UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2024/012
Judgment No.: UNDT/2025/050
Date: 30 July 2025
Original: English

Before: Judge Francis Belle

Registry: New York

Registrar: Isaac Endeley

JOHNSON-SIMMONS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Albert Angeles, DAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant is a former Programme Budget Officer with the Department of Management Strategy, Policy and Compliance ("DMSPC") in New York. On 9 March 2024, she filed an application contesting the decision to separate her from service with compensation *in lieu* of notice and without termination indemnity.

2. On 17 April 2024, the Respondent filed his reply challenging the receivability of certain parts of the application and contending that the contested decision was "reasonable, fair, legally and procedurally correct".

3. For the reasons set out below, the Tribunal rejects the application.

Facts

4. The Applicant joined the Organization on 9 May 1995. At the time of her initial appointment, she was neither a permanent resident nor a citizen of the United States of America ("United States" or "U.S." or "US"). She was granted a G-4 non-immigrant visa to work in the United States. At the time of her separation on 11 December 2023, she held a permanent appointment and served as a Programme Budget Officer, at the P-3 level, in DMSPC in New York.

5. On 16 August 2016, following consultations with her private lawyer in New York, the Applicant decided to apply for permanent resident status in the United States and signed the United States Citizenship and Immigration Service ("USCIS") Form I-508 (Request for Waiver of Certain Rights, Privileges, Exemptions and Immunities). On the same day, the Applicant also signed the USCIS Form I-566 (Interagency Record of Request—A, G or [North Atlantic Treaty Organization ("NATO")] Dependent Employment Authorization or Change/Adjustment to/from A, G or NATO Status) requesting an adjustment of her G-4 "non-immigrant" visa status to "immigrant" status.

6. The Applicant did not personally notify the Organization before or immediately after signing and filing the Form I-508 and Form I-566 with USCIS.

7. In March or April 2017, before receiving the approval of her application for permanent resident status in the United States, the Applicant applied for an education grant from the United Nations in favour of her school-age child for the 2017-2018 academic year and received the payment on 19 May 2017. This entitlement is normally payable only to international staff members and not to permanent residents or citizens of the country of their duty station.

8. On 14 August 2017, USCIS approved the Applicant's application for permanent resident status in the United States. She received the formal notification on 17 August 2017.

9. The Applicant did not inform the Organization of this approval and her residency status as recorded in her personnel file remained unchanged. The Organization continued to view her as an international staff member on a G-4 visa in the United States.

10. USCIS records obtained by investigators from the Office of Internal Oversight Services ("OIOS") show that the Applicant used her permanent resident card (also known as a "Green Card") to re-enter the United States for the first time on 3 January 2018. She did not use her G-4 visa on that occasion.

11. On 1 June 2018, the Applicant applied for and received payment of the education grant for the 2018-2019 academic year. She did not inform the Organization that she had become a permanent resident of the United States as of August 2017.

12. In February 2019, the Applicant requested an in-person consultation with a staff member of the United Nations Income Tax Unit in order to review her United States tax liability for the 2017 and 2018 tax years. She claims that during the consultation, she was advised that since her new status had not yet been updated to permanent resident in the United Nations Income Tax system, she did not have any tax liability

for 2017 and 2018. She claims she was also informed that it was not unusual to have "a lengthy time lapse before the system catches up".

13. Meanwhile, the Applicant submits that she understood she was still eligible to receive benefits and entitlements as an international staff member, including the education grant and her home leave entitlements, until her residency status was officially changed in the Organization's records.

14. Between 2017 and 2020, without informing the Organization that she had already acquired United States permanent resident status, the Applicant submitted four education grant claims and two home leave travel claims and received the corresponding payments amounting to USD130,954.53.

15. As of March 2021, the Applicant had a pending application for United States citizenship with USCIS but did not inform the Organization prior to or immediately after filing it.

16. From February to October 2021, the Applicant was on "extended Certified Sick Leave" but submits that she continued to follow up with the Human Resources Office regarding the status of the Form I-508 she had signed in August 2016 and was informed that the Organization had still not received it.

17. The Applicant submits that she also contacted the Income Tax Unit and was advised that she needed to sign a new Form I-508 in order for her income tax liability to be processed.

18. On 24 May 2021, following the advice of a Human Resources Partner, the Applicant prepared a memorandum seeking the Secretary-General's authorization to sign a new Form I-508, the waiver of privileges and immunities. This newly signed Form I-508 was then used to adjust the Applicant's residency status in the Organization's records going forward. However, it did not have a retroactive effect.

