



**IN THE UPPER TRIBUNAL**  
**IMMIGRATION AND ASYLUM CHAMBER**

Case No: UI-2023-000071

First-tier Tribunal No: EA/04335/2022

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
9 October 2023

**Before**

**UPPER TRIBUNAL JUDGE STEPHEN SMITH**  
**DEPUTY UPPER TRIBUNAL JUDGE BLACK**

**Between**

**WALEED AHMAD MALHI**

**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr J Holt, Counsel instructed by TMC solicitors  
For the Respondent: Mr A Basra, Senior Home Office Presenting Officer

**Heard at Field House on 5 September 2023**

**DECISION AND REASONS**

1. We have both contributed to this decision.
2. This is an appeal against the decision issued on 18 October 2022 by First-tier Tribunal Judge McCall ("FtT") which refused the appellant's appeal against a decision of the respondent refusing his application under the EEA (Immigration) Regulations 2016 as the dependent relative of an EEA citizen with reference to Regulation 8.
3. The appellant Mr Malhi is a citizen of Pakistan and his date of birth is 10 June 1992. The sponsor is his uncle, a Spanish citizen exercising Treaty Rights in the UK.

4. On 7 April 2021 the respondent refused the application. She was not satisfied that the appellant had shown dependency for essential needs nor that he was or had been part of the sponsor's household. There was no issue as to the biological relationship. The respondent raised concerns that there was evidence of additional deposits paid into the appellant's account from another source. The respondent was not satisfied that the register of tax payers established reliable evidence of lack of employment. There was no evidence to support the claim that the appellant resided in part of the sponsor's household. The respondent expected the financial evidence to cover a longer period, that provided was restricted to June 2019 - December 2020. The sponsor's income was insufficient to support himself and his family and the appellant.
5. First-tier Tribunal Judge McCall had regard to Reyes (EEA Regs: dependency) [2013] UKUT 314 (IAC) ("Reyes UT") at [11]. The principle is established in Reyes v Sweden [2014] EUECJ C-423/12 ("Reyes CJEU"). The FtT found that the sponsor owned the building where the appellant lived [15]. He had doubts as to the proximity of the relationship as between the appellant and the sponsor based on the sponsor's lack of knowledge about the appellant's educational qualifications during oral evidence [16]. The FtT found the evidence of the tax register was not reliable to establish that the appellant was not working. The evidence of the bank statements showing unexplained deposits was not produced in the bundles for the hearing. The FtT made no adverse findings on that issue [18]. The bank statements for April 2022 - September 2022 showed that the sponsor made regular payments since the date of decision [19], but there was no documentary evidence of transfers made from Spain or after the sponsor moved to the UK. The sponsor stated that he was unaware what the money he sent from Spain was used for [20]. It was accepted that the sponsor had transferred a total of £8,260 to the appellant between June 2019 - October 2022.
6. In considering dependency, in terms of meeting essential needs, the FtT accepted the sponsor's evidence that the appellant's father, who had been a serving police officer, received a regular pension. The FtT found a lack of transparency by the appellant who had made no reference to this fact in his application [23]. The FtT found that this was a regular income paid into the household that was sufficient to meet the essential needs of the appellant and his parents, and further that his father was not insolvent as claimed. The FtT concluded that the funds paid by the sponsor were intended to provide a better life for the appellant and his family rather than for essential needs [24].
7. The FtT made further findings that the appellant's father was the head of the household and not the appellant as claimed. There was no evidence as to the financial circumstances of the appellant's parents. The FtT found the sponsor was unable to meet the financial support requirements.
8. The grounds of appeal argued that the FtT went beyond the finding of factual dependency and looked for reasons for dependency which was contrary to the Directive 2004/38 and the judgment in Reyes. The FtT found that the sponsor provided accommodation rent free for the appellant which was sufficient to show dependency.
9. Permission to appeal was granted by Upper Tribunal Judge Jackson who found it just arguable that the FtT had gone beyond consideration of dependency by looking at whether or not there was alternative accommodation and income from

others which strayed into the issue of dependency of choice, as considered in Reyes.

10. In a Rule 24 response the respondent opposed the appeal contending that the grounds amounted to a disagreement. There was no challenge as to the credibility finding in relation to the proximity of the relationship between the appellant and the sponsor [16]. The FtT found that other family members provided support for the appellant [22-24].
11. Before us, Mr Holt relied specifically on the finding that the appellant was living in accommodation owned by the sponsor which, he submitted, amounted to a finding that factual dependency was present. He raised no challenge to the remaining findings made by the Tribunal, accepting that it was not open to him to do so. He argued that the FtT [23] had gone behind the fact of dependency and looked for reasons for that dependency. There were different aspects of dependency such as financial and/or accommodation. The FtT had breached the Reyes principle by concluding that the funds from the sponsor were to provide a better life style which was in effect looking at alternatives and which was an exercise that the FtT ought not to have embarked upon.
12. Mr Basra relied on the reasons for refusal and the Rule 24 response. He cited Lim v Entry Clearance Officer [2015] EWCA Civ 1383 at paragraph 32. The FtT correctly applied the Reyes principle at [22-24]. The core issue was the finding as to the proximity of the relationship.
13. Mr Holt distinguished Lim because it focused on financial support and not accommodation as in this instance.

