EU Member States, but may have to pay higher fees than nationals to access private or higher education.

The Brexit negotiations should seek to...

- Protect the right to claim family benefits for migrants to and from the UK;
- Protect migrant children’s right to access employment, healthcare and housing on the same basis as nationals;
- Protect migrant children’s right to access further and higher education on the same basis as nationals;
- Protect the residence rights of children who are born to EU migrants in the UK. This implies also protecting the residence rights of their carer parents.

Some useful sources if you want more detail...

- ILPA Brexit briefing: EU citizens’ access to benefits
- Joint Council for Welfare of Immigrants, ‘What does Brexit mean for EU migrants and their family members?’
- O’Brien, C. ‘The pillory, the precipice and the slippery slope: the profound effects of the UK’s legal reform programme targeting EU migrants’ JSWFL 37(1), 2015, 111-136
- O’Brien, C. “Hand-to-mouth” citizenship: decision time for the UK Supreme Court on the substance of Zambrano rights, EU citizenship and equal treatment JSWFL 38(1), 2016, 228-245

Useful Blogs...

- Brexit and the position of children born to European nationals living in the UK
- Don’t think of the children! CJEU approves automatic exclusions from family benefits in Case C-308/14 Commission v UK
- Bad news for most vulnerable as court rules UK can restrict child benefit for EU migrants
- Let them stay? EU nationals in the UK after Brexit