19. In June 2021, OIOS received from the Office of the Under-Secretary-General for DMSPC ("the USG/DMSPC") a report of possible unsatisfactory conduct

implicating the Applicant. Specifically, it was reported that the Applicant had applied for and had been granted permanent resident status in the United States and that she had failed to inform the Organization prior to signing the waiver of certain privileges and immunities as required under the applicable legal framework. It was further reported that after obtaining permanent resident status in the United States, the Applicant continued to apply for, and to receive, education grant and home leave payments not normally available to permanent residents of the United States.

20. Furthermore, it was reported that after obtaining permanent resident status, the Applicant did not file her income taxes through the United Nations Income Tax Unit, which raised concerns regarding her compliance with her legal obligations arising under United States federal, state and municipal income tax laws.

21. The Applicant obtained United States citizenship on 7 July 2021 and notified the Organization on 13 September 2021.

22. In October 2021, OIOS initiated an investigation into the Applicant's conduct in relation to the allegations that she continued to receive international staff benefits for which she was no longer eligible.

23. Beginning with the Applicant's entire February 2022 salary, the Organization implemented the process of recovering the international benefits, including the education grant and home leave entitlement payments, that the Applicant had received during the period from 2017 to 2020.

24. In April 2022, the Applicant reached an agreement with the Office of Human Resources ("OHR") for the recovery of one-third of her monthly salary going forward.

25. On 5 December 2023, the Applicant requested the Administration to reimburse the amount of USD76,038 that had been recovered from her monthly salary up to that point.

26. By letter dated 11 December 2023, the Assistant Secretary-General for OHR ("the ASG/OHR") informed the Applicant of the decision of the USG/DMSPC to separate her from service for serious misconduct (the "sanction letter").

27. On 4 February 2024, the Applicant received her final payment advice which showed that out of a total of USD130,954 owed to the Organization, USD76,038 had been recovered from her salary leaving a balance of USD54,917 which would be recovered from her final separation entitlements.

Considerations

Receivability

28. Among the remedies identified in the application, the Applicant requests "reimbursement for all income taxes due on [her United Nations] salary and emoluments" from the date of her change of status on 14 August 2017, "in view of the recoveries of Education Grant and Home Leave made for the same period".

29. The Respondent submits that the application is not receivable insofar as the Applicant's request for tax reimbursement is concerned for several reasons. Firstly, the Applicant has failed to identify the administrative decision she is contesting in that regard. Secondly, no administrative decision was issued regarding any alleged request by the Applicant to be reimbursed for income taxes paid between 2017 and 2020. Thirdly, the Applicant has not filed a request for the reimbursement of income taxes paid between 2017 and 2020 that could have resulted in any administrative decision. Fourthly, the Applicant failed to request management evaluation of any administrative decision regarding her income tax claim, which is a precondition for the Tribunal to assume jurisdiction.

30. In her rejoinder, the Applicant asserts that she is "contesting the administrative decision to not reimburse her tax liability for a period starting August 2017 to May 2021 despite [the Organization's] responsibility to pay the same in line with General Assembly resolution 13(I) of 14 February 1946 even as it continued to deduct staff

assessment". She also states that "this decision was first delivered during her visit to the Tax Unit" in 2019 and "was again corroborated" in 2021, "and the Applicant was later pressured to re-sign Form I-508, in this regard". According to her, "it was because of the advice provided by the Tax Unit that she did not submit tax returns for 2017 [to] 2020". She maintains that a "consistent premise in the message" she received from the Income Tax Unit was that as long as her residency status in the Organization's records had not been changed from that of an international staff member to that of a permanent resident of the United States, she "bore no tax liability for retroactive tax years".

31. The Applicant also submits that there was considerable "inconsistency in the information provided by different departments within the [O]rganization". On the one hand, she was informed by the Income Tax Unit that she had no tax liability and was still entitled to receive international staff benefits "due to the delay in updating her Permanent Residence information in the Tax system". On the other hand, the Human Resources Partners "indicated that they had not received the necessary form and stated that the [A]pplicant was no longer eligible for international benefits".

