

Subject-matter concerned	<input checked="" type="checkbox"/> 1) non-discrimination on grounds of nationality <input checked="" type="checkbox"/> 2) freedom of movement and residence - linked to which article of the Directive 2004/38 – Articles 7 and 8 <input type="checkbox"/> 3) voting rights <input type="checkbox"/> 4) diplomatic protection <input type="checkbox"/> 5) the right to petition
Full reference	<p>Court of Appeal (Civil Division), <i>Sanneh and others v. Secretary of State for Work and Pensions and others</i>, [2015] EWCA Civ 49, 10 February 2015, available at: www.bailii.org/ew/cases/EWCA/Civ/2015/49.html.</p> <p>Permission to appeal to the Supreme Court has been granted with regard to one of the parties, namely <i>R. (on the application of HC) v Secretary of State for Work and Pensions</i>.¹ No judgement has been passed.</p>
Decision date	10 February 2015
Deciding body (in original language)	Court of Appeal (Civil Division)
Deciding body (in English)	/
Case number (also European Case Law Identifier (ECLI) where applicable)	[2015] EWCA Civ 49
Parties	Sanneh v Secretary of State for Work and Pensions

¹ For more information, see: Supreme Court, ‘R (on the application of HC) (Appellant) v Secretary of State for Work and Pensions and others (Respondents)’, www.supremecourt.uk/cases/uksc-2015-0215.html.

	<p>R. (on the application of HC) v Secretary of State for Work and Pensions</p> <p>Birmingham City Council v Merali</p> <p>Scott v Croydon LBC</p>
Web link to the decision (if available)	www.bailii.org/ew/cases/EWCA/Civ/2015/49.html
Legal basis in national law of the rights under dispute	<p>Social Security (Habitual Residence) (Amendment) Regulations 2012</p> <p>Allocation of Housing and Homelessness (Eligibility) (England) (Amendment) Regulations 2012</p> <p>Child Benefit and Child Tax Credit (Miscellaneous Amendments) Regulations 2012</p>
Key facts of the case (max. 500 chars)	<p>The appellants in this case were all <i>Zambrano</i> carers (third country primary carers of a minor child that has the UK nationality).² They challenged amendment Regulations introduced by the Government in 2012 to introduce the CJEU <i>Zambrano</i> principle into UK law. The Regulations added <i>Zambrano</i> carers to a list of persons not habitually resident in the UK and excluded them from social assistance (income-related benefits). Specific issues in this case were the following: 1) when the <i>Zambrano</i> carer's rights arose ; 2) whether a <i>Zambrano</i> carer had a right under EU law to claim social benefits; and 3) whether benefits could be claimed at the same level of assistance as EU citizens by virtue of the non-discrimination principle enshrined in Article 18 TFEU. The court also looked at whether the Secretary of State had paid due regard to equality considerations before making the amendment Regulations and whether a question should be referred to the CJEU.</p>
Main reasoning / argumentation (max. 500 chars)	<p>The Court of Appeal held that <i>Zambrano</i> formed part of the wider effective citizenship principle. It stated that this principle is concerned with creating rights to reside where it is necessary to make a person's EU citizenship status meaningful and effective. The right to reside stemmed from Article 20 TFEU and thus also included a right to work. In the case of a <i>Zambrano</i> carer, the right to reside was necessary so as to support the status of an EU citizen child and therefore the <i>Zambrano</i> right arises instantly (rather than only from "the last date", i.e. the date when prohibited measures are taken or are imminent). The court then considered whether, in this case, EU law extended beyond a right to reside and work to a right to claim social assistance (issue 2)). It explained that, for the EU citizenship right of the child cared for by the <i>Zambrano</i> carer to be effective, Member States should make social assistance available to <i>Zambrano</i> carers when it is essential to do so to enable them to support themselves in order to be the carer for the EU citizen child in their care ("the basic support test").</p>

² CJEU, C-34/09, *Gerardo Ruiz Zambrano v Office national de l'emploi*, 8 March 2011.

