Translated from French

UNITED NATIONS DISPUTE TRIBUNAL

Case No.:	UNDT/GVA/2011/066 (UNAT 1568)
Judgment No.:	UNDT/2012/004
Date:	6 January 2012
	English
Original:	French

Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: Anne Coutin, Officer-in-Charge

VALIMAKI-ERK

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Esther Shamash, OSLA

Counsel for Respondent:
Alan Gutman, ALS/OHRM, UN Secretariat

Introduction

1. The Applicant contests the decision of 11 August 2005 in which the Office of Human Resources Management ("OHRM") at the United Nations Secretariat informed her that, if she wished to accept the post of Procurement Officer (P-3) for which she had been selected for a fixed-term appointment of two years, she must relinquish her permanent resident status in Australia.

2. She requests that the Tribunal order the Respondent to reinstate her as a United Nations staff member at the Secretariat in New York at an equivalent level and in a post that matches her competencies or, failing that, to give her priority for any P-4 vacancy there, while allowing her to retain her permanent resident status in Australia. She also requests that it direct the Respondent to place a letter in her official status file stating that she is not required to relinquish her Australian permanent residency or to apply for Australian citizenship in order to work in the Organization. Lastly, she requests compensation for moral injury and material damages stemming from the contested decision.

3. In accordance with the transitional measures set forth in General Assembly resolution 63/253, the application pending before the former Administrative Tribunal was transferred to the United Nations Dispute Tribunal on 1 January 2010. It was transferred from the New York Registry of the Dispute Tribunal to the Geneva Registry on 7 October 2011.

Facts

4. The Applicant, a Finnish national who became a permanent resident of Australia in 2002, entered into service at the United Nations on 26 September 2004 under an appointment for an initial period of one year as a Procurement Officer at the P-3 level in the Procurement Service in the Department of Management at the United Nations Secretariat in New York. The letter of 12 July 2004 attached to the Applicant's letter of appointment stipulated that, given the temporary nature of the offer of appointment, she would be allowed to

retain her permanent resident status in Australia, but that should she be offered a "long-term appointment" in the future, the personnel policy under the Staff Regulations and Rules in respect of her resident status would then be applied.

5. On 21 March 2005, the Executive Office of the Department of Management requested authorization from OHRM to recruit the Applicant as a Procurement Officer for a two-year appointment.

6. By email dated 28 March 2005, OHRM informed the Applicant that the offer of appointment was conditional upon her either relinquishing permanent resident status in Australia or filing for citizenship in Australia. The Applicant inquired about the relevant provisions, and OHRM responded on 29 March that General Assembly document A/2581 of 1 December 1953 set forth such a choice as a requirement.

7. After the Applicant questioned the justification for the choice that was being required of her, she was informed on 28 April 2005 that her case had been forwarded to the Office of Legal Affairs for its advice.

8. On 27 July and 1 August 2005, respectively, the Applicant informed the Office of Central Support Services and OHRM that she was not eligible to apply for Australian citizenship, as she had not been present in Australia for over two years, since February 2002, the date when she had received her permanent resident status.

9. In its advice of 4 August 2005, the Office of Legal Affairs held that there was a practice in the Organization whereby staff members who had obtained permanent resident status in a country other than their country of nationality were required to relinquish that status before they could be recruited by the Organization.

10. By memorandum dated 11 August 2005, to which the Office of Legal Affairs opinion was attached, the Chief of the Common Services Activities at Headquarters Section of OHRM informed the Applicant that if she wished to accept the post of Procurement Officer for which she had been selected, she

would have to relinquish her permanent resident status in Australia and submit proof thereof to OHRM.

11. On 26 September 2005, the Applicant's appointment was extended for six months.

12. On 4 October 2005, the Applicant requested a review of the decision of 11 August 2005. In addition, on 28 November 2005, she submitted to the Joint Appeals Board in New York a request for suspension of the implementation of this decision, and on 29 November 2005 she contested it on its merits.