32. Finally, the Applicant concedes in the rejoinder that she "did not request management evaluation on this matter" but adds that in line with the recent ruling of the Appeals Tribunal in *Jackson* 2024-UNAT-1475, the Organization is required to "pay the amounts withheld from salary in staff assessment, for the purpose of paying taxes due to jurisdictions such as the United States". In her closing statement, the Applicant adds that she "could not request management evaluation on the matter since [she] was terminated without notice and directed to the Tribunal for relief". She also argues that "[t[he Administration cannot have it both ways—it cannot, on the one hand, recover Education Grant and Home-leave allowances for the period of 2017-2020, under the pretext that [the Applicant] was not entitled, as [she] was no longer deemed to have 'international status', and at the same time refuse to pay the tax liability that would become due upon a change to US residence, for the same period".

33. The Tribunal recalls that under staff rule 11.2(a), staff members wishing to formally contest an administrative decision alleging non-compliance with their

contract of employment or terms of appointment, including all pertinent regulations and rules pursuant to staff regulation 11.1(a), shall, as a first step, submit to the Secretary-General in writing a request for a management evaluation of the administrative decision.

34. Article 8.1(c) of the Dispute Tribunal's Statute also provides that an application shall be receivable if an applicant has previously submitted the contested administrative decision for management evaluation where required. Moreover, it is settled case law that requesting management evaluation is a mandatory first step for access to the internal justice system (*Olowo-Okello* 2019-UNAT-967, para. 25). The absence of a management evaluation, where required, makes it impossible for the Dispute Tribunal to exercise its jurisdiction.

35. In the case at hand, the Tribunal notes that not only has the Applicant failed to identify the contested administrative decision regarding reimbursement of any income tax payments, but she has also admitted that she did not submit the matter for management evaluation. Under these circumstances, the Tribunal finds that the Applicant's claim regarding the reimbursement of her income tax payments is not receivable.

Main issues in the case

36. The Administration's case against the Applicant is based on the premise that the Applicant waived the rights, privileges, exemptions and immunities pertaining to her office by signing USCIS Form 1-508 ("Request for waiver of certain rights, privileges, exemptions, and immunities") which she, through her lawyer, submitted to USCIS in support of her application for permanent resident status in the United States without the prior permission of the Secretary-General.

37. The Respondent argues that the Applicant failed to disclose to the Organization the relevant information regarding her application for and acquisition of U.S. permanent resident status and U.S. citizenship, thus facilitating her continued receipt of the education grant and home leave entitlements for which she was no longer eligible

in view of her acquisition of U.S. permanent resident status. This resulted in the Applicant wrongly receiving payments for education grant and home leave in the total amount of USD130,954.53.

The sanction letter

38. The charges against the Applicant are contained in the sanction letter dated 11 December 2023 which reads, in relevant part, as follows:

> a. On 16 August 2016, [the Applicant] waived the rights, privileges, exemptions and immunities pertaining to [her] office as a Programme Budget Officer by signing United States Citizenship and Immigration Services ("USCIS") Form I-508 ("Request for Waiver of Certain Rights, Privileges, Exemptions, and Immunities"), which [she], through [her] lawyer, submitted to USCIS in support of [her] application for permanent resident status in the U.S., without the prior permission of the Secretary-General;
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> b. Between 16 August 2016 and 13 September 2021, [the Applicant] failed to disclose to the Organization, as required, relevant information concerning [her] application for and acquisition of U.S. permanent resident status and/or citizenship, including: (i) [her] signing of Form I-508; (ii) the date that [she] signed [her] Form I-508; (iii) [her] intention to acquire U.S. permanent resident status and citizenship; (iv) [her] application for U.S. permanent resident status and citizenship; and (v) [her] acquisition of U.S. permanent resident status and receipt of [her] permanent resident card, which resulted in [her] continued receipt of education grant ("EG") and home leave entitlements, to which [she was] not entitled in view of [her] acquisition of U.S. permanent resident status;
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> c. Between April or May 2017 and December 2020, despite not being eligible, [the Applicant] claimed and received payments for EG and home leave entitlements in the total amount of US$ 130,954.53; and
>
> d. Between April 2017 and June 2020, on at least two occasions, [the Applicant] provided false information regarding [her] U.S. visa status, in support of [her] EG claims.

39. The USG/DMSPC concluded that: (i) the allegations against the Applicant are established by clear and convincing evidence; (ii) through her conduct, the Applicant violated staff regulations 1.1(f), 1.2(b), 1.2(q), staff rules 1.5 and 1.7; (iii) the Applicant's actions amounted to serious misconduct; and (iv) the Applicant's

procedural fairness rights were respected throughout the investigation and the disciplinary process.