## **Discussion**

14. By way of a preliminary observation, we note that Mr Holt accepted that it was not open to the appellant to challenge any of the judge's findings of fact (save, of course, in relation to the central issue of whether the appellant was dependent upon the sponsor for his essential needs). Mr Holt was right to make that concession; the findings of fact reached by the judge were open to him on the evidence before him, for the reasons he gave. Those findings of fact provide the foundation for the judge's subsequent application of the law concerning dependency.
15. At their core, Mr Holt's submissions appear to be based on the following reasoning:
  - a. accommodation is an essential need;
  - b. the sponsor provided the appellant's accommodation in Pakistan;
  - c. therefore, the sponsor provided for an essential need of the appellant, notwithstanding the remaining findings about a lack of transparency concerning their true financial circumstances, and any support provided was to enable the appellant to enjoy higher standard of living, rather than for his essential needs.
16. The difficulty with this approach is that it is founded on the premise that the appellant could either live rent-free in the sponsor's apartment, on the one hand, or that he would be homeless, on the other. Plainly, if those options were the only alternatives, the appellant would have established dependence merely by

virtue of living rent-free in accommodation provided by the sponsor. In our judgment, however, the approach of the Court of Justice in *Reyes* calls for an assessment that is rooted in reality, not in narrow opposing propositions of logic. So much is clear from the requirement, at para. 22 of *Reyes*, that “the host Member State must assess whether, having regard to his financial and social conditions” a situation of dependence exists. While any such examination must not include an assessment of the reasons for any claimed dependency, it is nevertheless a holistic assessment, which looks to the “financial *and social* conditions” of the putative dependent.

17. The premise of Mr Holt’s submissions ignores the possibility that the appellant could have paid to rent sponsor’s apartment from him; he did not face the stark choice of homelessness or accepting the sponsor’s support, on the FtT’s findings of fact. Of course, on the FtT’s findings of fact, he did not pay rent. But the fact that he did not do so was not capable of leading to the only conclusion for which Mr Holt contended, namely the existence of a situation of dependency.
18. Properly understood, therefore, the FtT found that the sponsor’s provision of rent-free accommodation to the appellant was a form of benefit in kind. Had the appellant been responsible for the payment of his own rent, and had the sponsor made payments to him to cover the cost of the rent, on the basis of the remaining unchallenged findings of fact reached by the FtT that would not amount to a situation of dependence. It would simply be another payment in order to improve the living standards of the appellant and would not demonstrate a situation of dependence to cover the appellant’s essential needs. The position is no different simply because on the facts of this case (and the FtT’s findings of fact), the provision of rent-free accommodation to the appellant is part of the sponsor’s financial contribution towards a higher standard of living.
19. The FtT made clear sustainable findings having considered all the evidence and in particular placed weight on credibility having found that there was a lack of transparency by the appellant who significantly had not disclosed that his father provided a regular income in the form of a pension [23]. Whilst accepting that the appellant lived in part of the accommodation owned by the sponsor the FtT in assessing whether the sponsor’s funds met the essential needs took into account the lack of transparency, the reservations as to the proximity of the relationship and the fact of the father’s additional income. Our view is that the FtT was entitled to make such findings on the evidence and reach the conclusions which were within the scope of considerations as to dependency in *Reyes UKUT* at [19]. The appellant had not shown that his situation was one of real dependence.
20. *“From the above, we glean four key things. First, the test of dependency is a purely factual test. Second, the Court envisages that questions of dependency must not be reduced to a bare calculation of financial dependency but should be construed broadly to involve a holistic examination of a number of factors, including financial, physical and social conditions, so as to establish whether there is dependence that is genuine. The essential focus has to be on the nature of the relationship concerned and on whether it is one characterised by a situation of dependence based on an examination of all the factual circumstances, bearing in mind the underlying objective of maintaining the unity of the family. It seems to us that the need for a wide-ranging fact-specific approach is indeed enjoined by the Court of Appeal in *SM (India)*: see in particular Sullivan LJ’s observations at [27]-[28].”*

21. Dependency cannot simply be deduced from the provision of accommodation rent free. In this appeal we are satisfied that the FtT assessed the appellant's circumstances in light of his negative credibility in failing to disclose the additional source of income from his father's pension and in concluding that the provision of funds from the sponsor were for a better life style rather than to meet his essential needs. This appeal was not about dependency of choice. The appellant was properly found not to be dependent on his sponsor for his essential needs because he failed to show that his factual situation was characterised by the fact of material support for him provided by his sponsor. We take the view that the FtT was assessing the degree of need – was it an essential need or a need for some higher standard of living, and reached a sustainable conclusion on the evidence. That conclusion was entirely consistent with the approach of the Court of Appeal in *Lim* at para. 32:

“In my judgment, the critical question is whether the claimant is in fact in a position to support himself or not, and Reyes [CJEU] now makes that clear beyond doubt, in my view. That is a simple matter of fact. If he can support himself, there is no dependency, even if he is given financial material support by the EU citizen. Those additional resources are not necessary to enable him to meet his basic needs.”

22. The above description could aptly be deployed to describe the appellant in these proceedings.

**Notice of Decision**

**The decision and reasons do not contain a material error of law and shall stand.**  
**The appeal is dismissed.**

**G.A. Black**

Deputy Judge of the Upper Tribunal  
Immigration and Asylum Chamber

3<sup>rd</sup> October 2023

