

CTC/1443/2018

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

Decision and Hearing

1. **This appeal by the claimant succeeds.** In accordance with the provisions of section 12(2)(b)(ii) of the Tribunals, Courts and Enforcement Act 2007 I set aside the decision of the First-tier Tribunal sitting in Fox Court (London) and made on 7th December 2017 under reference SC242/17/11821. I substitute my own decision. This is to the effect that at the material time the claimant's son E was receiving full-time non-advanced education at a school or college and therefore the claimant was entitled to child tax credits in respect of him. I refer the matter to Her Majesty's Revenue and Customs (HMRC) for implementation as appropriate.

2. On 22nd November 2018 I held an oral hearing of the claimant's application for permission to appeal. Permission was granted on that date. It has not been necessary to hold an oral hearing of the substantive appeal. The parties are agreed that the decision of the First-tier Tribunal was made in error of law and that I should substitute the above decision. I set the matter out in a little detail because it is not clear how widespread the error in interpretation has been and because the First-tier Tribunal allowed itself to be misled by the original submissions from HMRC.

Background and Procedure

3. The appellant was born in 1957. He is the father of a boy born on 4th September 1998, to whom I shall refer as E. On 1st September 2015 E (then almost 17) commenced a 4 year course in Torah Studies at a Talmudical College in North East London. The first 2 years were at level 2, and the final two years are at level 3. These are equivalent to the same levels of NVQ. The course is due to finish on 31st July 2019. The First-tier Tribunal found on the basis of agreement between the parties, that E was studying for 25 hours weekly but it is not clear how this figure was calculated or what it includes. E had previously been a student at a school run by a specific Hasidic group.

4. On 27th June 2016 HMRC notified the claimant of his entitlement to working tax credit and child tax credit for the 2016-2017 tax year. On 5th September 2016 (the day after his 18th birthday) child benefit in respect of E ceased. This prompted HMRC to make enquiries about E's education. It discovered that although the Talmudical College was a registered charity it had ceased being a school registered with the Department of Education and the local authority in 1996 and had not been reregistered. There was no official record of the course being undertaken by E.

5. On 21st July 2017 HMRC decided that entitlement to tax credits in respect of E ceased from 6th April 2016 because he was not in full-time non-advanced education. On 1st September 2017 the claimant appealed to the First-tier Tribunal against that decision of HMRC. On 17th December 2017 the First-tier Tribunal dismissed the appeal and confirmed the decision that had been taken by HMRC. On 24th April 2018

a different judge of the First-tier Tribunal refused the claimant's application for permission to appeal against the decision of the First-tier Tribunal on the basis that no error of law was raised. This was obviously a mistaken view. On 31st May 2018 the application was renewed to the Upper Tribunal. For some reason this was not referred to me until 12th September 2018, when I directed that there be an oral hearing of the application. This took place on 22nd November 2018. Final submissions from the parties were not received until 14th February 2019.

The Relevant Law

6. The relevant regulations are the Child Tax Credit Regulations 2002 as amended and are made under section 8(4) of the Tax Credits Act 2002. Part I of the Act is about tax credits, including child tax credit. For the purposes of Part I of the Act regulation 5(1) relates to a person who has reached the age of 20. The other relevant parts of regulation 5 provide:

5(2) A person who is not a child but has not attained the age of twenty years is a qualifying young person for any period during which the following conditions are satisfied with regard to him ...

5(3) The first condition is that he is –

- (a) receiving full-time education, not being –
 - (i) advanced education, or
 - (ii) education received by that person by virtue of his employment or any office held by him ...

5(5) For the purposes of paragraphs (3) and (4) a person shall be treated as being in full-time education if full-time education is received by that person by undertaking a course –

- (a) at a school or college, or
- (b) where that person has been receiving that education prior to attaining the age of sixteen, elsewhere if approved by the Board,

where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds or exceeds on average 12 hours a week in normal term time.

There are further detailed provisions in relation to the calculation of the amount of time included.

7. The claimant also produced a page from a document said to be paragraph TCM 0320300 of official guidance from HMRC. This document is undated and no more precise source has been given, but HMRC has not objected to its production. The page is headed “Non-advanced education” and towards the end states “The following provide guidelines for cases where religious studies have to be considered” and includes in a list:

Jewish studies – where the young person is studying at a Yeshiva in the UK this should be accepted as non-advanced education.

8. As I understand it “Yeshiva” derives from a Hebrew word and describes a Jewish religious institution for the study of Torah and Talmud. The word would be used to describe, amongst other institutions, the Talmudical College attended by E. The claimant also produced a letter of 17th January 2014 to similar effect to another person from HMRC.

Conclusions

9. HMRC’s submission of 7th January 2019 states in paragraph 18:

“The [First-tier Tribunal] has applied regulation 5(5)(b) ... when regulation 5(5)(a) was the applicable one in this instance. The latter regulation does not require in any manner for the pertinent educational establishment to be registered or approved by “the Board”.

10. I agree. Whether the relevant person is at a school or college is a question of fact, and whether that person is in full-time education depends on a number of findings of fact, but neither those facts nor the question of entitlement is any longer in dispute in this case.

H. Levenson
Judge of the Upper Tribunal
15th March 2019