40. Consequently, the USG/DMSPC decided to impose on the Applicant the disciplinary measure of separation from service with compensation *in lieu* of notice, and without termination indemnity, in accordance with staff rule 102(a)(viii). The USG/DMSPC also authorized the recovery from the Applicant of the amount of USD130,954.53 (less any partial payments already made in line with the agreement regarding monthly salary deductions).

The Tribunal's limited scope of review

41. Article 9.4 of the Dispute Tribunal's Statute provides that in conducting a judicial review of a disciplinary case, the Dispute Tribunal is required to examine: (a) whether the facts on which the disciplinary measure is based have been established by evidence; (b) whether the established facts legally amount to misconduct; (c) whether the disciplinary measure imposed was proportionate to the offence; and (d) whether the staff member's due process rights were respected.

42. When termination is a possible outcome, misconduct must be established by clear and convincing evidence, which means that the truth of the facts asserted is highly probable. (See, for instance, the Appeals Tribunal in *Karkara* 2021-UNAT-1172, para. 51.) The Appeals Tribunal has further explained that clear and convincing proof "requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable" (see *Molari* 2011-UNAT-164, para. 30). In this regard, "the Administration bears the burden of establishing that the alleged misconduct for which a disciplinary measure has been taken against a staff member occurred" (see *Turkey* 2019-UNAT-955, para. 32). To meet this standard, "[t]here must be very solid support for the finding" including "direct evidence of events or […] evidential inferences that can be properly drawn from other direct evidence" (*Kavosh* 2025-UNAT-1550, para. 84, citing *Applicant* 2022-UNAT-1187, para. 64 and *Negussie* 2020-UNAT-1033, para. 45).

43. Furthermore, the Appeals Tribunal has held that "it is not the role of the Dispute Tribunal to consider the correctness of the choice made by the Secretary-General amongst the various courses of action open to him" or otherwise "substitute its own decision for that of the Secretary-General" (see *Sanwidi* 2010-UNAT-084, para. 40). In this regard, the Appeals Tribunal noted that "the Dispute Tribunal is not conducting a 'merit-based review, but a judicial review'" explaining that a "[j]udicial review is more concerned with examining how the decision-maker reached the impugned decision and not the merits of the decision-maker's decision" (see *Sanwidi*, para. 42). Moreover, as the Appeals Tribunal has stated regarding the circumstances to consider when assessing the Administration's exercise of its discretion, "[t]here can be no exhaustive list of the applicable legal principles in administrative law, but unfairness, unreasonableness, illegality, irrationality, procedural irregularity, bias, capriciousness, arbitrariness and lack of proportionality are some of the grounds on which tribunals may for good reason interfere with the exercise of administrative discretion" (see *Sanwidi*, para. 38).

44. The Tribunal will therefore assess the contested decision in light of the criteria set out in art. 9.4 of the Dispute Tribunal's Statute and the jurisprudence of the Appeals Tribunal.

Whether the facts on which the disciplinary measure is based have been established

Did the Applicant sign the Form I-508 waiver without the prior permission of the Secretary-General?

45. It is alleged in the sanction letter that on 16 August 2016, the Applicant "waived the rights, privileges, exemptions and immunities" pertaining to her office by signing the USCIS Form I-508 "without the prior permission of the Secretary-General".

46. Staff rule 1.5 provides (emphasis in the original):

> **Notification by staff members and obligation to supply information**

> (a) Staff members shall supply the Secretary -General with relevant information, as required, both during the application process and on subsequent employment, for the purpose of determining their status under the Staff Regulations and Rules as well as for the purpose of completing administrative arrangements in connection with their employment. Staff members shall be held personally accountable for the accuracy and completeness of the information they provide.
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> (b) Staff members shall promptly notify the Secretary -General, in writing, of any subsequent changes affecting their status or administrative arrangements under the Staff Regulations or Staff Rules.
>
> (c) Staff members who intend to acquire permanent residence status in any country other than that of their nationality or who intend to change their nationality shall notify the Secretary-General of that intention before the change in residence status or the change in nationality becomes final.

47. Pursuant to sec. 5.2 of 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), staff members who are or become permanent residents of the United States are required to sign a waiver of the rights, privileges, exemptions and immunities which would accrue to them as staff members of the United Nations, but under sec. 5.3, "[s]uch staff members must first request permission to sign the waiver" and when a permanent resident card is issued to a staff member, "she or he must take it to the Office of Human Resources Management to be recorded".