13. The Joint Appeals Board rejected the request for suspension of action submitted by the Applicant, and the Secretary-General decided to accept this conclusion. The Applicant was so informed on 27 January 2006.

14. The Applicant accepted a temporary one-year appointment to take effect on 26 March 2006 and continue through 25 March 2007.

15. On 30 September 2006, the Applicant was assigned to the United Nations Children's Fund ("UNICEF") in New Delhi, India, for a 15-month appointment at the L-4 level for a technical assistance project.

16. Under cover of a letter dated 28 August 2007, the Under-Secretary-General for Management at the United Nations Secretariat transmitted to the Applicant a copy of the Joint Appeals Board report on the matter, which upheld her claims. The Under-Secretary-General also notified her of the Secretary-General's decision not to accept the advice of the Board and not to accede to her requests.

17. On 31 January 2008, the Applicant filed an application with the former United Nations Administrative Tribunal contesting the decision of 11 August 2005. On 10 July 2008, after requesting and receiving two extensions of time from the Administrative Tribunal, the Respondent filed his answer. The Applicant submitted observations on 5 August 2008.

18. The case, which was not adjudicated by the Administrative Tribunal before that body was abolished on 31 December 2009, was transferred to the United Nations Dispute Tribunal on 1 January 2010 and registered by the New York Registry.

19. By Order No. 110 (NY/2010) of 21 April 2010, the judge hearing the case in New York asked the parties whether they considered a hearing to be necessary and they replied in the negative.

20. By Order No. 234 (NY/2011) of 7 October 2011, the case was transferred to the Geneva Registry.

21. By Order No. 186 (GVA/2011) of 31 October 2011, the Tribunal ordered the Respondent to submit additional observations on whether there existed a consistent practice whereby staff members who had acquired permanent resident status in a country which was not their country of nationality must relinquish that status before they could be recruited by the Organization, and ordered the Applicant to submit additional observations on the moral injury and material damages she alleged.

22. On 10 November 2011, the Respondent submitted the documents requested.

23. By Order No. 197 (GVA/2011) of 15 November 2011, the Tribunal extended to 29 November 2011 the deadline for Applicant's counsel to implement the Order of 31 October 2011.

24. On 29 November 2011, the Tribunal received the Applicant's observations on the alleged damage, and on 12 December 2011, the Respondent replied to these observations.

Parties' submissions

25. The Applicant's contentions are:

a. The application is receivable since it is not time-barred and the contested decision is an administrative decision which violates her rights;

b. The decision taken by the Administration is arbitrary, as it is not based on any relevant written provision;

c. If there was a practice within the Organization that entailed the requirement being imposed on her, it was not brought to her attention before she began working for the United Nations. During her first contract, OHRM practice with regard to her status was not made clear to her;

d. While the Administration is relying on General Assembly document A/2581, this document is dated and is merely a recommendation. Moreover, it is not applicable to her case, as it refers to holders of permanent resident status in the country of their duty station;

e. The Organization does not apply the practice in dispute to all staff with permanent resident status in a country which is not their country of nationality, and the Office of Legal Affairs acknowledged in its advice that there was a need to amend ST/AI/2000/19 (Visa status of non-United States staff members serving in the United States, members of their household and their household employees, and staff members seeking or holding permanent resident status in the United States) so that it could be applied to staff members of all nationalities. Furthermore, in a report submitted in 2006, the Secretary-General requested that the General Assembly discontinue this practice, which was no longer in keeping with current realities;

f. If the Administration had informed her in advance of the requirement to relinquish her resident status in Australia, she could have filed for Australian citizenship in 2004 as the spouse of an Australian

citizen; in 2005, however, she could not do so, having been divorced in the interim;

g. Her career in the Secretariat was interrupted and she was forced to leave the Procurement Service in New York and accept the first post offered, which was at UNICEF and was professionally of far less interest;

