



Before: Judge Margaret Tibulya

Registry: New York

Registrar: Isaac Endeley

DOLGOPOLOV

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

ON RECEIVABILITY

Counsel for Applicant:

Sètondji Roland Adjovi
Anthony Kreil Wilson

Counsel for Respondent:

Lucienne Pierre, AS/ALD/OHR, UN Secretariat

Introduction

1. On 12 September 2023, the Applicant, a staff member of the Department of Operational Support (“DOS”) in New York, filed an application in which he contested “[t]wo negative decisions violating the duty of care and the obligation to protect staff members against discrimination”.

2. On 3 October 2023, the Respondent filed a motion on receivability in which he challenged the receivability of the application and requested the Tribunal to determine this as a preliminary issue.

3. By Order No. 101 (NY/2023) dated 10 October 2023, the Duty Judge (a) granted the Respondent’s motion to have the receivability of the application decided as a preliminary issue, (b) suspended the deadline for the Respondent to file his reply in accordance with art. 10.1 of the Dispute Tribunal’s Rules of Procedure until the issue of receivability has been determined, and (c) ordered the Applicant to file a rejoinder responding to the Respondent’s submissions regarding the non-receivability of the application.

4. On 6 November 2023, the Applicant filed his response on the receivability of the application.

5. On 1 April 2024, the case was assigned to the undersigned Judge.

6. On 4 April 2024, a case management discussion (“CMD”) was held to discuss the further proceedings at which Counsel for the parties, as well as the Applicant, were present. Both Counsel confirmed that no further submissions were necessary for the Tribunal to determine the issue of receivability.

Facts

First appealed decision

7. By letter dated 5 January 2022, 37 staff members, including the Applicant, requested the Secretary-General “for action by the United Nations on removing the discriminatory restrictions imposed by host country government on the [United Nations] staff — nationals of Russia” regarding the following: (a) “[t]wenty-five miles radius travel restrictions from the Columbus Circle”; (b) “G-4 Visa renewal time of four months or longer compared to [United Nations] staff members nationals of other countries”; (c) G-4 visa duration of one year or less compared to [United Nations] staff members nationals of other countries; (d) “[h]umiliating procedures upon arrival at an airport: many Russian colleagues were escorted to the special US CBP [assumedly, referring to “Customs and Border Patrol”] room, which is usually used to deal with people trying to enter the US illegally or suspected of having committed a crime”.

8. On 7 February 2022, the Applicant emailed “SG Central”, copying the other complainants, stating as follows:

Dear colleagues in SG Central,

On 5 January 2022, more than one month ago, we sent attached letter to the Secretary-General. However, since that time, we have neither received any confirmation of receipt of our letter nor any response to the letter. Would you be so kind to confirm the receipt of the letter, inform us about the reference number assigned to it and let us know a current status of the letter- who is it assigned to, please?

9. On 16 January 2023, the Applicant emailed the Deputy Secretary-General and the Chef de Cabinet, copying the other complainants stating as follows (emphasis in original omitted):

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

It is more than one year since you received our petition however we have not received any response so far.

The absence of a response from your side for so long shows us that our concerns and requests are being ignored, and the fact of ... the discrimination is being silenced by the [United Nations] administration.

We continue to experience the discriminatory restriction imposed by the host country government in violation of the [United Nations] Charter, the 1946 Vienna Convention, the 1947 United Nations Headquarters Agreement, numerous [United Nations General Assembly] resolutions and other relevant legal documents.

These restrictions are imposed on us because of our official status—[United Nations] staff members—nationals of Russia: I used to have a US B1 visa in 2014-2017, and the visa was issued for three years with no restrictions on the freedom of movement within the US unlike G-4 visa where I have 25 miles restrictions for movement from the Columbus Circle and the visa is being issued only for one year with the waiting time for the renewal from four to twelve months. My family members were issued US F1 and F2 visas in the same period with no restrictions.

On 3 January 2023 while entering the US in JFK I was again escorted to the special US CBP room, which is usually used to deal with people trying to enter the US illegally or suspected of having committed a crime.

On my question of why there was a deviation from the normal border crossing process the US Border and Customs Protection Officers informed me that the humiliating procedure was applied to me because of my official status—G-4 visa holder and that their actions were triggered by the US Department of State.

On top of that, the absence of a response to our petition and the silence of the [United Nations] senior management about the discrimination of the [United Nations] staff members based on their nationality while the [United Nations] administration is very vocal about other types of discrimination- show us that we are being treated as second-class people.

Because our attempt to appeal to the goodwill of the [United Nations] senior management and to request the help of the [United Nations] administration in the elimination of discrimination did not bring any results, I am requesting protection against discrimination by the host country government from you under ST/SGB/2008/5 Prohibition of

discrimination, harassment, including sexual harassment, and abuse of authority.

In addition, I am requesting permission to publish the story about discrimination against [United Nations] staff members based on their nationality on social networks: Instagram, Twitter, Facebook, Telegram, and other providers.

