

# HB Alerts

<b>Circular Reference:</b>		<b>A10 2010</b>	
<b>Subject:</b>	Right to Reside of parent or primary carer with child in education	<b>Effective Date:</b>	<b>Immediate</b>

## **Summary**

Recent judgments made by the Court of Justice of the European Union (CJEU) over the right to reside of a parent or primary carer of a child in education in a host Member State have had the following effect on Housing and Council Tax Benefit claims.

In the cases of Ibrahim V London Borough of Harrow and Teixeira V London Borough of Lambeth it was argued that where an EU migrant worker had worked in another member state, the child or children of that worker could access the education system of that Member State under rights conferred in Article 12 of Regulation (EEC) 1612/88. This would have the effect of treating a claimant previously deemed to be PFA as having a right to reside whilst their child was in education in Great Britain.

A claimant for HB or CTB would have a right to reside if on the date of claim,

- the claimant is the parent, step-parent or primary carer of a child, and
- that either of the child's parents are citizens of an EEA state or Switzerland, and
- the claimant is or has been employed in the UK, and
- the child had commenced education whilst the claimant was living in the UK, and
- the child is still in education and under 18

## **Points to note**

The employment cannot have been self-employment and must have been genuine and effective. Registering to seek work would not be admissible.

A2 and A8 nationals will need to have completed 12 months of registered or authorised work before benefiting from the decision.

There needs to be a common period where the child and migrant worker were living in the UK and the child in education. The worker does not necessarily need to have resided with the child during this time.

Education can include university or similar courses but Article 12 states that the rights of the child to education cease when the child reaches 18 in the UK.

Provided the child of the migrant worker remains habitually resident in the UK, the migrant worker can leave the UK but still retain the right to reside should they return. The child can also leave the UK for temporary periods (up to six months) as long as there is then intention to return. Should the child leave the UK and the break is not temporary then any rights to reside will cease for both child and claimant.

## **Suggested Action**

Decision makers need to be aware of the implications these judgments will have on appeals. Affected appeals still at First-tier Tribunal should be revised if in light of this guidance the claimant would be entitled to HB or CTB.

Reconsiderations made on decisions dated prior to 23<sup>rd</sup> February 2010 should not be classed as Official Error as they are in effect an error of law. Consequently and decisions reconsidered after

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