



**TC03891**

**Appeal number: TC/2013/03961**

*Child Trust Fund Scheme –was Appellant eligible? - No – appeal dismissed*

**FIRST-TIER TRIBUNAL  
TAX CHAMBER**

**FAZAL KARIM**

**Appellant**

**- and -**

**THE COMMISSIONERS FOR HER MAJESTY'S      Respondents  
REVENUE & CUSTOMS**

**TRIBUNAL:    JUDGE ALISON MCKENNA  
                  MR MICHAEL SHARP FCA**

**Sitting in public at Bedford Square on 27 June 2014**

**The Appellant appeared in person**

**David West, HMRC Officer, appeared for the Respondents**

## DECISION

5 1. This matter concerns the Appellant's eligibility for the Child Trust Fund Scheme ("CTFS"). The Tribunal's jurisdiction in this matter derives from sections 22 and 23 of the Child Trust Funds Act 2004, as amended. The Appellant is a "relevant person" in relation to the child for the purposes of this appeal.

### *The Facts*

10 2. The background facts were not in dispute. The Appellant's son Pue was born on 19 January 2005. In June 2007, the Home Office issued Pue with documents giving him limited leave to remain in the UK.

15 3. In November 2007 a CTFS account was opened for Pue with a £250 voucher provided by the Government. In April 2008, the Child Trust Fund Office checked Pue's eligibility for the CTFS against Home Office information about his immigration status, informed the Appellant that Pue was not eligible for the CTFS and recovered the £250 voucher.

4. In December 2012, the Home Office granted Pue indefinite leave to remain in the UK. The Appellant informed the Child Trust Fund Office of this change of circumstances.

20 5. On 21 March 2013 HMRC informed the Appellant that as Pue was subject to immigration control until 18 December 2012 he was not entitled to a Child Trust Fund account. On 1 May 2013 that decision was confirmed on review by HMRC. The Appellant appealed to the Tribunal.

### *The Law*

25 6. The Child Trust Funds Act 2004 provides at s. 2 (1) that a child is an "*eligible child*" if the child was born after 31 August 2002 and a person is entitled to Child Benefit in respect of that child. However, s. 2 (5) (c) provides that "*A child who is not settled in the UK within the meaning of s. 33 of the Immigration Act 1971...is not an eligible child*".

30 7. Section 33 (2A) of the Immigration Act 1971 defines "*settled in the UK*" as "*ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain*".

35 8. The Savings Accounts and Health in Pregnancy Act 2010 amended the Child Trust Funds Act 2004 and closed the CTFS to new entrants. Section 3 of the 2010 Act inserted new sub-sections (5A), (5B) and (5C) into s. 2 of the 2004 Act. Section 2 (5B) (c) provides that a child is an eligible child if s. 2 (5) of the 2004 Act does not apply to him at the beginning of January 2011, or that if it applies to the child at that date, it has ceased to apply to the child before 3 April 2011.

### *HMRC's Decision*

9. HMRC's decision was that Pue was not an eligible child for the purposes of the CTFS because, firstly, s. 2(5) of the 2004 Act applied to him as at the beginning of January 2011. Secondly, because s. 2 (5) only ceased to apply to Pue in December  
5 2012 when he received unlimited leave to remain, which was not before 3 April 2011 as required by section 2 (5B) (c), as inserted by the 2010 Act.

### *Submissions*

10. The Appellant explained that he had thought Pue was eligible for the CTFS. He said he knew some other people who had similar circumstances to his but had not had  
10 the CTFS voucher recovered. He thought HMRC's decision very unfair. He told the Tribunal that he had wanted to use the account and the voucher to save up for his son to attend university.

11. Mr West told the Tribunal that he completely understood why the Appellant was unhappy with HMRC's decision and that he sympathised with the Appellant. He  
15 explained to the Tribunal that the CTFS had been administered by the issuing of vouchers to all recipients of Child Benefit, but that immigration status checks were only required to be carried out after the issuing of the vouchers. This had meant that thousands of people, including the Appellant, had had their vouchers recovered when it was discovered that they were ineligible due to their immigration status. Mr West  
20 informed the Tribunal that this was the first such case to come to a full appeal hearing in the Tribunal.

12. The Appellant, having heard Mr West's submissions, very fairly stated that he now understood for the first time why Pue was ineligible for the CTFS. He said that he had been waiting five years for someone to explain it to him and that he had even  
25 travelled to London to consult a barrister about it. He felt very strongly about the issue and intended to raise it with his Member of Parliament.

### *Conclusion*

13. We are satisfied that HMRC's decision in this case was correct and should stand. The appeal is accordingly dismissed.

30 14. Pue's change of immigration status did not, unfortunately, happen in time for him to fall within the eligibility window created by the new s. 2 (5B) (c). We accept that the Appellant knows people who appear to have similar circumstances but have experienced different outcomes. However, as it all depends upon the date of the change of immigration status, we suspect that the apparently different treatment may  
35 be explained by their different dates. In the circumstances we must dismiss the appeal but we hope that this decision is helpful to the Appellant in taking the matter forward with his MP.

15. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal  
40 against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax

Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

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**ALISON MCKENNA  
TRIBUNAL JUDGE**

**RELEASE DATE: 8 August 2014**