



THE UPPER TRIBUNAL

Case No:

ADMINISTRATIVE APPEALS CHAMBER

Appellant:

Respondent: HM Revenue and Customs

Date of Decision: September 2020

DECISION OF THE UPPER TRIBUNAL
J T LUNNEY
JUDGE OF THE UPPER TRIBUNAL

ON APPEAL FROM: First-tier Tribunal (Social Entitlement Chamber)

Tribunal Case No:

Tribunal Venue: Glasgow

Hearing Date: June 2019

THE UPPER TRIBUNAL

ADMINISTRATIVE APPEALS CHAMBER

DECISION OF THE UPPER TRIBUNAL JUDGE

As the decision of the First-tier Tribunal involved the making of an error in point of law, it is set aside under section 12(2)(a) of the Tribunals, Courts and Enforcement Act 2007. I remake the decision under section 12(2)(b)(ii) in the following terms:

The claimant is entitled to child benefit payable from October 2017, in respect of her two children

REASONS FOR DECISION

1 . This appeal is brought by the claimant against the tribunal's decision that she was not entitled to child benefit for any period prior to August 2018. The appeal is supported by HM Revenue and Customs whose submission writer agrees that the tribunal erred in law and that the benefit is payable from the date of her application for asylum, December 2017. I agree that the tribunal erred in law in this regard and its decision is therefore set aside. As there is a sufficiency of facts that are not in dispute, I re-make the decision as set out above.

2. The claimant was included in her partner's application for asylum made on December 2017. Notification of the success of the application was made by the Home Office on August 2018. The claimant made a claim for child benefit on October 2018 which resulted in an award of the benefit payable from August 2018. The claimant sought backdating of the award to the date of the application for asylum. This was refused by a decision of the respondent taken on October 2018 leading to her appeal against that decision.

3. The claimant in her appeal sought to rely on the following provisions of regulation 6 of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 (as amended) which are in the following terms —

6(1) The time within which a claim for child benefit or guardian's allowance is to be made is 3 months beginning with any day on which, apart from satisfying the conditions for making the claim, the person making the claim is entitled to the benefit or allowance.

(2) Paragraph (1) shall not apply where -

(d) a person who has claimed asylum and, on or after 6 April 2004, makes a claim for that benefit or allowance and satisfies the following conditions —

(i) the person is notified that he has been recorded as a refugee by the Secretary of State; and (ii) he claims that benefit or allowance within 3 months of receiving that notification;

(3) In a case falling within paragraph (2)(d) the person making the claim shall be treated as having made it on the date when he submitted the claim for asylum.

4. The respondent's submission to the tribunal argued that the claimant could not benefit from the provisions of regulation 6 as she had not made a claim for asylum in her own right, as she was entitled to do notwithstanding her inclusion in her partner's claim. The tribunal agreed with this interpretation in refusing her appeal. The respondent's submission to the Upper Tribunal departs from the position taken before the tribunal. The submission writer quite rightly points out that the regulation makes no reference to a person who has claimed asylum being required to do so in their own right. I agree with that assertion. The claimant was granted refugee status in the UK as a consequence of being included in her partner's claim, she had plainly made an effective claim for asylum.

5. Furthermore, I am advised by the respondent that it is customary when a family applies for asylum in the UK, it is done on one form by one spouse with the other spouse and children include in the application as dependents. This follows the guidance given to families by the Home Office which advises that a separate application from each person is not required.

6. Had it been the intention that regulation 6(2) and (3) would only be triggered where a claim for asylum had been made in the claimant's own right, the regulation would have been explicit on that point. Instead it merely refers to 'a person who has claimed asylum'. The claimant patently satisfies that criteria. There was accordingly no requirement upon her to make a claim in her own right to satisfy that portion of regulation 6 which enables her claim for child benefit to be backdated to the date of her claim for asylum. Her appeal therefore succeeds.

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Authorised for issue
on 22 September
2020

J T LUNNEY
Judge for the Upper Tribunal