	<p>However, the court held that the status of <i>Zambrano</i> carers is derived from the child's citizenship rights and not founded on any personal right of residence or right to social assistance. Therefore, the consequences of the basic support test were threefold: the amount of social assistance payable is exclusively governed by national law; it does not have to be shown that the <i>Zambrano</i> carer would in fact have to leave the EU; and the EU principle of proportionality did not apply. With regard to issue 3) the court held that only EU citizens can rely on the nationality non-discrimination principle enshrined in Article 18 TFEU. The discrimination between <i>Zambrano</i> carers and other benefits claimants, resulting from the Regulations, was not direct discrimination on the grounds of nationality but indirect discrimination on the basis of immigration status. Furthermore, the court considered that EU law had no application when a Member State treated some people within its jurisdiction less favourably than others. The only restrictions were those imposed by national law, which incorporated Article 14 of the ECHR, and was not violated as there were policy reasons for making distinctions between <i>Zambrano</i> and other carers.</p>
<p>Key issues (concepts, interpretations) clarified by the case (max. 500 chars)</p>	<p>The court clarified that the <i>Zambrano</i> right arises instantly and held that, while <i>Zambrano</i> carers have a right to social assistance, this right is derived from the child's citizenship rights and, therefore, they are not entitled to the same level of social assistance as EU citizens lawfully residing in the EU. The amount of social assistance payments is exclusively governed by national law and Member States are only obliged to provide sufficient support to meet the <i>Zambrano</i> carer's basic support needs in order to be able to care for the EU citizen child.</p>
<p>Results (e.g. sanctions) and key consequences or implications of the case (max. 500 chars)</p>	<p>The court did not think it was necessary to refer the case for a preliminary ruling by the CJEU. With regard to the specific facts of the case, the appeals by the first and third actions (Sanneh and Birmingham City Council) were allowed and the appeals in the second and fourth (R. and Scott) actions were dismissed.</p>
<p>Key quotations in original language and translated into English with reference details (max. 500 chars)</p>	<p>"In my judgment, for the reasons given below, the effective citizenship principle means that EU law confers a right to reside on a <i>Zambrano</i> carer from the First Date. As Elias LJ expressed the position in argument, the <i>Zambrano</i> carer has under EU law a positive right to work and reside in the member state in which the EU citizen child is resident, and a negative right not to have prohibited measures taken against him. I agree, though this may not be an exhaustive statement of the <i>Zambrano</i> carer's EU law rights". [Para. 25]</p> <p>"As to (2) – the right to social benefits - for the reasons given below, if the EU citizenship right of the EU citizen child cared for by the <i>Zambrano</i> carer is to be effective, then, in my judgment, member states must make social assistance available to <i>Zambrano</i> carers when it is essential to do so to enable them to support themselves in order to be the carer for the EU citizen children in their care within the EU. I will call this "the basic support test". If this test is met, it cannot be said that their departure (if it occurs) was due to any prohibited</p>

	<p>national measure or to any refusal to pay social assistance which is tantamount to a prohibited national measure. In my judgment, this is the furthest that EU law goes because the status of Zambrano carers is only derivative: their rights are derived from the EU citizen child and their status is not founded on any personal right of residence, or right to be paid social assistance, conferred on them by any EU treaty provision or legislative measure". [Para. 26]</p> <p>"In my judgment, the answer to main issue (3) is no. Only EU citizens can rely on the nationality non-discrimination principle. Furthermore, EU law has no application when a member state treats some people within its jurisdiction less favourably than others (so-called "reverse discrimination"). The only restrictions are those imposed by the national law, which, in the case of the UK, incorporates Article 14 of the Convention. Article 14 is not violated because the UK government has policy reasons for making distinctions between Zambrano carers and others, and this court cannot say that those reasons are clearly without foundation. Insofar as there is indirect discrimination, it is objectively justified for the same reasons". [Para. 29]</p>
<p>Has the deciding body referred to the Charter of Fundamental Rights. If yes, to which specific Article.</p>	<p>Yes – Articles 7, 21 and 52.</p>