As well, I am requesting permission to share this story with the media, such as BBC, CNN, Fox News, RTVi, Al Jazeera, China News, RT, and other media providers.

If no reply is received to this request by 15 February 2023, it will be deemed that permission is granted.

10. On 1 August 2023, the Applicant emailed the Deputy Secretary-General and the Chef de Cabinet, copying the other complainants, stating as follows (emphasis in original copy omitted):

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

We are writing to you, as most senior [United Nations] officials after the Secretary-General—we would like to appeal for your assistance in regards to our letter to the Secretary-General dated 5 January 2022 with a request for help in removing discriminatory restrictions imposed by the host country on [United Nations] staff G-4 visa holders the nationals of Russia. It has been almost eight months and we still have not received any answer.

According to [the Executive Office of the Secretary-General (“EOSG”)], the letter was registered in Unite Correspondence with the number EOSG-202200032 and was originally assigned to the Office of Legal Affairs. Then, on 10 February 2022, our petition was routed to your office and in the four months that followed, we haven’t received any response yet. That prompted us to follow up on this matter on 25 May, 1 and 6 June respectively with [the Assistant Secretary-General for Human Resources] and [the Under Secretary-General of the United Nations for Management Strategy, Policy and Compliance] on 20 June 2022, and EOSG on 12 and 18 July 2022. However, for some reason, we did not get any response from her.

The United Nations senior management has always been vocal against any form of discrimination, and rightly so. However, when it comes to a large group of [staff members] being discriminated against by the host country right at the UN Headquarters, it chooses to turn a blind eye to it. Meanwhile, discriminatory measures are getting harsher by the day. They collectively target law-abiding people who in many

instances live in this country for many years, invest in its economy, and send their children to local schools. Yet, the host country still treats them with animosity and suspicion. Whenever they try to find out the reasons for visas being rejected, delayed etc., they are faced with silence.

It saddens us to state that the [United Nations] senior management, [Office of Legal Affairs, Office of Human Resources and Department of Management Strategy, Policy and Compliance] seem to have chosen the same strategy of silencing our problem. Given the grim political realities of the world in general and our region in particular, this only adds to our stress and anxiety, alienates us from families and greatly affects our mental health and well-being, which incidentally is one of the declared priorities of the SG's staff policy.

Moreover, the current situation directly violates our contractual rights:

1. One of us was forced to move to Russia because his g-4 visa was not renewed for more than fourteen months and he was separated from his family for that period.
2. Another Russian citizen could not get his contract with the [United Nations] formalized because the US government has not issued a G-4 visa to him for more than a year.
3. Many Hiring managers in the [United Nations] system prefer not to select Russian citizens for the positions in the [United Nations] because of the difficulties associated with current restrictions imposed by the host country.
4. We are very often unable to travel on work-related assignments outside the US due to the delays in the G-4 visa renewal, which negatively affects our ability to gain new experience and knowledge, which, in turn, makes us less competitive compared to the [United Nations] staff not affected by the restrictions imposed by the host government.

On top of that, we see the signs that the [United Nations] administration is helping the host country to discriminate against us: Travel and Transportation Service published a "Travel Notification Form"—a tool used by the host country's government to violate our human rights on i-Seek—we interpret this as passive participation in illegal inhuman discrimination.

Please, let us know when will we get a response to our letter?

Second appealed decision

11. On 28 March 2023, the Applicant emailed AA (a United Nations staff member, name redacted for privacy reasons), copying in BB (another United Nations staff member, name redacted for privacy reasons), stating as follows:

Dear [AA],

...

Moreover, as I informed you during our meeting, I was approached by persons who stated that they were agents of the Counter Intelligence Division of the Federal Bureau of Investigation ["FBI"] who tried to recruit me to work for them but I did not cooperate with them. I believe this is another violation of the ["United Nations"] Charter, Host Country Agreement and other relevant legal documents and I am concerned that my non-cooperation will lead to delays in my G-4 visa renewal or even in the refusal of the host-country government to renew my G-4 visa. Therefore, I would like to kindly ask you to bring this information to the attention of the Secretary-General for possible investigation and action.

...

12. On 31 March 2023, the Applicant emailed AA, copying BB, stating as follows:

Dear [AA],

I would like to inform you that I just discovered that somebody tampered with evidence I have for the attempt of person who claimed to be agents of Counterintelligence Division of Federal Bureau of Investigation. That means that the fact that I formally complained about the attempt to recruit me by the group of alleged FBI agents became known to that group and that those people are working on the cover up of that attempt. I am concerned that they can kill me or organize provocation aimed to discredit me by fabricating criminal case against me. Therefore, I am requesting the implementation of my immediate protection. I will also take steps to ensure should something happen to me the information about the attempt will become public and passed to the government of my country.

13. On 31 March 2023, AA emailed the Applicant, copying in BB, that his request had been “referred” to the Department for Safety and Security (“DSS”). AA had further been advised that “an investigator [would] be in touch to assist [him]”.

