



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2021/013

Judgment No.: UNDT/2021/044

Date: 28 April 2021

Original: English

Before: Judge Joelle Adda

Registry: New York

Registrar: Nerea Suero Fontecha

APPLICANT

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Robbie Leighton, OSLA
Sètondji Roland Adjovi

Counsel for Respondent:

Miriana Belhadj, UNOG
Jérôme Blanchard, UNOG

Introduction

1. The Applicant, a former staff member of the Office of the High Commissioner for Human Rights (“OHCHR”), appeals the following purported decisions: (a) OHCHR’s decision to cease all contact with the Applicant following her separation; (b) the Organization’s failure to comply with its obligation to repatriate the Applicant upon her separation; (c) the Administration’s failure to inform the Applicant about the efforts undertaken to facilitate the issuance of a valid national passport; (d) the Organization’s failure to assert its privileges and immunities.

2. The Respondent contends that the application is partly non-receivable and, in any event, without merit.

3. For the reasons set out below, the Tribunal finds the application not receivable in its entirety and dismisses it.

Facts

4. The Applicant joined OHCHR on a temporary appointment in 2017.

5. On 2 July 2018, the Applicant informed OHCHR that she had received information indicating that she had been “blacklisted” in her home country because of her work with OHCHR and requested the Organization’s assistance in obtaining “an immigration status in the host country”. She stated that her national passport was due to expire shortly and that she was unable to renew it due to her blacklisting.

6. On 4 July 2018, the Applicant was informed that her case was being reviewed by the Safety and Security Section.

7. On 23 July 2018, having consulted with the Safety and Security Section and the United Nations Office in Geneva, OHCHR informed the Applicant that the Organization was not in a position to support her in filing an immigration petition with

the host country or to apply for political asylum as this was not compatible with her status as UN employee. OHCHR further offered the Applicant two possible courses of action:

a. To repatriate the Applicant to a third country or to her country of nationality as soon as possible but at the latest before the date of expiration of her passport, on 12 August 2018. The Administration stated that it would only be able to extend the Applicant's appointment if she held a valid national passport for the period of her employment, or

b. To terminate the Applicant's contract by the date of expiration of her national passport. With this option, OHCHR stood ready to repatriate the Applicant and process her travel as per her instructions to the country of nationality or anywhere else in the world up to that cost. Repatriation travel would be done upon the Applicant's request and within a period of two years from the end of her contract.

8. These options were discussed between the Applicant and the Chief of Human Resources, OHCHR, among others, at a meeting held on 7 August 2018. It was further proposed that while being a staff member, the Applicant could be escorted by a United Nations Security Officer when travelling to her home country for the purpose of renewing her passport. The Applicant was informed that as per the Safety and Security Section's assessment, the risk she incurred upon return to her home country was considered "low".

9. The Applicant's temporary appointment expired on 30 September 2018.

Consideration

Scope of the case

10. The Appeals Tribunal has held that “the Dispute 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”. When defining the issues of a case, the Appeals Tribunal further held that “the Dispute Tribunal may consider the application as a whole”. See *Fasanella* 2017-UNAT-765, para. 20, as affirmed in *Cardwell* 2018-UNAT-876, para. 23. In *Kennes* 2020-UNAT-1073, para. 34, the Appeals Tribunal recalled that the Dispute Tribunal must adequately interpret and comprehend the application whatever name the moving party attaches to it.

11. To determine the scope of the administrative decision(s) in this case, in the following, the Tribunal will take into consideration the Applicant’s definition of the contested administrative decisions in section IV of the application, the description of the facts as well as the supporting evidence, and the remedies requested in the application. The Tribunal will identify the different contested decisions and review the receivability of their challenges in turn.

The decision to cease all contact with the Applicant following her separation and failure to inform the Applicant about the efforts undertaken to facilitate the issuance of a valid national passport

12. The Applicant contends that the Administration has a duty of care for its staff members and requests as remedy that the Organization resume contact with her and inform her of the efforts undertaken to facilitate the renewal of her passport.

13. The Respondent replies that the Administration did not take any decision to cease contact with the Applicant after her separation but instead continued contact with her until January 2019.

14. The Respondent further argues that even if such a decision was taken, the Applicant is not entitled to continued contact with the Administration after the date of her separation, in particular on issues that are outside of the Organization's purview.

15. At the outset, the Tribunal notes that after the Applicant's separation, she is not entitled to receive any further assistance from the Organization with respect to the renewal of her passport. Therefore, the Administration's lack of response did not have an impact on the Applicant's terms of employment. This decision is therefore non-receivable.

16. The Tribunal further notes that after the Applicant had shared her security concerns with OHCHR, the Office reviewed her reported information and offered several possible courses of action. These possible solutions were discussed with the Applicant from July 2018 until the end of her appointment in September 2018.

17. The record further shows that after the Applicant's separation on 30 September 2018, and even though she was no longer a staff member of the Organization, the Administration continued to communicate with the Applicant in an attempt to formalize her repatriation.

