



Before: Judge Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

HAMON

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Sandra Lando, UNHCR
Elizabeth Brown, UNHCR

Introduction

1. By application filed on 11 April 2022, the Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the ineligibility to the education grant for French nationals residing in neighbouring France and serving in Geneva, and the decision to deny her education grant claim for her son for the 2020-2021 school year.

Facts and procedural history

2. The Applicant joined UNHCR in 1994 and has been gradually promoted from the P-2 to the P-5 level. Following her transfer to Geneva in August 2019, she is currently working as Senior Adviser (P-5) for the Division of International Protection, on a temporary assignment in Geneva.

3. The Applicant is a French national holding an indefinite appointment. She currently resides in Ferney-Voltaire, France, and her son is enrolled in a private school in Geneva.

4. By email of 1 October 2020, a Senior Personnel Administration Assistant (“SPAA”) in the Entitlements Processing Team, UNHCR, informed the Applicant that her claim for the 2019/2020 education grant had been denied because French nationals who serve in Geneva and reside in France are not eligible for an education grant.

5. Further to the Applicant’s disagreement, by email of 9 October 2020, the SPAA informed the Applicant that her 2019/2020 education grant claim would be “exceptionally” granted on grounds that she had not been previously advised of the applicable rules. She further informed the Applicant that her claim for the 2020/2021 education grant would not be covered by the exceptions if she remains “assigned in Geneva and as a French National reside in France”.

6. In response to an Applicant's inquiry, by email of 26 October 2020, the SPAA, informed the Applicant that an audit (AE2004/311/03) of the Office of Internal Oversight Services ("OIOS") on education grants at the United Nations Office at Geneva ("UNOG"), dated 29 September 2004, indicated the non-eligibility of education grants of French nationals residing in France and serving in Geneva. She further stated that:

based on these policy [documents] we can only consider education grant payment for staff with French nationality assigned to Geneva if they could also prove that [their] residence is established in Switzerland.

7. On 12 September 2021, the Applicant submitted her claim for an education grant for the academic year 2020/2021 through the Management Systems Renewal Project ("MSRP") of UNHCR.

8. By email of 21 September 2021, the Applicant informed the Chief, Personnel Administration Section ("PAS"), UNHCR, of several new arguments contesting the October 2020 decision mentioned in para. 5 above, and requested the Chief, PAS, UNHCR, to grant her 2020/2021 education grant claim.

9. By email of 22 September 2021, the Chief, PAS, UNHCR, informed the Applicant of her ineligibility to the education grant and of the decision to deny her 2020/2021 education grant claim.

10. By email of 27 September 2021, the Chief, PAS, UNHCR, reiterated her earlier decision, and advised the Applicant to submit a request for management evaluation.

11. On 15 November 2021, the Applicant requested management evaluation concerning the decision to find her ineligible for an education grant.

12. By letter dated 13 January 2022, the Deputy High Commissioner, UNHCR, responded to the Applicant that her request for management evaluation was not receivable *ratione temporis* and that the contested decision had been upheld.

13. On 11 April 2022, the Applicant filed the application mentioned in para. 1 above.

14. On 13 May 2022, the Respondent filed his reply.

15. By Order No. 15 (GVA/2023) of 6 March 2023, the Tribunal informed the parties of its finding that the matter could be determined without holding a hearing, and ordered them to file their respective closing submission, which they did on 16 March 2023.

Consideration

The contested decision and the scope of judicial review

16. It is well-settled law that the Tribunal has “the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review”, and “may consider the application as a whole, including the relief or remedies requested by the staff member, in determining the contested or impugned decisions to be reviewed” (see, e.g., *Fasanella* 2017-UNAT-765, para. 20; *Cardwell* 2018-UNAT-876, para. 23).

17. After a perusal of the case file, the Tribunal considers that the Applicant essentially contests the ineligibility to the education grant for French nationals residing in neighbouring France and serving in Geneva, and the decision to deny her education grant claim for her son for the 2020-2021 school year.

18. Noting that the Applicant also contested the outcome of her management evaluation request, the Tribunal recalls that “the Administration’s response to a request for management evaluation is not a reviewable decision” (see *Nwuke* 2016-UNAT-697, para. 20-23). This means that the Tribunal does not have jurisdiction to consider appeals against the outcome of the review of an administrative decision by the Administration. Accordingly, this aspect of the application falls outside the scope of judicial review.

19. Having reviewed the parties' submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the application is receivable;
- b. Whether the contested decision is lawful; and
- c. Whether the Applicant is entitled to any remedies.