14. On 4 April 2023, the Applicant emailed AA, thanking AA “very much” for the support. The Applicant further informed AA that he had “met with the SSS [assumedly, referring to the Security and Safety Service of DSS] investigator today and [they] agreed on a solution which is most effective at this moment”.

15. On 11 April 2023, AA emailed the Applicant and, *inter alia*, stated that AA was “glad DSS [had] been able to help”.

16. On 13 April 2023, the Applicant emailed AA, copying BB, stating, *inter alia*, as follows (emphasis from the original copy omitted):

Dear [AA],

...

On 28/03/2023 I reported to you that I was approached by persons who stated that they were agents of the Counter Intelligence Division of the Federal Bureau of Investigation who tried to recruit me to work for them but I did not cooperate with them. I believe this is another violation of the [United Nations] Charter, Host Country Agreement and other relevant legal documents and I am concerned that my non-cooperation will lead to delays in my G-4 visa renewal or even in the refusal of the host-country government to renew my G-4 visa.

I also informed you that I met with the SSS investigator to address concerns about my safety. I shared with him the history in chronological order from the moment I was approached by persons who claimed to be agents of the Counter Intelligence Division of the Federal Bureau of Investigation of the United States of America to the time when I seized all communication with them.

I shared with the investigator the copy of [WhatsApp] chat which was used by one of the persons described above. The chat content was changed by unknown person/people to make it look like a friendly conversation between two people. That change in the chat caused me to panic because I understood that somebody was trying to tamper with the evidence. I was afraid that they could try to kill or discredit me to cover up their activity- that’s why I requested your assistance. Thank you very much for your help again.

The meeting with the SSS representative revealed the following information:

1. The SSS could only record my statement but did not have any capacity to conduct a proper investigation with the required forensic research.
2. They would only be able to hand over my case to local law enforcement, which was one of the most probable participants in my case and it would be the same as the handover of the crime investigation to the criminal who had committed that crime.
3. We agreed to pause any actions given the sensitivity of the situation and my vulnerability in front of the FBI.

In summary, the referral to SSS was not really helpful therefore, I would like to ask you: who is currently dealing with the incident I reported? What is being done? How my concern that my refusal to be recruited affects the renewal of my G-4 visa is being addressed?

17. On 14 April 2023, the Applicant emailed AA, copying BB, stating as follows (emphasis in original copy omitted):

Dear [AA],

I hope this email finds you well.

I received your email today but not as a reply to this message, therefore, to consolidate our communication in one place I pasted the content of your reply below:

“Dear [the Applicant]: I hope my message finds you well.

I have contacted DSS and have been informed that they looked into your case and spoken with you several times since last Friday. They also informed me that, while they have not found any evidence of a threat against you, they are monitoring the case and will remain in contact with you.

Warmest, [AA]”

First, I would like to bring to your attention mistakes contained in your reply above:

1. I met with SSS investigator [“CC”, name and rank redacted for privacy reasons] only once on Monday, 3 April 2023.

2. The expression “they are monitoring the case”—I am wondering- how they are monitoring my case—may[be] telepathically”—by extrasensory means? I do not see any activities on their side which can be called monitoring”—please, ask them to elaborate”—be more specific.

Second, as I mentioned before the referral of my case to SSS is useless because:

1. The SSS could only record my statement but did not have any capacity to conduct a proper investigation with the required forensic research.

2. They would only be able to hand over my case to local law enforcement, which was one of the most probable participants in my case and it would be the same as the handover of the crime investigation to the criminal who had committed that crime.

Questions:

1. Was my case which is violation of international law, including UN Charter, 1946 Vienna Convention on the UN Privileges and Immunities, Host Country Agreement by host country government reported to OLA for legal evaluation and to raise this incident on the GA Host Country Committee?

2. Was my case which is violation of international law, including UN Charter, 1946 Vienna Convention on the UN Privileges and Immunities, Host Country Agreement by host country government reported to the SG, DSG and CdC for their awareness and actions?

3. Who is dealing with the following aspect of my case: possibility of the delay in the renewal or denial to extend of my G-4 visa because of refusal to be recruited by host country government?

18. On 19 April 2023, the Applicant emailed AA, copying BB, stating as follows:

Dear [AA],

I hope this email finds you well. This is a polite follow-up to my email below. The matter in question is very urgent and has a very high potential to negatively affect my legal status in the US, my professional career, my well-being and even my life, therefore I am kindly requesting you respond at your earliest possible convenience.

19. On 23 April 2023, AA emailed the Applicant, copying BB, stating that, “I hope you are well also. Any follow-up questions you might have for Security should be addressed to them”.

20. On 25 April 2023, the Applicant emailed BB, copying AA, stating as follows (emphasis in original copy omitted):

Dear [BB]

I hope this email finds you well.

I am very sorry for bothering you but my current situation forces me to escalate my request to you because I am concerned that I could be subject to retaliatory actions for reporting the attempt of host-country law enforcement to recruit me.