48. The Applicant submits in the application that on 16 August 2016, after consulting with her private lawyer in New York, she decided to acquire permanent resident status in the United States and proceeded to sign the USCIS Form I-508 and Form I-566. She made this decision "after legal advisement" and with the "legal expectations" that her lawyer would, on her behalf, "forward the appropriate forms to the United Nations and USCIS" and that this would serve as her "official notification" to the Secretary-General of her intention to become a permanent resident of the United States and to change her citizenship to United States citizen.

49. The Applicant does not directly address the issue of obtaining prior authorization in her application or her rejoinder, but in her closing statement she states that "[h]aving to request permission from the Secretary-General to apply for [her] permanent residency is not obvious or intuitive", and in her final observations she adds that "[th]e fact that [she] did not know that [she] had to first seek the Secretary-General's approval is immaterial but also speaks to the lack of bad intent on [her] part".

50. The Respondent asserts in his reply that the Applicant "confirmed that she did not obtain the Secretary-General's permission before waiving the rights, privileges, exemptions and immunities pertaining to her office when she signed Form I-508 on 16 August 2016 in support of her application for a change in her residency status". He also states in his closing statement that the Applicant "admitted" that she signed the waiver "without the Secretary-General's prior permission".

51. The Tribunal notes that the Applicant does not dispute the assertion that she failed to obtain the Secretary-General's approval prior to signing the Form I-508 waiver. In her defence, she claims she "did not know" of this requirement and that she expected her lawyer to notify the Organization after the fact.

52. Accordingly, the Tribunal finds that it is established by clear and convincing evidence that the Applicant did not seek or obtain the Secretary-General's permission prior to signing the Form I-508 waiving the rights, privileges, exemptions and immunities conferred on her as a staff member of the United Nations. The Tribunal also finds that there is no evidence that the Applicant's private lawyer forwarded to the Organization a copy of the Form I-508 that the Applicant executed on 16 August 2016. In any event, as clearly outlined in staff rule 1.5 above, it was the Applicant's personal responsibility as a staff member, and not the responsibility of her private lawyer, to obtain the Secretary-General's permission prior to signing the waiver. She failed to fulfill that obligation.

Did the Applicant fail to disclose relevant and required information to the Organization?

53. In the sanction letter, it is stated that between 16 August 2016 and 13 September 2021, the Applicant failed to disclose to the Organization, as required, relevant information concerning her application for and acquisition of permanent resident status in the United States. This resulted in her continued receipt of certain international staff benefits and entitlements which she was no longer eligible to receive in view of the change in her status to that of a permanent resident of the United States.

54. The Applicant avers that she "was compliant" with the relevant provisions of the Staff Rules and "did actually set out to inform [the Secretary-General] and his representatives in the first instance since 16 August 2016, through her attorney ahead of the decision to acquire permanent residence" and, secondly, in person two months before she obtained United States citizenship on 7 July 2021. She maintains that her actions "were not in fact deliberate and willful" and that she understood that her lawyer would submit the Form I-508 to the Organization on her behalf. She says at every step of the process, she "took proactive actions" in her engagements with the Human Resources Office and the Income Tax Unit and relied on the "erroneous assurance" she received from the Administration. She further asserts in her final observations that there is "evidence of numerous emails between 2019 and 2021" to show that she conveyed the required information to the Administration.

55. The Respondent contends that after the Applicant applied in August 2016 to become a permanent resident of the United States and received approval from USCIS in August 2017, she "failed to update the Organization or her current residency status". Between 2017 and 2020, she continued to request and receive international staff benefits and entitlements such as the education grant and home leave travel payments for which she was no longer eligible. She also continued to sign and certify the relevant request forms by providing inaccurate information, "including her G-4 visa status which she knew did not reflect her current residency status" in the United States.

56. The Tribunal has considered the Applicant's assertions that she believed her private lawyer had sent a copy of the Form I-508 to the Organization and that she relied on the advice of the Income Tax Unit staff who informed her that she had no United

States income tax liabilities and that she was still eligible to receive international staff benefits while waiting for the personnel records to be updated. It has also examined some of the "numerous emails between 2019 and 2021" in which the Applicant engaged with her Human Resources and Income Tax Unit colleagues. However, the Tribunal was unable to find any evidence that the Applicant conveyed the required information regarding her changed residency status to them.