h. During the period 2008-2011, she missed career opportunities and, as a result, significant chances for selection for a D-1 post in her field of professional specialization, which caused a future financial loss in the amount of USD31,243, to which must be added a loss of USD7,088.62 in her repatriation grant;

i. During the 16 months she spent in India, she incurred a loss of USD12,083 in salary compared to the salary she would have earned had she stayed in New York. That made it necessary for her to sell her house in Australia in 2007, thereby incurring a loss of AUD6,000;

j. The stay in India resulted in additional expenses for the purchase of various items totalling USD7,766, as well as the cost of travel from New Delhi to New York in order to see her partner;

k. She suffered moral injury owing to the stress caused by the contested decision. She therefore requests compensation equivalent to three months' net base salary.

26. The Respondent's contentions are:

a. The application is not receivable because the contested decision, that is, the decision of 12 July 2004, is not an administrative decision that violates the Applicant's rights under her contract. The decision clearly stated that should she be offered "a long-term appointment" in the future, the policy provided for under the Staff Regulations and Rules in respect of permanent resident status would be applied to her. Moreover, the letter of 12 July 2004, which was not a formal offer of appointment, could not give

rise to any rights. It was the Applicant's responsibility to make enquiries regarding the conditions attached to the letter;

b. The memorandum of 11 August 2005 referred to a post whose conditions of employment had yet to be finalized, and a letter of appointment had not been signed by the parties. It was therefore not an administrative decision;

c. The application is time-barred and does not comply with staff rule 111.2(a) in effect at the time of the events. That provision required that review of the contested decision be requested within two months from the date the staff member received notification. The Applicant was informed of the contested decision on 12 July 2004 and did not submit her request for review until 4 October 2005. Moreover, the decision of 11 August 2005 merely confirmed the decision of 12 July 2004;

d. The contested decision is consistent with an established practice of the Organization whereby, in order to be recruited, staff members must relinquish their permanent resident status in any country which is not their country of nationality. This was confirmed by the jurisprudence of the former United Nations Administrative Tribunal;

e. It is not for the Applicant to challenge the rationale for this practice or its application to staff members of various nationalities. Moreover, she cannot dispute a rule of the Organization;

f. On 1 December 1953, the Advisory Committee on Administrative and Budgetary Questions ("ACABQ") submitted to the General Assembly its report A/2581, in which it recommended that candidates for appointment with permanent resident visas should be ineligible for appointment as internationally recruited staff members unless they are prepared to change to a G-4 visa status (or equivalent status in countries other than the United States of America). The General Assembly adopted this practice in 1953 because it considered that the decision by a staff

member to retain permanent resident status was not in the Organization's interest. An information circular of the Secretary-General of 19 January 1954, ST/AFS/SER.A/238, recalled these provisions. Furthermore, the Secretary-General, in reports submitted to the General Assembly in 2006, 2009 and 2010, and the ACABQ in a 2010 report, requested and recommended, respectively, that the General Assembly review the contested practice. However, while the General Assembly took note of the ACABQ recommendation, it did not review the practice. An administrative instruction clarifying and confirming the practice is currently under consideration;

g. The Applicant cannot maintain that she was forced to leave the Procurement Service as a consequence of the contested decision. In fact, she was selected for an L-4 post at UNICEF, while the post that she held at the Secretariat was a P-3 post, and her contract had not yet expired;

h. She suffered no damage to her career, since after working at UNICEF, she returned to the Secretariat in December 2007 at the P-5 level and in 2008 returned to UNICEF as a senior adviser, also at the P-5 level, in what was in fact a rapid promotion;

i. While the Applicant maintains that she missed opportunities for promotion to the D-1 level, the damage in question is purely hypothetical;

j. Given that she was recruited for a fixed-term six-month non-renewable contract, the Applicant's argument that she would not have joined the Organization in 2004 had she known of its practice is not plausible;

