



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

**Case No: UI-2024-001907**  
**First-tier Tribunal Nos:**  
**EU/53150/2023**  
**LE/00874/2024**

**THE IMMIGRATION ACTS**

**Decision & Reasons Issued:**  
**On the 23rd September 2024**

**Before**

**UPPER TRIBUNAL JUDGE McWILLIAM**  
**UPPER TRIBUNAL JUDGE LOUGHRAN**

**Between**

**TAPOSI RABEYA**  
**(NO ANONYMITY ORDER MADE)**

Appellant

**and**

**ENTRY CLEARANCE OFFICER**

Respondent

**Representation:**

For the Appellant: Mr A Malik, instructed by Law Valley Solicitors  
For the Respondent: Ms S Nwachuku, Senior Home Office Presenting Officer

**Heard at Field House on 27 August 2024**

**DECISION AND REASONS**

1. The Appellant is a citizen of Bangladesh. Her date of birth is 8 July 1995.
2. The Appellant was granted permission by the First-tier Tribunal (Judge Moon) to appeal against the decision of the First-tier Tribunal (Judge Meyler) to dismiss her appeal against the decision of the ECO on 27 September 2022 to refuse her application (made on 6 May 2022) under the EUSS scheme.
3. The Appellant's application was for a family permit under the EUSS on the basis that she is dependent on her daughter (the Sponsor), an EEA citizen who was granted entry clearance and leave to remain in the UK under the EUSS Scheme.

The SSHD's decision

4. The ECO was not satisfied with the evidence of dependency. The ECO said that the Appellant had not provided any evidence of her own domestic circumstances in Bangladesh and said that without such evidence they were not able to sufficiently determine that she could not meet essential living needs without financial or other material support from the Sponsor. The ECO said that the Appellant had not provided evidence which fully detailed her circumstances, income and expenditure and evidence of her financial position including any other evidence she may receive or bank statements in her name. The ECO said that they could not be satisfied that funds that the Sponsor sends to the Appellant is her only or main source of income used to meet her essential living needs.
5. In the SSHD's in their review relied on the decision of the ECO 22 February 2023.

#### Dependency

6. In terms of the law dependent means that an applicant needs the material support of the EEA family member to meet their essential living needs: SM (India) v Entry Clearance Officer (Mumbai) [2009] EWCA Civ 1426, [2010] Imm AR 351 and C-1/105 Jia Migrationsverket [2007] QB 545. In order to establish dependence it is not necessary to establish that the EEA family member is the sole source of funds from which the applicant meets essential living needs. The support must be material in the sense that without it the applicant could not meet their essential needs.
7. In Lim v ECO Manila [2015] EWCA Civ 1383. Elias LJ, with whom McCombe and Ryder LJ agreed what was required at paragraph at 32. To summarise what they said; it is not enough simply to show that financial support is in fact provided by the EU citizen to the family member. The family member must need this support from their sponsor in order to meet her basic needs
8. In Reyes v Migrationsverket C-423/12 [2004] QB 1140 the court engaged with the evidence required to support dependency at paragraphs 26 and 27. It was recognised that it would be unrealistic for a decision maker to require a document from the country of origin attesting to the dependence of the individual seeking entry to the other Member State. At para 24 the court said as follows:

“The fact that, in circumstances such as those in question in the main proceedings, a Union citizen regularly, ..., pays a sum of money to that descendant, necessary in order for him to support himself in the State of origin, is such as to show that the descendant is in a real situation of dependency vis-à-vis that citizen”.

#### The decision of the First-tier Tribunal

9. At the hearing before Judge Meyler the Appellant was represented by Counsel. The SSHD was unrepresented. The judge heard evidence from the Sponsor. There were witness statements from the Appellant and the Sponsor.
10. The judge identified the central issue as acknowledged by the Appellant's representative as whether the Appellant was dependent on the Sponsor. The judge said that the SSHD relied on the decision of the ECO that said that

evidence of the Appellant's own domestic circumstances was expected, specifically highlighting the failure to provide the Appellant's bank statement showing any other income received.

11. The judge said as follows:

"17. It is clear from the money transfers, that the appellant has a bank account (see, for example, pp 57-64, 124-132/203). I appreciate that dependency may be partial and of choice and that dependency may be more than just financial, however given the ongoing failure to disclose the appellant's bank statements, despite the specific request made for them in the refusal letter, it is not clear to me that the appellant actually needs the money sent. The appellant has provided details of receipts for groceries and other expenditure; however, it is unclear why the appellant has chosen not to disclose her bank statements in response to the issue specifically raised by the respondent.

18. Based on the failure of the appellant to disclose her bank statements, I find that the assertions as to dependence on the sponsor have not been adequately supported by documentary evidence that is available; namely bank statements throughout the relevant period relied on. I therefore find that the appellant has failed to show, on the balance of probabilities, that she needed the financial support sent by the sponsor throughout the period relied on or that she was dependent (in whole or in part) on the sponsor. In the circumstances, I cannot find that the appellant is unable to meet her essential needs (in whole or in part) without the financial or other material support of the relevant EEA citizen".