20. The Tribunal will address below these issues in turn.

Whether the application is receivable

21. The Respondent submits that the application is not receivable *ratione materiae* because the Applicant did not file a management evaluation request within 60 days from the date on which she received notification of the contested decision pursuant to staff rule 11.2(c). Specifically, he argues that the Applicant was first informed of the contested decision in October 2020 and, thus, her request for management evaluation of 15 November 2021 was not filed within the statutory time limit provided by staff rule 11.2(c).

22. In contrast, in identifying the contested decision, the Applicant points to the Administration's email of 27 September 2021, reiterating the Administration's earlier decision contained in the email of 22 September 2021.

23. In this respect, the Tribunal notes that staff rule 11.2(c) provides that "[a] request for a management evaluation shall not be receivable by the Secretary-General unless it is sent within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested". It is well-settled case law that "the Dispute Tribunal may only review decisions that have been the subject of a timely request for management evaluation" (see *Khan 2022-UNAT-1284*, para. 52).

24. Moreover, “[t]he date of an administrative decision is based on objective elements that both parties (Administration and staff member) can accurately determine” (see, e.g., *Kerby* 2020-UNAT-1064, para. 37). “[T]he reiteration of an original administrative decision, if repeatedly questioned by a staff member, does not reset the clock with respect to statutory timelines. Rather, time starts to run from the date on which the original decision was [notified]” (see *Kerby*, para. 37).

25. The Tribunal notes that by email of 1 October 2020, the Administration explicitly informed the Applicant that French nationals who serve in Geneva and reside in France are not eligible for an education grant. Therefore, all subsequent communications in this respect were a mere reiteration of the original administration decision. Consequently, the Applicant’s request for management evaluation on 15 November 2021 against the ineligibility to the education grant for French nationals residing in neighbouring France and serving in Geneva was time-barred. As such, this aspect of the application is not receivable *ratione materiae*.

26. Nevertheless, the Administration did not make a final decision regarding the Applicant’s claim for the 2020/2021 education grant in October 2020. Indeed, while the Administration, by email of 9 October 2020, exceptionally granted the Applicant’s 2019/2020 education grant claim on grounds that she had not been previously advised of the applicable rules, it merely informed her that her claim for the 2020/2021 education grant would not be covered by the above-mentioned exception if she remained assigned in Geneva and resided in France as a French national.

27. Considering the circumstances of the case, and noting various new arguments put forward by the Applicant before the Administration in September 2021, the Tribunal finds that the 22 September 2021 Administration’s denial of the Applicant’s 2020/2021 education grant claim constitutes a new administrative decision. As such, the 60-day deadline for requesting management evaluation of this decision started to run from 22 September 2021 and ended on 21 November 2021.

28. Accordingly, the Tribunal finds that the Applicant's 15 November 2021 request for management evaluation against the Administration's denial of her 2020/2021 education grant claim is not time-barred. It follows that this aspect of the application is receivable and the Tribunal will proceed to examine the merits of the case in this respect.

Whether the contested decision is lawful

29. In determining whether the Administration's denial of the Applicant's 2020/2021 education grant claim is lawful, the Tribunal needs to examine whether she is eligible to an education grant.

30. The Applicant submits that she is eligible to it. In her view, the Administration failed to properly interpret staff rule 3.9 because it bluntly refuses to take into consideration the definition of "duty station" as spelled out in staff rule 3.9(a)(iv), which enshrines the principle of "commuting distance notwithstanding national boundaries". She further argues that her non-eligibility to an education grant constitutes discrimination against her.

31. The Respondent contends that the Applicant is not eligible for the education grant because staff regulation 3.2(a) and staff rule 3.9 unequivocally exclude from the education grant benefit staff members who reside in their recognized home country. In his view, the principle of "equal pay for equal work" does not prohibit the establishment of different treatment for different categories of staff members if the distinction is made on the basis of lawful goals.

32. The Tribunal will address below these issues in turn.

The eligibility to an education grant

33. In the present case, the Applicant is a French national residing in Ferney-Voltaire, France, and serving in Geneva.

34. In this respect, the Tribunal notes that the General Assembly clarified the payment of a repatriation grant to staff members living in their home country while stationed at duty stations located in another country via its resolution 49/241 (Payment of repatriation grant to staff members living in their home country while stationed at duty stations located in another country), adopted on 6 April 1995. Specifically, para. 1 of said resolution reiterates that expatriate benefits, including education grants, are “limited to staff who both work and reside in a country other than their home country”.

35. Accordingly, staff regulation 3.2 provides in its relevant part that (emphasis added):

(a) The Secretary-General shall establish terms and conditions under which an education grant shall be available to a staff member residing and serving **outside his or her recognized home country** whose dependent child is in full-time attendance at a school, university or similar educational institution of a type that will, in the opinion of the Secretary-General, **facilitate the child’s reassimilation in the staff member’s recognized home country**[.]