k. She suffered no loss of income, as her gross salary in India was in fact higher than the salary she was paid in New York. The difference in income of which she complains stems from the post adjustment, which is compensation for the cost of living and cannot be taken into consideration

in assessing material damage, in accordance with the jurisprudence of the Appeals Tribunal;

l. The expenditures related to her purchases in India, the sale of her house in Australia and her personal trips, and the fact that in February 2012 she will receive from UNICEF a repatriation grant in an amount lower than that she would otherwise have received, are unrelated to the contested decision. The Applicant's career is a result of her personal choices and, in particular, of her decisions to accept promotions and transfers between the Secretariat and UNICEF;

m. Compensation for moral injury is unwarranted given that the contested decision is not illegal.

Consideration

27. The Applicant contests the decision of 11 August 2005 in which OHRM informed her that if she wished to assume the post of Procurement Officer for which she had been selected for a two-year appointment, she must relinquish her permanent resident status in Australia.

28. With the concurrence of the parties, the Tribunal considers that a hearing is unnecessary in this case.

Receivability

29. Requesting that the Tribunal reject the application, the Respondent maintains, first of all, that it is not receivable because the contested decision is not an administrative decision subject to appeal.

30. It is clear that the decision being contested by the Applicant, which she submitted for the Secretary-General's review, is the decision contained in the memorandum of 11 August 2005 from the Chief of the Common Services Activities at Headquarters Section in OHRM. This memorandum informs the Applicant that if she wishes to assume the post of Procurement Officer for which

she was selected, she must relinquish her permanent resident status in Australia and furnish proof that she has done so, and it includes an attachment explaining the basis for the requirement.

31. The Respondent maintains that since no contract had been signed between the Administration and the Applicant when she was notified of the contested decision, the latter is not in violation of her rights. Since the Applicant filed her application with the former United Nations Administrative Tribunal in existence at the time, and applications pending before that Tribunal were transferred to the United Nations Dispute Tribunal in accordance with General Assembly resolution 63/253 of 24 December 2008, it falls to this court to consider whether the application was receivable before the former United Nations Administrative Tribunal. Such consideration poses no special difficulties in this case, as the relevant regulations and jurisprudence with regard to appealing administrative decisions before the old and new Tribunals are very similar.

32. The Tribunal cannot under any circumstances accept the Respondent's first challenge to receivability set out above. In fact, the Applicant, who was already a staff member of the Organization as at 11 August 2005 and therefore subject to the Staff Regulations and Rules, had the right, given her status, to apply for other posts. The Respondent cannot seriously maintain that a staff member cannot contest a decision not to select her and *a fortiori*, as in this case, the requirement by the Administration that she satisfy an additional condition in order to be appointed to a post for which she was selected after successfully completing the selection process. The contested decision of 11 August 2005 could thus violate the Applicant's rights and therefore constitutes an administrative decision that is subject to appeal.

33. The Tribunal will now consider the Respondent's other challenge to receivability, that is, whether the request for review submitted to the Secretary-General was time-barred.

34. The Respondent maintains that the request for review of the 11 August 2005 decision was time-barred because that decision merely confirmed a prior

decision of 12 July 2004, regarding which no request for administrative review had been made within the established time limits.

35. The letter of 12 July 2004 that accompanied the Applicant's letter of appointment stated that should she be offered a "long-term appointment" in the future, the personnel policy under the Staff Regulations and Rules in respect of her permanent resident status would then be applied. Such information provided to the Applicant cannot under any circumstances be considered an administrative decision subject to appeal, as it is hypothetical and does not violate her rights.

36. The Tribunal must also consider whether the decision of 11 August 2005 merely confirmed the first decision conveyed to the Applicant in an email dated 28 March 2005 that informed her of her selection for the post of Procurement Officer and stated that it was the Organization's intention to offer her a fixed-term two-year appointment should she choose either to relinquish her permanent resident status in Australia or file for Australian citizenship.