Background:

1. On 28 March 2023 I reported to [AA] that I was approached by persons who stated that they were agents of the Counter Intelligence Division of the Federal Bureau of Investigation who tried to recruit me to work for them but I did not cooperate with them.

2. I believe that their attempt to recruit me were caused by my actions on elimination of G-4 restrictions imposed by the host country.

3. On 31 March 2023 I discovered that somebody tampered with evidence I had for the attempt of person who claimed to be agents of Counterintelligence Division of Federal Bureau of Investigation and requested [AA] to assist. Consequently, she referred me to SSS investigator.

4. On 3 April 2023 I met with the SSS investigator [CC] to address concerns about my safety. I shared with him the history in chronological order from the moment I was approached by persons who claimed to be agents of the Counter Intelligence Division of the Federal Bureau of Investigation of the United States of America to the time when I seized all communication with them. I shared with the investigator the copy of What’s Up chat which was used by one of the persons described above. The chat content was changed by unknown person/people to make it look like a friendly conversation between two people. That change in the chat caused me to panic because I understood that somebody was trying to tamper with the evidence. I was afraid that they could try to kill or discredit me to cover up their activity.

5. Unfortunately, the referral of my case to SSS was not helpful because:

a. The SSS could only record my statement but did not have any capacity to conduct a proper investigation with the required forensic research.

b. They would only be able to hand over my case to local law enforcement, which was one of the most probable participants in my case and it would be the same as the handover of the crime investigation to the criminal who had committed that crime.

6. I am very concerned that I could be subject to retaliatory actions from host-country government which could include delays in the G-4 visa renewal, refusal to renew G-4 visa, provocation aimed to discredit me by fabricating criminal case against me or even physical elimination of myself for reporting the attempt of host-country law enforcement to recruit me.

21. On 27 April 2023, the Applicant emailed BB, copying AA, as follows:

Dear [BB],

I reported the incident of host-country law enforcement attempting to recruit me on 28 March 2023. The absence of an adequate meaningful response to this incident from the UN leadership for one month makes me feel that I am on my own against the world's most powerful country. This makes me feel very vulnerable and brings the stress to an unbearable level.

Therefore, I would like to kindly ask you to respond to my request at your earliest convenience.

22. On 2 May 2024, the Applicant emailed BB, copying AA, "This is a polite follow up to my urgent request below".

23. On 2 May 2024, DD (name redacted for privacy reasons) emailed the Applicant:

Dear [the Applicant],

Thank you for your message. I take the liberty of replying in [AA's] absence as her [Officer-in-Charge].

As AA noted in one of her previous emails, your concerns have been referred to DSS and they have assigned you a focal point. If you

continue to have concerns, we would strongly encourage you to be in touch with the focal point in DSS with any additional information you may have to share. Unfortunately, DOS does not have a mandate to investigate such issues.

24. On 3 May 2023, the Applicant emailed the Deputy Secretary-General and the Chef de Cabinet, copying BB, as follows (emphasis in original copy omitted):

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

I hope this email finds you well.

I am very sorry for bothering you but my current situation forces me to escalate my request to you because I am concerned that I could be subject to retaliatory actions for reporting the attempt of host-country law enforcement to recruit me.

Background:

1. On 28 March 2023 I reported to [AA, title redacted for privacy reasons] that I was approached by persons who stated that they were agents of the Counter Intelligence Division of the Federal Bureau of Investigation who tried to recruit me to work for them but I did not cooperate with them.

2. I believe that their attempt to recruit me were caused by my actions on elimination of G-4 restrictions imposed by the host country.

3. On 31 March 2023 I discovered that somebody tampered with evidence I had for the attempt of person who claimed to be agents of Counterintelligence Division of Federal Bureau of Investigation and requested [AA] to assist. Consequently, she referred me to Security and Safety Service investigator.

4. On 3 April 2023 I met with the investigator [CC] from [United Nations] Security and Safety Service to address concerns about my safety. I shared with him the history in chronological order from the moment I was approached by persons who claimed to be agents of the Counter Intelligence Division of the Federal Bureau of Investigation of the United States of America to the time when I seized all communication with them. I shared with the investigator the copy of [WhatsApp] chat which was used by one of the persons described above. The chat content was changed by unknown person/people to make it look like a friendly conversation between two people. That change in the chat caused me to panic because I understood that somebody was trying to tamper with the evidence. I was afraid that they could try to kill or discredit me to cover up their activity.

5. Unfortunately, the referral of my case to [United Nations] Security and Safety Service was not helpful because:

a. The [United Nations] Security and Safety Service could only record my statement but did not have any capacity to conduct a proper investigation with the required forensic research.

b. They would only be able to hand over my case to local law enforcement, which was one of the most probable participants in my case and it would be the same as the handover of the crime investigation to the criminal who had committed that crime.

