



**Before:** Judge Margaret Tibulya

**Registry:** Geneva

**Registrar:** René M. Vargas M.

CASTRO FIGUEREDO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Ana Stella, OSLA

Jason Biafore, OSLA

**Counsel for Respondent:**

Elizabeth Brown, UNHCR

Zuzana Kovalova, UNHCR

## **Introduction**

1. The Applicant, a Senior Implementing Partner Management Officer at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Budapest, contests the administrative decision to deny his request for education grant concerning his 4-year old son (age at the time of the request).
2. For the reasons below, the Tribunal rejects the application.

## **Facts**

3. On 29 October 2021, the Applicant’s request for education grant in relation to his son was rejected.
4. On 12 November 2021, the Applicant requested management evaluation of the decision, which was upheld by the Administration by letter dated 9 March 2022.
5. On 24 May 2022, the Applicant filed this application.
6. On 24 June 2022, the Respondent filed his reply.
7. On 20 July 2022, the Respondent filed a motion for leave to file additional evidence.
8. On 22 July 2022, the Applicant filed his opposition to the Respondent’s motion.
9. On 4 August 2022, the Respondent filed a second motion requesting leave to file additional evidence in response to the Applicant’s opposition to his motion dated 20 July 2022.
10. On 8 August 2022, the Applicant filed a second motion opposing the Respondent’s submissions.

11. By notification dated 7 June 2023, the Tribunal ruled on the Respondent's motions dated 20 July and 4 August 2022, allowing additional evidence into the record, and invited the parties to attend a Case Management Discussion ("CMD") on Wednesday, 14 June 2023. In addition, the Applicant was instructed to file a rejoinder, if any, by 14 June 2023 at noon Geneva time.

12. On 14 June 2023, the parties attended the virtual CMD via Microsoft Teams.

13. By Order No. 60 (GVA/2023) of 15 June 2023, the Tribunal informed the parties that the case can be determined based on the papers and instructed them to file closing submissions.

14. On 7 July 2023, the Applicant and the Respondent filed their respective closing submission.

### **Considerations**

15. The issue is whether the Applicant is entitled to an education grant in respect to his son.

16. Para. 4.2 of Administrative Instruction UNHCR/AI/2018/8/Corr.1 (Education Grant) lays down the following eligibility requirements for the education grant:

- a. The child is a recognised dependant of the staff member;
- b. The child is in full attendance at an educational institution at the primary level, secondary or post-secondary level while the staff member resides and is in service at a duty station that is outside the home country of the staff member;
- c. Education is deemed at the "primary level" for the purposes of UNHCR/AI/2018/8/Corr.1 when the child is five years of age or older at the beginning of the school year, or when the child reaches the age of five within three months of the beginning of the school year. Where the school year commences before 1 October (for school years spanning two calendar years,

i.e., August/September through June), this requirement is considered met if the child has reached five years of age by 31 December of the same year; and

d. Exceptionally, a lower age than stated under 4.2 (c) above is accepted for education in those jurisdictions which, by virtue of law, require an earlier start of formal primary education. In order to claim expenses related to a child at lower than minimum age, the staff member must submit an additional certificate/attestation provided by the educational institution confirming that the child attends the institution and that enrolment at the earlier age is supported by the law of the country.

17. It is not disputed that the Applicant's child is his recognised dependant and was born on 3 December 2017. It follows that the Applicant's child was four years old at the beginning of the 2021-2022 school year. Similarly not disputed is the fact that the child was enrolled at a pre-school.

18. It is therefore understood that the child does not meet the five-year age or "primary level" eligibility requirements set forth in paras. 4.2(b) and (c) of UNHCR/AI/2018/8/Corr.1.

19. Seeking to rely on the exception under para. 4.2(d), the Applicant contends that in Hungary his three-year-old son's education is legally compulsory under the Act on National Education, which provides as follows:

Children shall participate in pre-school activities in not less than four hours a day as from the starting date of the pre-school year in the year in which they turn three before 31 August. The municipal clerk or, in case of church or privately operated institutions, the operator may grant exemption from participation in compulsory pre-school education until the child turns five upon the application of the parent and with the consent of the head of the pre-school and the community nurse, also observing the lawful interests of the child, if it is justified by the family conditions of the child, the putting forth of his/her capabilities or his/her special situation.