18. In an email dated 9 October 2018 from an OHCHR official to the Chief, Human Resources, OHCHR, it stated that the OHCHR official met with the Applicant on that day but that the Applicant stated that she would rather speak in the presence of the Chief, Human Resources of OHCHR.

19. In January 2019, OHCHR again emailed the Applicant requesting her to complete the separation formalities and the Applicant replied requesting an update on a discussion with the Office of Legal Affairs ("OLA") with respect to the issue of the expiry of her passport. After further correspondence, on 28 January 2019, the Chief of Staff of OHCHR referred the Applicant to the Chief, Human Resources. Counsel for the Applicant further contacted OHCHR in requesting that the matter of the renewal of the Applicant's national passport be referred through OLA to the Permanent Mission

to the United Nations of the Applicant's home country. The Chief, Human Resources responded that OHCHR was not in a position to assist with a previously requested special leave without pay for the Applicant and indicated that she would arrange a meeting with OLA.

20. The Tribunal therefore further concludes that the Administration did not cease communication with the Applicant after her separation. This ground of appeal is therefore moot.

21. Finally, the Tribunal notes that the Applicant labels the 23 July 2018 email listing the possible courses of action presented to the Applicant, attached as annex 3 to the application, as the "contested decision".

22. It is evident from the record and undisputed that the Applicant declined both solutions presented by the Administration as she did not deem them appropriate. However, there is no evidence that she sought to challenge this decision through the internal justice system.

The Organization's failure to comply with its obligation to repatriate the Applicant upon her separation

23. The Applicant states that she meets all requirements of staff rule 3.19 and is therefore eligible for a repatriation grant and that the Organization is obligated to repatriate her upon separation outside of the duty station.

24. She claims that upon separation, she contacted various officials in the Human Resources Section to inquire about the next steps. She claims that when she was requested to return her ground pass and *Laisser-Passer*, she sought clarifications regarding her repatriation as she was not in possession of a valid national passport. She claims that she received no further response from the Respondent.

25. As remedy, however, the Applicant does not seek payment of a relocation grant but rather an update from the Organization on the way in which it intends to relocate her.

26. The Respondent replies that it stands ready to travel the Applicant out of the duty station but points out that the Applicant is not entitled to receive a repatriation grant as she did not complete five years of continuing service on a fixed-term or continuing contract. She is however eligible to be paid the travel expenses to the place of recruitment under staff rule 7.1(a)(iv) and 7.1(b).

27. The Respondent avers that these entitlements have not been paid to the Applicant because she has refused to complete the separation formalities and shown no intention to leave the duty station.

28. The Applicant responds that the reason why the Applicant failed to complete the formalities for her repatriation is the continuous threat she would face if she were to return to her home country.

29. As noted above, the Applicant had declined all the options offered for her relocation. Instead, she decided to remain in the territory of duty station after the expiration of her appointment and continued to request the Organization's assistance to renew her passport from there.

30. The Tribunal recalls that the Applicant has no right to be assisted by the Organization with the renewal of her passport as she is no longer a staff member of the Organization and therefore no longer enjoys functional immunity. The Organization's failure to assist her in this respect does, therefore, have no impact on the Applicant's terms of her employment with the Organization.

31. Moreover, the Tribunal concludes from the facts on record that the Applicant has neither been repatriated nor traveled outside the duty station because she failed to

provide the required information. There is therefore no decision from the Administration not to repatriate the Applicant which is capable of judicial review.

32. This aspect of the application is therefore not receivable.

The Organization's failure to assert its privileges and immunities

33. The Applicant avers that by “failing to assert the Organization’s privileges and immunities” by allowing the Government of the Applicant’s home country to obstruct the Applicant’s employment with the Organization, the Administration relinquished its privileges and immunities. She claims that the Organization should have made arrangements to ensure that her passport be renewed. As remedy, the Applicant requests that the Organization update her on the efforts undertaken to secure the renewal of her passport and to perform an up-to-date security assessment of the risks associated with her relocation to her home country.

34. The Respondent responds that the Applicant did not provide evidence that the Government of her home country refused the renewal of her passport due to her employment with the Organization. He stresses that the Organization tried to find a solution to the Applicant’s situation while she could be traveled back as an employee of the United Nations with a valid passport and although the security risk had been assessed as low.

35. The Respondent recalls that a security escort was offered to the Applicant while she was still in the Organization’s employment.

36. Finally, the Respondent recalls that since 30 September 2018, the Applicant is no longer a staff member and therefore no longer enjoys functional immunity.

37. The Tribunal recalls that a staff member’s privileges and immunities cease with his or her separation from the Organization. The Applicant did not challenge any failure of the Organization to assert its privileges and immunities while she was still in its employment.

38. Moreover, as the Applicant no longer enjoys privileges and immunities since her separation, there can be no decision from the Administration not to assert such privileges and immunities after that date.

39. The application is therefore not receivable in this respect.

Conclusion

40. The application is dismissed in its entirety.

(Signed)

Judge Joelle Adda

Dated this 28th day of April 2021

Entered in the Register on this 28th day of April 2021

(Signed)

Nerea Suero Fontecha, Registrar, New York