6. My attempts to get assistance from my parent department-DOS were unsuccessful.

7. I am very concerned that I could be subject to retaliatory actions from host-country government which could include delays in the G-4 visa renewal, refusal to renew G-4 visa, provocation aimed to discredit me by fabricating criminal case against me or even physical elimination of myself for reporting the attempt of host-country law enforcement to recruit me. Request: Therefore, I would like to request for your kind consideration of implementation of such measures which would adequately address my concerns about possible retaliatory actions of the host country government and the possible violation of the host country government its obligation under UN Charter, 1946 Convention on the privileges and immunities of the United Nations, host country agreement and other relevant provisions of the international law.

25. On 5 May 2023, the Applicant emailed the Deputy Secretary-General and the Chef de Cabinet, copying BB, as follows:

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

I would like to inform you that yesterday, on 4 May 2023 at 12.10 I met again with the investigator [CC] from [United Nations] Security and Safety Service who again informed me that the SSS mandate is to ensure my personal physical safety on the [United Nations] grounds only, and that SSS would not be able to provide any other services.

Currently, I believe that I am already suffering from vindictive retaliatory actions of the host country government: I am waiting for the renewal of my G-4 visa for four months already. I have elderly parents in Russia, who are in bad health conditions and required my assistance, and the absence of valid G-4 visa prevent me from helping them.

In addition, I do not have any concerns regarding my personal physical safety on the [United Nations] grounds.

Therefore, I request that you provide me with name and contact details of the focal point who will help with protection from vindictive retaliatory actions of the host country government.

26. On 9 May 2023, the Applicant emailed the Deputy Secretary-General and the Chef de Cabinet, copying BB, stating as follows:

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

This is an urgent follow-up to my request below.

I reported an incident with the FBI's attempt to recruit me on 28 March 2023. It has been six weeks since then and to date I have not got any meaningful adequate response to my request for help except for referring me to UNSSS in New York which was useless because:

a. The SSS mandate is to ensure my personal physical safety on the UN grounds only and for me, the UN grounds in New York are the safest place in the USA.

b. The [United Nations] Security and Safety Service could only record my statement but did not have any capacity to conduct a proper investigation with the required forensic research.

c. They would only be able to hand over my case to local law enforcement, which was one of the most probable participants in my case and it would be the same as the handover of the crime investigation to the criminal who had committed that crime.

There is a real threat for me and my family that we could be subject to retaliatory actions from the host-country government which could include delays in the G-4 visa renewal, refusal to renew the G-4 visa, provocation aimed to discredit me by fabricating a criminal case against me or even physical elimination of myself for reporting the attempt of host-country law enforcement to recruit me.

Please, help.

27. On 18 May 2023, AA emailed the Applicant, copying BB and DD, stating as follows:

Dear [The Applicant],

I hope this message finds you well.

After discussions with [Executive Office of the Secretary-General], I am replying to your message to [the Deputy Secretary-General and the Chef de Cabinet]. Regarding the status of your visa, as mentioned to you this week by [two Assistant Secretary-Generals, names redacted for privacy reasons], the issue is being discussed with the host country at the most senior levels and [Office of Legal Affairs], DOS and [Department of Management Strategy, Policy and Compliance] are continuously engaged on this matter—not only for Russian nationals but for staff of all nationalities facing the same issue of visa delays. We in DOS are also once again checking on the status of your visa through our own channels.

Regarding your personal safety, as we had previously noted, if you have concerns about your safety you should be in touch directly with DSS. There is no mechanism outside of DSS through which to carry out investigations or provide personal protection. Additionally, from the limited information provided, we understand that DSS have not been able to establish any credible threat to you or your family. I'm sure DSS would be happy to re-engage with you should you have additional information or wish DSS to refer the matter to local law enforcement.

28. On 3 August 2023, the Applicant emailed AA, copying BB and DD, stating as follows:

Dear [AA],

I met today with DSS focal point and he informed me that SSS NY is not aware of any threat and risk assessment conducted which determined that there were no credible threats towards me and my family—could you point out who in DSS informed you about the absence of credible threats, please?

29. On 8 August 2023, AA emailed the Applicant stating as follows:

Hi [the Applicant]:

I see you are already in communication with DSS, who are best placed to answer your questions on all security matters you have raised.

30. On 8 August 2023, the Applicant emailed AA, copying BB, stating as follows (emphasis in the original omitted):

Dear [AA],

In your email on behalf of [the Deputy Secretary-General and the Chef de Cabinet] you stated: “Additionally, from the limited information provided, we understand that DSS have not been able to establish any credible threat to you or your family”.

This means that a specific DSS official provided you with this information.

However, DSS focal point did not agree with these findings and was not aware of these conclusions.

Therefore, I would like to ask you who in DSS provided you with that information?

31. On 8 August 2023, the Applicant emailed AA, copying BB, stating as follows:

Dear [AA],

This is a polite follow-up to my email below.

As a former security professional, I have grounds to doubt the credibility of the information (Probably even in the existence of proper threat and risk assessment which is supposed to be conducted in such cases) in your email regarding the safety of my family and myself. I have a technical question for the person who provided you with that information.