20. The Applicant argues that the fact that in Hungary children start compulsory education at the age of three, he is entitled to the education grant under the exception in para. 4.2(d).

21. It must be clarified that the compulsory nature of education at any level is not one of the eligibility requirements for the education grant. The determining factor is the binding nature of the start of formal *primary* education. The fact that the Hungary Education law relates to “pre-school activities” defeats the argument that the Act creates an exception in terms of paragraph 4.2(d) of UNHCR/AI/2018/8/Corr.1.

22. Paragraph 4.2(d) provides for an exception only if an earlier start of *formal primary education* is required by law. In other words, it creates an exception to the five-year age-based definition of “primary level” set forth in para 4.2(c). The legal minimum level of education for education grant eligibility purposes remains the primary level.

23. The Applicant cannot, therefore, base his claim on the exception in para 4.2(d) since his son attended pre-school and did not, in fact, have an earlier start to formal primary education by law.

24. The Hungarian Act on National Education does not render pre-school activities part of the primary level of education. In this regard, it is worth mentioning that—contrary to what the Applicant argues—a literal, contextual, and teleological interpretation of the term “formal primary education” does not support an inclusion of pre-schools within it. This is further confirmed by the Permanent Mission of Hungary to the United Nations (“the Permanent Mission”) in response to an inquiry by the UN Secretariat about the educational system in Hungary. In a Note Verbale dated 13 June 2022, the Permanent Mission confirmed that “formal primary education” in Hungary starts at the age of six, and that kindergarten (or pre-school) does not count towards that.

25. The Applicant raises several arguments about the definition of “primary level education”. He argues that by virtue of its application across duty stations, the education grant policy needs to be able to capture the diversity in education systems across the world. He further claims that the term “formal primary education” is devoid of meaning in a context of hundreds of different education systems, covering different languages, curricula, and organizations.

26. By his statement that, “probably for this reason, UNHCR/AI/2018/8/Corr.1 adopts an exclusively age-based definition of primary level education”, the Applicant himself provides an answer to the issues he raised.

27. The Applicant further argues that the rationale underlying the education grant, which is to “facilitate the child’s reassimilation in the staff member’s recognized home”, justifies extending the education grant for staff members based in Hungary to eligible children attending mandatory education from the age of three. He explains that to this effect, he enrolled his son in an English school that would allow him to reassimilate in his home country Guatemala.

28. This argument repeats what was considered at para. 21 above, merely reiterating the mandatory aspect of pre-primary education in Hungary. The facts and the law, however, do not favour a finding that the mandatory nature of pre-school education for a three-year-old in Hungary qualifies the Applicant for an education grant in terms of paragraph 4.2 of UNHCR/AI/2018/8/Corr.1.

29. For the Applicant to be entitled to education grant in this scenario, there should exist an enabling legal framework in UNHCR where eligible children of staff members serving in Hungary could benefit from an education grant from when their children attain the age of mandatory *schooling*, which is currently three years old.

30. Likewise meritless is the Applicant’s argument that staff members in UNICEF Hungary are receiving education grant for their children’s pre-school from the age of three. Even if this were true, such fact does not support a finding of illegality in the decision of UNHCR to deny the education grant for the Applicant in this case, as UNHCR is not legally bound by the divergent practice and/or framework of another agency.

31. Finally, the Applicant’s claim that if the legislator wanted to introduce an objective frame of reference to distinguish between levels of education for the purposes of the exception of paragraph 4.2(d), he could have used the International Standard Classification of Education (“ISCED”) of UNESCO, is irrelevant.

32. It is neither for the Tribunal nor for the Applicant to hypothesize about the legislator's intention or the language chosen in any given policy. The scope of judicial review is limited to verifying whether the Administration's decision was lawful based on the applicable legal framework.

**Conclusion**

33. In view of the foregoing, the application is dismissed in its entirety.

*(Signed)*

Judge Margaret Tibulya

Dated this 16<sup>th</sup> day of August 2023

Entered in the Register on this 16<sup>th</sup> day of August 2023

*(Signed)*

René M. Vargas M., Registrar, Geneva