37. The second decision differs from the first in that, while it involves an offer of appointment to the same post and while this offer is also subject to a condition, the condition has changed. It consists solely of a requirement that the Applicant furnish evidence that she had relinquished her permanent resident status in Australia. Moreover, whereas grounds for the first decision were not provided, grounds for the second decision are provided, and consist to a large extent of legal considerations different from those provided to the Applicant when she contested the first decision.

38. Given that the substance of the two decisions is not the same, the second decision cannot be considered a confirmation of the first. The case materials indicate that on 4 October 2005 the Applicant requested a review of the OHRM decision of 11 August 2005 within the two-month time frame stipulated under staff rule 111.2(a) then in force.

39. Accordingly, the Tribunal must reject the Respondent's contention that the matter is time-barred and will now consider the dispute on its merits.

Lawfulness of the contested decision

40. To support the requirement contained in the memorandum of 11 August 2005 that the Applicant must relinquish her permanent resident status in Australia if she wished to assume the post of Procurement Officer, OHRM attached to the memorandum the advice from the Office of Legal Affairs laying out the grounds for the decision. In it, the Administration acknowledges quite clearly that there is no regulation, either in the Staff Regulations and Rules or in any other administrative document, which requires staff members to relinquish their permanent resident status in a country which is not their country of nationality before receiving an appointment.

41. As the basis for the contested decision, the Respondent refers to a consistent practice of the Organization, implemented beginning in 1954 in accordance with the ACABQ report A/2581 of 1 December 1953 submitted to the General Assembly at its eighth session. Excerpts from ACABQ and Fifth Committee reports cited by the Respondent indicate that the reports allude to the case of internationally recruited staff members who retain their permanent resident status, particularly in the United States, and that some delegations of Member States had expressed the concern that such staff members might sever their ties with their country of nationality. However, these ACABQ and Fifth Committee reports were never endorsed by the General Assembly. Thus, it cannot be maintained that the Administration adopted the contested practice in application of a General Assembly resolution.

42. In addition, the Respondent maintains that the fact that the General Assembly has not reviewed the contested practice despite requests and recommendations from the Secretary-General and the ACABQ in their respective reports bears out the need for the Secretary-General to continue applying the contested practice. The Tribunal notes, however, that the reports referred to all came after the contested decision. Furthermore, in its resolution 65/247 of 24 December 2010, the General Assembly merely "t[ook] note of paragraphs 84 and 85 of the report of the [ACABQ] on reconsidering the requirement to

renounce permanent resident status", which rules out the conclusion that it approved the practice.

43. To substantiate the contested decision, the Respondent also makes reference to an information circular of the Secretary-General, ST/AFS/SER.A/238 of 19 January 1954, which draws the attention of staff members to the importance of any visas or status they hold as well as to changes of nationality. The circular states that decisions by staff members to file for or maintain permanent resident status in the country of their duty station could be damaging to the interests of the Organization. However, the circular was rescinded by an administrative instruction and by subsequent circulars which refer only to staff members holding permanent resident status in the United States. Thus, while the circular referred to above is evidence that at some point the Secretary-General took up the issue of staff members with permanent resident status, as the Respondent indeed points out, the contested practice is not based on any legally applicable written provision.

44. While the Respondent maintains that the Secretary-General of the United Nations is entitled to determine and apply certain practices that he deems necessary to the interest of the Organization, even in the absence of a regulation, it is for the Tribunal to determine whether the Organization is entitled to impose practical conditions on the recruitment of staff members which are not stipulated in any written provision or General Assembly resolution. In this case it must be determined whether the Secretary-General's discretionary authority to recruit and appoint staff members means that he may direct offices of the Organization to apply an unwritten rule to all recruitment of staff members, in addition to the rules on recruitment set out in the Charter of the United Nations and the Staff Regulations and Rules.