36. Staff rule 3.9, titled “Education grant”, provides in its relevant part as follows (emphasis added):

Definitions

(a) For the purposes of the present rule:

...

(iv) “Duty station” means **the country, or area within commuting distance** notwithstanding national boundaries, where the staff member is **serving**.

Eligibility

(b) Subject to conditions established by the Secretary-General, a staff member who holds a fixed-term or a continuing appointment shall be entitled to an education grant in respect of each child, provided that:

(i) The staff member is regarded as an international recruit under staff rule 4.5 and **resides and serves at a duty station** which is **outside his or her home country**; and

(ii) The child is in full-time attendance at a school, university or similar educational institution.

(c) If a staff member eligible under paragraph (b) above is reassigned to a duty station within his or her home country in the course of a school year, he or she may receive the education grant for the balance of that school year. (Emphasis added)

37. It follows that General Assembly resolution 49/241, staff regulation 3.2 and staff rule 3.9 explicitly exclude from the education grant benefit staff members who reside in their recognized home country, as is the case of the Applicant. The legal text in this respect is clear and unambiguous, and leaves no room for the Tribunal to question them.

38. Moreover, the Tribunal finds no merit in the Applicant's submission that she should be eligible to an education grant pursuant to the definition of duty station in staff rule 3.9(a)(iv). Indeed, the fact that Ferney-Voltaire is within commuting distance of her duty station, Geneva, does not make the former an area outside the Applicant's home country, France.

39. Also, it stems from staff regulation 3.2(a) that the purpose of the introduction of the education grant is to "facilitate [a] child's reassimilation in the staff member's recognized home country". Such purpose could not be served by granting such entitlements to those residing in their home country, as it is the case with the Applicant.

40. Accordingly, the Tribunal finds that the Applicant is not eligible for the education grant because she resides in her home country.

The alleged discrimination and unequal treatment

41. Turning to the Applicant's claim of discrimination and unequal treatment, the Tribunal recalls that the principle of equality and non-discrimination is "only applicable when staff members in similar situations are treated differently" (see *Lapper* UNDT/2022/057 (not appealed), para. 57).

42. In this respect, the Appeals Tribunal ruled in *Elmi* 2016-UNAT-704, para. 33, that:

[T]he principle ‘equal pay for work of equal value’ forbids discrimination; but it does not prohibit every form of different treatment of staff members. Such different treatment constitutes discrimination only when there is no lawful and convincing reason for the different treatment of staff members, e.g. when it is based on an *a priori* unlawful criterium such as gender or race, or when there are no significant differences between the categories of staff members being treated differently

43. The Appeals Tribunal also held in *Tabari* 2011-UNAT-177, para. 26, that “there is no discrimination, when the difference is motivated in the pursuit of general goals and policies and when it is not designed to treat individuals or categories of them unequally”.

44. Applying the above to the present case, the Tribunal finds that the Applicant failed to demonstrate that the Organization treated her differently than other international staff members who reside in their home country and work in another country. In this respect, the Applicant specifically argues that she is discriminated compared to other French international staff employed by other UN agencies in Geneva. However, the Tribunal fails to see the relevance to the present case of her reference to other French international staff member employed by other UN agencies because they are not subject to the Staff Regulations and Rules of the United Nations.

45. Moreover, the Tribunal is of the view that the denial of the Applicant’s claim for an education grant does not constitute any discrimination against her. It is true that, in the context of the education grant, staff members residing and working in a foreign country are treated differently than those residing in their home country and working in a foreign country. Nevertheless, this difference in treatment is not discriminatory because there is a lawful and convincing reason for it.

46. Indeed, as mentioned above, the purpose of staff regulation 3.2(a) and staff rule 3.9 is to provide financial support for the education of expatriate staff members' children with a view to facilitate their reassimilation in their home country. Also, such differential treatment is based on objective and significant criteria, i.e., the expatriate status of international staff members living and working outside their home country.

47. Therefore, the Tribunal finds no merit in the Applicant's claim of discrimination and unequal treatment.

48. Accordingly, the Tribunal concludes that the Administration's decision to deny her education grant claim for her son for the 2020-2021 school year is not unlawful.

Whether the Applicant is entitled to any remedies

49. In her application, the Applicant requested that her claim for education grant for the 2020/2021 school year be granted and that future claims for her children be honoured.

50. Having found that the contested decision is lawful, the Tribunal finds no basis for the remedies pleaded for in the application. Therefore, the Tribunal rejects the Applicant's request for remedies.

Conclusion

51. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Teresa Bravo

Dated this 9th day of June 2023

Entered in the Register on this 9th day of June 2023

(Signed)

René M. Vargas M., Registrar, Geneva