The grounds of appeal

12. Ground 1 says that there was procedural unfairness. There was no dispute as to whether funds were being sent to the Appellant or who was sending the funds because it was not raised in the ECO's decision. It is said that the decision solely focused on the domestic circumstances of the Appellant and the judge mischaracterises the refusal specifically highlighting the Appellant's bank statements. It is said that the refusal decision in relation to the bank statements is "pro-forma". The Appellant provided evidence to establish her claim in the form of a detailed witness statement setting out her income and expenditure and financial position. There were remittance receipts from 2018 to the date of the hearing and the Sponsor's witness statement responded to the SSHD's review. There were receipts of expenditure in Bangladesh. It is argued that the SSHD did not raise any issue regarding bank statements and instead focused on the evidence that had been submitted. The case of TC (PS compliance - "issued based" reasoning) [2023] UKUT 00164 is relied on by the Appellant in the grounds. It is said the judge pursued matters which were not relevant to the appeal and overstated the importance of the bank statements.

13. Ground 2 says that the judge misdirected herself by failing to cite or follow Reyes. The court in this case was clear that there were positive features from the transfer of funds which inferred a real state of dependency. The Appellant says that Reyes (with reference to para 24 of that decision) was not applied by the judge who also failed to take into account that the Appellant did not have any other form of financial support.

### Error of law

14. While giving our reasons for finding a material error we will engage with the submissions we heard from both representatives and the grounds of appeal. There was no Rule 24 response; however, we took into account Ms Nwachuku's oral submissions.
15. We agreed with Ms Nwachuku that a number of issues raised in the grounds and oral submissions have no substance. The decision of the ECO discloses that the Appellant's domestic circumstances were in issue and highlighted the absence of bank statements. The SSHD in their review relied on the decision of the ECO. There is in no error arising from TC. There was no procedural irregularity.
16. In so far as ground 2 says that the judge did not apply Reyes and did not consider the evidence that was capable of supporting dependency, there is some substance in this. We find that the judge's error arises from how she dealt with the evidence. We accept that the judge did not explain what she made of the evidence as a whole including the Appellant and the Sponsor's witness statements. She placed weight on the absence of bank statements without considering the evidence in the round. While there is nothing in Reyes that prevents the decision maker taking into account the absence of supporting documentation (in this case bank statements) in determining whether an individual has established on the balance of probabilities that they are dependent upon the EU national, we accept that a decision maker cannot require documentation and conclude that dependency has not been established simply because of its absence. All the evidence, oral, documentary or otherwise, must be considered as a whole in reaching the decision. It is not clear to us what the judge made of the Sponsor's and the Appellant's evidence in their witness statements, specifically what the Sponsor said at paragraph 9 of her witness statement which describes what she sends to the Appellant and the Appellant's outgoings. It is not clear what weight the judge attached to the other pieces of evidence, for example five years of remittances, day-to-day expenses and the evidence pertaining to emotional dependency. The dismissal of the appeal was based solely, in our view, on the failure by the Appellant to provide bank statements. This is a material error.
17. We also take into account that in the reasons for refusal letter there was no request for the Appellant to produce her bank statements contrary to what is said by the judge at paragraph 17. The ECO's decision was worded to express an expectation rather than a request.
18. We will deal with Mr Malik's oral submissions. We do not find that the error in the first paragraph of the decision in relation to the name and nationality of the Appellant and the failure to identify the name of the Sponsor amounts to a material error. While unfortunate, we are satisfied that the judge throughout the rest of the determination properly identified the Appellant. It clear that the judge was dealing with this Appellant. The error is typographical and probably arises from cutting and pasting. We do not accept that any unfairness arises from the judge not asking the Sponsor why there were no bank statements produced. She did not address the issue in her evidence. The Appellant was represented and the

absence of bank statements was a relevant issue. In any event, Mr Malik was not able to explain how this is material. There was no application under Rule 15(2A) of the Tribunal (Upper Tribunal) Procedure Rules 2008. Moreover, neither of these matters are raised in the grounds of appeal.

19. For the reasons that we have explained there is a material error of law and the decision of the First-tier Tribunal to dismiss the appeal is set aside. The credibility findings are flawed. There are no sustainable findings. There will need to be a fresh hearing. Applying the guidance in AEB v SSHD [2022] EWCA Civ 1512, taking into account the nature and extent of the fact finding needed in this case, we remit the matter to the First-tier Tribunal (Manchester) to be re-heard not before Judge Meyler. There is no requirement for an interpreter.

**Joanna McWilliam**

Judge of the Upper Tribunal  
Immigration and Asylum Chamber

**18 September 2024**