45. Article 101 of the Charter of the United Nations states that "[t]he staff shall be appointed by the Secretary-General under regulations established by the General Assembly".

46. The introductory paragraph of the Staff Regulations then in force stated:

> **Scope and purpose**
> The Staff Regulations embody the fundamental conditions of service and the basic rights, duties and obligations of the United Nations Secretariat. They represent the broad principles of personnel policy for the staffing and administration of the Secretariat ... The Secretary-General, as the chief administrative officer, shall provide and enforce such staff rules consistent with these principles as he or she considers necessary.

47. It is very clear from the provisions quoted above that the status of United Nations staff and their recruitment conditions are governed solely by the Staff Regulations and Rules and by any administrative instructions issued by the Secretary-General in application thereof. While the discretionary authority of the Secretary-General allows him, on a case-by-case basis, to refrain from recruiting a staff member for the sole reason that he or she holds permanent resident status in a country, the Secretary-General is acting *ultra vires* in requiring offices of the Organization to apply an additional condition for the international recruitment of all staff members, that is, to require that they relinquish their permanent resident status in a country other than their country of nationality if they wish to receive an offer of appointment. Furthermore, it is a well established principle that for a regulation to be binding on the relevant individuals it must be published, and therefore, clearly, it must exist in writing.

48. Furthermore, Chapter IV of the Staff Rules in force at the time of the events deals with the rules applicable specifically to international recruitment of staff members, and the provisions of that chapter cited below address the situation of staff members who hold or file for permanent resident status, or who change that status:

> **Rule 104.4**
> **Notification by staff members and obligation to supply information**
> ...
> (c) A staff member who intends to acquire permanent residence status in any country other than that of his or her nationality or who intends to change his or her nationality shall notify the Secretary-General of that intention before the change in residence status or in nationality becomes final.
> ...

> **Rule 104.7**
> **International recruitment**
> ...
> (c) A staff member who has changed his or her residential status in such a way that he or she may, in the opinion of the Secretary-General, be deemed to be a permanent resident of any country other than that of his or her nationality may lose entitlement to non-resident's allowance, home leave, education grant, repatriation grant and payment of travel expenses upon separation for the staff member and his or her spouse and dependent children and removal of household effects, based upon place of home leave, if the Secretary-General considers that the continuation of such entitlement would be contrary to the purposes for which the allowance or benefit was created. Conditions governing entitlement to international benefits in the light of residential status are shown in appendix B to these Rules applicable to the duty station.
>
> **Rule 104.8**
> **Nationality**
> (a) In the application of Staff Regulations and Staff Rules, the United Nations shall not recognize more than one nationality for each staff member.
> (b) When a staff member has been legally accorded nationality status by more than one State, the staff member's nationality for the purposes of the Staff Regulations and these Rules shall be the nationality of the State with which the staff member is, in the opinion of the Secretary-General, most closely associated.

49. The above provisions make several mentions of a scenario involving staff members who hold permanent resident status in a country which is not their country of nationality, and while these provisions require them to notify the Secretary-General of any relevant change and stipulate that staff members may lose certain entitlements, nowhere do they require staff members to relinquish their status. It follows that the practice of requiring international staff members to relinquish their permanent resident status runs counter to the Staff Regulations and Rules applicable at the time when the contested decision was taken.

50. From all of the foregoing, it follows that the Secretary-General's decision to require the Applicant to relinquish her permanent resident status in Australia if she wished to receive a two-year contract as Procurement Officer is unlawful, owing to the fact that it is premised on a practice that has no legal basis.

51. The Applicant is therefore entitled to request compensation for the damage caused by the unlawful decision.

Compensation

52. The Applicant, having refused to comply with the unlawful requirement that she relinquish her permanent resident status in Australia, did not receive the two-year appointment to the post for which she had been selected. The damages suffered were therefore due to the refusal to grant her the appointment. The Applicant maintains that the unlawful decision prompted her to leave the post she held in order to accept an L-4 post at UNICEF in India. The Tribunal considers that, contrary to what the Respondent maintains, there is a direct causal link between the unlawful decision and the Applicant's departure from New York.