Therefore, I would like to ask you to let me know the name of the DSS official who provided you with this information.

32. On 17 August 2023, the Applicant emailed AA, copying BB, stating as follows:

Dear [AA],

This is a polite follow-up to my email below.

In the absence of any response from your side I will be forced to give this email exchange with my suspicions to my lawyer for the inclusion into [Dispute Tribunal] application.

If I do not hear from you by [close of business] tomorrow I will do so.

Consideration

Parties' submissions

33. The Respondent's submissions may be summarized as follows:
- a. The Application is “not receivable *ratione materiae*” as the Applicant has failed “to identify a final administrative decision that is in non-compliance with his terms of appointment or contract of employment, as required under Article 2.1(a) of the Statute of the United Nations Dispute Tribunal”.
 - b. The United Nations Appeals Tribunal has “defined an administrative decision as a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order”, referring to *Tintukasiri* 2015-UNAT-526, *Nguyen-Kropp & Postica* 2015-UNAT-509, *Hamad* 2012-UNAT-269 and *O'Brien* 2023-UNAT-1313. An applicant has the statutory burden of establishing that a contested decision violates his terms of appointment. The Appeals Tribunal articulated this principle in *Selim* 2015-UNAT-581: “[A] statutory burden is placed upon an applicant to establish that the administrative decision in issue was in non-compliance with the terms of his appointment or his contract of employment. Such a burden cannot be met where the applicant fails to identify an administrative decision capable of being reviewed. [...]”.
 - c. The Applicant “has not met his burden” by failing “to identify an administrative decision that he alleges to be in non-compliance with his terms of appointment or his contract of employment”. In “Section V, paragraph 1 of the Application form, entitled ‘Details of the contested decision,’ the Applicant asserts that he is contesting ‘[t]wo negative decisions violating the duty of care and the obligation to protect staff members against discrimination,’ but does not explicitly identify the ‘two negative decisions’”.

d. The Applicant's statements that he "was informed of the 'two negative decisions' by the 'Deputy Secretary General, to whom 'the latest email' was addressed, and that it was the 'Deputy Secretary General to whom the latest email was addressed' who informed him of the decisions, do not clarify the matters in dispute".

e. It is "not the role of the Dispute Tribunal to speculate as to the specific decisions the Applicant wishes to contest". While the Applicant "indicates the '[d]ate on which the decision was made' as '15 June 2023 or thereafter,' he fails to precisely identify the contested administrative decisions that were allegedly taken on that day or thereafter". The Applicant's "failure to identify the final administrative decisions he disputes deprives the Respondent of notice of the challenged administrative decisions and prejudices his ability to mount a defense".

f. To the "extent the Application is subject to interpretation, it outlines no fact or controversy that is within the subject matter jurisdiction of the Dispute Tribunal".

g. The Applicant's "allegations of a 'discriminatory policy of the host country against staff members who are of Russian nationality,' are not receivable".

h. The Applicant's "allegations focus on visa restrictions the Government of the United States has placed on him as a United Nations staff member of Russian nationality and on alleged delays in the host government issuing him a visa". However, "[v]isa restrictions imposed on a staff member of the Organisation by the Government of the United States are not part of the terms and conditions of employment", referring to *Dolgoplov* 2021-UNAT-109. Likewise, "[i]ssuance of a visa is a result of an administrative procedure held by a host country in accordance with its own internal policies", and "[t]he Organization cannot be held accountable for any delay of the host country in

issuing a visa to the Applicant”, with reference to the Dispute Tribunal in *Mollaoglu* UNDT/2022/125.

i. The Organization “fulfilled its obligations concerning the Applicant’s visa request”. The Organization “requested visas for the Applicant and his spouse in January 2023, and the host country granted the request for the visas in May 2023”. The Organization had “no control over the time the host country took to conduct its internal policies with respect to the issuance of the visas, or any restrictions the host country imposed on the visas”.

j. The Applicant’s “claim that the Organization did not fulfill its ‘duty of care’ is not receivable”. This claim is “exceedingly general and fails to specify what administrative decision the Organization made that was allegedly unlawful, and had a direct negative impact on the Applicant’s terms of appointment or contract of employment”. Neither “the Dispute Tribunal nor the Respondent should have to speculate as to the specific decision the Applicant wishes to contest”.

k. To “the extent the Applicant intends for the Application to be a complaint against the Organization for an alleged failure to act in accordance with ST/SGB/2019/8 (Addressing discrimination, harassment, including sexual harassment and abuse of authority), the Application is not receivable” (reference to footnote omitted). First, “the Applicant may not directly make ST/SGB/2019/8 complaints to the Dispute Tribunal”.

