

UPPER TRIBUNAL CASE NO: CPC/2200/2017

**DECISION OF THE UPPER TRIBUNAL  
(ADMINISTRATIVE APPEALS CHAMBER)**

As the decision of the First-tier Tribunal (made on 22 March 2017 at Telford under reference SC002/15/00510) involved the making of an error in point of law, it is SET ASIDE under section 12(2)(a) and (b)(ii) of the Tribunals, Courts and Enforcement Act 2007 and the decision is RE-MADE.

The decision is: on her claim for a state pension credit, made on 23 March 2015 and refused on 15 June 2015, the claimant was not entitled to a credit as she did not have a right to reside in the United Kingdom.

**REASONS FOR DECISION**

1. Both the claimant and her daughter who represents her have limited command of English, so I have tried to explain this decision as clearly as I can with limited technicalities.
2. The claimant made a claim for a state pension credit on 23 March 2015. She was only entitled if she had a right to reside in the United Kingdom. The Secretary of State decided that she did not and therefore refused the claim on 15 June 2015.
3. Let me make clear that this was a decision about entitlement to a social security benefit. It was not an immigration decision and the claimant need not be concerned that this will result in her removal from the United Kingdom.
4. The claimant had a right to appeal against the Secretary of State's decision, which she did. Her appeal was heard by the First-tier Tribunal on 22 March 2017. The tribunal allowed the appeal, deciding that the claimant had a right to reside as a dependent family member of her daughter.
5. That left the Secretary of State with a choice – either (a) to accept the decision and decide whether the claimant satisfied the other conditions for an award or (b) to challenge the tribunal's decision in the Upper Tribunal. The Secretary of State chose (b) and I gave permission to appeal on 6 October 2017.
6. There was then some confusion over who was the claimant's representative and correct addresses. In April 2018, I gave the claimant's daughter a month in which to respond to the appeal. She has done so, but only to say that she believes that her mother is entitled to a state pension credit and that she cannot say more. In those circumstances, it is not necessary for the Secretary of State to reply.
7. I have decided that the Secretary of State's decision was right and that the tribunal's decision was wrong. This is why.

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8. The only issue is whether the claimant was dependent on her daughter. I analysed what that meant in *CIS/2100/2007*. A copy of that decision is in the papers at pages 788-798.

9. The test that the tribunal had to apply was whether the claimant's daughter provided her with material support, financial or otherwise, that met or contributed towards the basic necessities of life.

10. The tribunal found that that test was satisfied. It gave its reasons in paragraph 27 on page 704 of the papers. The tribunal identified two forms of support: linguistic communication and emotional or social support. The Secretary of State argued that neither form of support was material. The tribunal decided that emotional or social support was not material, but that linguistic support was. That was wrong in law.

11. From the evidence, the communication involved assisting the claimant at medical and other appointments and dealing with forms and officialdom. I do not consider that translation can be a material form of support in accordance with my analysis of EU caselaw of the Court of Justice of the European Union in *CIS/2100/2007*. It is outside anything contemplated by the Court's caselaw, which is concerned with the physical necessities of life. That is why *material* captures the essence of the reasoning. That word is not appropriate to describe translation. Including translation effectively removes a key word from the analysis, a word that is designed to limit the forms of support that may be taken into account.

12. I have therefore set aside the First-tier Tribunal's decision and re-made it to confirm that the claimant is not entitled to a state pension credit.

13. For completeness, the tribunal was right that emotional or social support is not material. I left that issue open in *CIS/2100/2007* at [29] as it did not arise. It does arise here and I consider that it is not material support for the reasons I have given in respect of translation.

**Signed on original  
on 24 May 2018**

**Edward Jacobs  
Upper Tribunal Judge**