53. First, the Applicant is claiming compensation for the difference between the salary she would have been paid had she remained in New York and the salary she earned at UNICEF in New Delhi. However, the case materials indicate that while her income in New Delhi was lower than the income she would have received in New York, the difference is due solely to the difference between the post adjustments in these two cities. As the Appeals Tribunal ruled in *Kasyanov* 2010-UNAT-076, the post adjustment is linked to a duty station, and the Applicant cannot maintain that she suffered damages owing to the difference between the post adjustment she would have received in New York and the one she received in New Delhi.

54. Second, the Applicant maintains that the fact that she was compelled to leave the Secretariat and go to UNICEF hurt her career and delayed her promotion to the D-1 level. However, the pleadings indicate that the Applicant, who held a P-3 post on the date when the contested decision was taken, was recruited by UNICEF at the L-4 level, then returned to the Secretariat in December 2007 to take up a P-5 post and finally returned to UNICEF in 2008, also to take up a P-5 post. The Applicant has therefore not substantiated any actual and certain damage to her career. The same applies to the delay in promotion to a D-1 post and the

reduced repatriation grant that she will receive in 2012 upon leaving UNICEF, which are merely speculative damages.

55. Third, while the Applicant maintains that her move to India compelled her to make certain purchases there, she does not substantiate that the purchases she made for her personal needs would not have been made had she stayed in New York. By the same token, there is no direct and certain connection between the loss she incurred when she sold her house in Australia and the contested decision.

56. Fourth, the Applicant maintains that leaving for New Delhi resulted in travel expenses incurred in order to maintain personal relationships with people residing in New York. The Tribunal finds that these expenses were the result of personal decisions taken by the Applicant and were not directly related to the contested decision.

57. Lastly, the Applicant requests compensation in the amount of three months' net base salary for moral injury. The Tribunal finds that the unlawful requirement under the contested decision that the Applicant relinquish her permanent resident status in Australia if she wished to receive a two-year appointment in New York did cause her some moral injury, since there was an intrusion into her personal life by the Administration. Moreover, although the Tribunal had found that her move from New York to New Delhi caused her no financial losses, it did cause significant upheaval in her life. The Tribunal therefore considers that the Applicant's request on this point should be upheld and that the Respondent should be ordered to pay her the amount requested, that is, three months' net base salary, calculated on the basis of the last salary payment made by the Secretariat to the Applicant in 2006.

Other claims of the Applicant

58. While the Applicant requests the Tribunal to order the Respondent to reinstate her as a United Nations staff member at the Secretariat in New York at an equivalent level and in a post that matches her competencies or to give her priority for any P-4 vacancy there, the Tribunal notes that the Applicant obtained

a P-5 post at the Secretariat in December 2007 and that therefore these claims are now moot.

59. The present decision responds directly to her request that the Tribunal order the Respondent to lift the requirement to relinquish her permanent resident status in Australia or file for Australian citizenship in order to be able to work within the Organization.

Conclusion

60. In view of the foregoing, the Tribunal DECIDES:

a. The Secretary-General is ordered to pay the Applicant compensation equivalent to three months' net base salary, calculated on the basis of the last salary payment made by the Secretariat to the Applicant in 2006;

b. The aforementioned compensation shall bear interest at the United States prime rate with effect from the date this Judgment becomes executable until payment of the said compensation. An additional five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable;

c. The Applicant's other claims are rejected.

(*Signed*)

Judge Jean-François Cousin

Dated this 6th day of January 2012

Entered in the Register on this 6th day of January 2012

(*Signed*)

Anne Coutin, Officer-in-Charge, Geneva Registry