l. Second, “the Applicant’s contentions regarding discrimination, harassment, and abuse of authority concern actions taken by the host government, allegedly because of his Russian nationality”. The United Nations “does not have the authority to enforce ST/SGB/2019/8 against the host country’s government”. The “provisions of ST/SGB/2019/8 are enforceable against persons, not governments”, and “[n]othing in ST/SGB/2019/8 binds the government of the host country or provides the

Dispute Tribunal with jurisdiction to adjudicate allegations the Applicant brings against the host country's government”.

m. To “the extent the Applicant alleges that the host country’s government’s conduct, with respect to visa restrictions, delays, and alleged attempts to recruit him is a ‘violation of the host country government it’s [sic] obligation under UN Charter, 1946 Convention on the privileges and immunities of the United Nations, host country agreement and other relevant provisions of the international law’ such matters are beyond the scope of the Dispute Tribunal’s jurisdiction”. The Dispute Tribunal does “not have jurisdiction to adjudicate disputes that may arise between the United Nations and host countries, or between staff members of the United Nations and governments of host countries”. Such “matters fall into the realm of diplomacy” and “not administrative decisions directly impacting the terms of appointment or contract of employment of the Applicant reviewable by the Dispute Tribunal”.

34. The Applicant’s submissions may be summarized as follows:

a. The present case is “receivable *ratione materiae*”. The Applicant “recalls his submission on two specific negative decisions”—(a) “the negative decision allowing the discrimination by the Host Country against Russian staff member such as the Applicant”, and (b) the decision “about the refusal by the organization to protect the Applicant against the law enforcement agents of the Host Country”.

b. The first decision is “certainly within the preview of the Tribunal because the [United Nations] Secretary General has an obligation to ensure that international civil servants under his authority are protected against discrimination”. The “basis here is the [United Nations] Charter (Preamble especially), the general principles of law (Article 2 of the Universal Declaration of Human Rights, among others) and respect for human rights”.

The issue “here is not only about delay in the visa processing as the Respondent seems to imply; it is also about the limitation of travel by the Applicant to 25 miles around the [United Nations] headquarters and the length of the visa granted”. The Secretary-General “has a clear obligation to ensure that all staff members of the organization are treated equally, and he has failed in this regard”. The “provisions of the Staff Rules and Regulations, in particular Staff Regulations 1.1 and 1.2 (c), and ST/SGB/2019/8, in particular Section 1.2 are clear; discrimination against a [United Nations] staff member is a violation of these promulgated administrative issuances and therefore a violation of a staff member’s conditions of employment at the United Nations”. The “negative decision of not doing anything to change such an abuse is therefore a receivable matter before this Tribunal”.

c. The “second decision is also within the jurisdiction of the Tribunal”. The Applicant “resides in New York in the service of the United Nations, which has an obligation to ensure his security and safety in this foreign environment in accordance with Staff Regulation 1.2 (c)”. The “attempt by the law enforcement agents of the Host Country to recruit the Applicant as a spy jeopardized the Applicant’s security and safety”. A “violation of formally promulgated administrative issuances is a violation of a staff member’s conditions of employment at the United Nations”. The “refusal by the organization to do anything about it is therefore a receivable matter before this Tribunal”.

d. The Respondent has “misguidedly relied on *Dolgopolov* 2021-UNAT-1093, which was about waiving the immunity of the Applicant to embark on a case against the Host Country”. In the present case, the Applicant has “clearly identified two negative decisions by the Secretary General which are directly linked to the rights of the Applicant as a staff member”.

e. General Assembly resolution 77/114 (Report of the Committee on Relations with the Host Country) dated 7 December 2022 quoted “as ground

for the application was adopted after the appeal judgment and constitutes therefore new legislative measure that could not have been taken into consideration” by the Appeals Tribunal. The “double negative decisions that the Applicant has challenged in this application occurred within a new legal framework that was not in place at the time of the judgment referred to, and must be considered”.

Legal framework on receivability of appealable administrative decisions before the Dispute Tribunal (ratione materiae)

35. Article 2.1(a) of the Statute of the Dispute Tribunal provides that a staff member may file an application against “Secretary-General as the Chief Administrative Officer of the United Nations” or may appeal “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment” and the “terms ‘contract’ and ‘terms of appointment’ include all pertinent regulations and rules and all relevant administrative issuances in force at the time of alleged noncompliance”.

36. For an application to be receivable, and for the Dispute Tribunal to thereby have jurisdiction under its Statute, the relevant staff member must therefore be able to (a) identify a particular and affirmative legal right in her/his employment relationship with Organization, and (b) prove that this right has been violated by the Administration.

37. The Tribunal’s jurisprudence is firm that “an appealable administrative decision is a decision whereby its key characteristic is the capacity to produce direct legal consequences affecting a staff member’s terms and conditions of appointment” (see, the Appeal Tribunal in *Larriera* 2020-UNAT-1004, para. 28, as affirmed in, for instance, *Handy* 2020-UNAT-1044, *Kennes* 2020-UNAT-1073, *Toson* 2021-UNAT-1161, *Loto* 2022-UNAT-1292, and *Reilly* 2022-UNAT-1309). The Appeals Tribunal further provided in *Larriera* that (para. 30):

... Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision. [reference to footnote omitted] What matters is not so much the functionary who takes the decision as the nature of the function performed or the power exercised. The question is whether the task itself is administrative or not.

38. In *Ovcharenko et al.* 2022-UNAT-1262, para. 36, the Appeals Tribunal added that “[i]n this context, in order to be considered as an appealable administrative decision, what matters is that the administrative measure must have a present and direct adverse impact on the terms and conditions of employment and not the potential of a future injury” (see, similarly, *Sahyoun* 2021-UNAT-1149, para. 25 and *Al Smadi* 2022-UNAT-1241, para. 25).

39. In *Loubani* 2021-UNAT-1086, para. 19, the Appeals Tribunal stated this definition slightly differently, but to the same effect, as follows:

... It is acceptable by all administrative law systems that an “administrative decision” is a unilateral decision taken by the administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules and regulations), as well as from those not having direct legal consequences. Administrative decisions are therefore characterized by the fact that they are taken by the Administration, they are unilateral and of individual application, and they carry direct legal consequences.

40. Considering the above jurisprudence, the Tribunal determines that the Applicant must demonstrate: (a) that the contested decisions were specifically addressed to him on an individualized basis and that they were not of general application to other staff members, and (b) that it was the Administration which took the decisions and not some other entity or person outside the United Nations.

The first appealed decision

41. In the application, the Applicant presents the first appealed decision as “the discriminatory policy of the host country against staff members who are of Russian nationality”. The specifics of this complaint concern delay in visa processing, limitations on the Applicant’s travel to 25 miles around the United Nations headquarters, and the length of the visa granted to him.

42. The Applicant “is now challenging the failure of the Secretary General to take any action to ensure that all staff members, him including, are treated equally, when the staff rules protect such equal treatment”.

43. In the Tribunal’s view, however, the decision of failure to take any action to ensure that all staff members, including the Applicant, are treated equally applies to other staff members as well. It was not specifically addressed to the Applicant as an individual. This removes the first contested decision from the ambit of art. 2.1(a) of the Statute of the Dispute Tribunal.

44. And, as rightly argued by the Respondent, the provisions of ST/SGB/2019/8, on which the Applicant seeks to base his claim are only enforceable against persons, and not governments. The Tribunal therefore has no jurisdiction to adjudicate complaints against a host country's government.

45. The Tribunal moreover fully agrees with the Respondents legally founded submissions that: (a) “[v]isa restrictions imposed on a staff member of the Organisation by the Government of the United States are not part of the terms and conditions of employment” (see in line herewith, the Appeals Tribunal in *Dolgoplov* 2021-UNAT-1093, para. 41); (b) “[i]ssuance of a visa is a result of an administrative procedure held by a host country in accordance with its own internal policies” (similarly, see the Dispute Tribunal in *Mollaoglu*. UNDT/2022/125, para. 28, holding that :“issuance ... of visas are ... a result of an administrative procedure held by a

host country in accordance with its own internal policies”); (c) the Organization “cannot be held accountable for any delay of the host country in issuing a visa to the Applicant” (see also *Mollaoglu*, para. 29, where the Dispute Tribunal stated that the Organization “cannot be held accountable for the refusal of the host country to issue a visa to the Applicant”, and the same logic applies for delay of the host country to issue a visa to a United Nation staff member).

46. Based on the foregoing, the Tribunal finds that the first contested decision, concerning the “discriminatory policy of the host country against staff members who are of Russian nationality” is not receivable *ratione materiae*.

The second appealed decision

47. The Applicant identifies the second decision in the application as “the attempt by the law enforcement agency of the host country to recruit [him] as its agent against his country of nationality”. The Applicant “is now challenging the failure of the Secretary General to protect him in his residence and to safeguard the immunity of the Organization which is a shield for the Applicant against such abuse by the host country”.

48. He argues that the attempt to recruit him is a “violation of the host country government it’s [sic] obligation under [United Nations] Charter, 1946 Convention on the privileges and immunities of the United Nations, host country agreement and other relevant provisions of the international law”.

49. The Tribunal, however, agrees with the Respondent that since it does not have jurisdiction to adjudicate disputes that may arise between the United Nations and host countries, or between staff members of the United Nations and governments of host countries, the Applicants claim is beyond the scope of its jurisdiction.

50. The Tribunal finds that the contested decision is not an administrative decision which directly impacts the Applicants terms of appointment or contract of his employment.

Conclusion

51. The Respondent’s alleged failure to protect the Applicant against “the attempt by the law enforcement agency of the host country to recruit [him] as its agent against his country of nationality” is not receivable *ratione materiae*.

52. The application is dismissed for lack of receivability.

(Signed)

Judge Margaret Tibulya

Dated this 24th day of April 2024

Entered in the Register on this 24th day of April 2024

(Signed)

Isaac Endeley, Registrar, New York