57. Furthermore, the Tribunal has reviewed copies of the various forms by which the Applicant requested the payment of international staff benefits and entitlements between August 2017 and May 2021, and finds that the Applicant's claims are not supported by the evidence. For instance, following her signing of the USCIS Form I-508 waiver and Form I-566 requesting the adjustment of her status to that of an immigrant, and after the approval of her application for permanent resident status in August 2017, the Applicant knew she was no longer on a G-4 visa. Moreover, the USCIS records at the port of entry show that the Applicant used her permanent resident card to re-enter the United States for the first time on 3 January 2018. Yet, in her education grant claims submitted in February 2019 and May 2020, the Applicant stated that she was on a G-4 visa, which would make her eligible to receive international staff benefits and entitlements. She did not inform the Organization that she was already a permanent resident of the United States.

58. Accordingly, the Tribunal finds that there is clear and convincing evidence that the Applicant failed to disclose relevant and required information to the Organization between 16 August 2016 and 13 September 2021.

Did the Applicant claim and receive entitlements for which she was not eligible between April 2017 and December 2020?

59. It is stated in the sanction letter that between April or May 2017 and December 2020, despite not being eligible, the Applicant claimed and received payments for education grant and home leave entitlements in the total amount of USD130,954.53.

60. The Applicant does not dispute the fact that she received payment of the entitlements as alleged but argues that she was still eligible to receive them since the Organization had not yet updated her residency status in its records and continued to view her as an international staff member. She avers in the application that she believed her private lawyer had notified the Organization of her signing of the Form I-508 on 16 August 2016. In March or April of 2017, as she was "unsure of the timeframe" for approval of her permanent residency application by USCIS, she applied for the education grant for the 2017-2018 school year and received payment on 19 May 2017. It was upon returning from home leave on 17 August 2017 that she received notification of the approval of her application for permanent resident status in the United States. She subsequently received her permanent resident card ("Green Card") in September 2017.

61. The Applicant further asserts that on 1 June 2018, as she "had still not been notified by the [Secretary-General] or his representatives that [her] waiver had been received", she applied for and received payments of the education grant for the 2018-2019 school year. Moreover, in February 2019, she consulted with staff members of the Income Tax Unit regarding her income tax liability for 2017 and 2018. She maintains that during that consultation she mentioned to the Income Tax Unit staff that she had received her United States permanent resident card in 2017. They then advised her that information regarding her permanent resident status "was not yet updated in the Tax system, therefore [she] had no tax liability for 2017-2018". She also asserts that she was further advised that "it wasn't abnormal for there to be a lengthy time lapse before the system catches up".

62. The Respondent submits in his reply and in his closing statement that between April 2017 and December 2020, without disclosing the required information or notifying the Organization that she had already acquired United States permanent resident status, the Applicant submitted four education grant claims and two home leave entitlement claims and received the corresponding payments amounting to USD130,954.53. The Respondent states that the Applicant knew that "the Organization

lacked the requisite information" about her permanent resident status, "which would have meant that she was not entitled to receive the amounts claimed" but that "[d]espite being aware of this, the Applicant still failed to update the Organization of her current residency status".

63. The Respondent also notes that on the Form P.45 (Request for payment of education grant and/or advance against the education grant) that the Applicant signed, certified and submitted to the Organization on 28 February 2019 and 11 May 2020, she continued to conceal her permanent resident status and stated that she was a G-4 visa holder. She knew that this information was untrue and incorrect, yet she certified the information on the forms. The Respondent argues that "the Applicant's misconduct was willful and resulted in financial loss to the Organization in the total amount of US$ 130,954.53", which is the total of the "benefits erroneously paid to her".

64. The Respondent further avers that it was only in March 2021 that the Organization was notified that the Applicant had acquired permanent resident status in the United States. The Applicant was then informed that she was not entitled to the education grant and home leave payments she had received between 2017 and 2020 amounting to USD130,954.53. She was requested to return the payments to the Organization and arrangements were made to recover the sum through monthly salary deductions until May 2025. However, upon the Applicant's separation from service on 11 December 2023, the outstanding balance was recovered from her final entitlements.

65. The Tribunal is not persuaded by the Applicant's argument that she was advised by Income Tax Unit staff in February 2019 that she could continue receiving the international staff entitlements until her residency status was updated in the Organization's personnel files. The record shows that on 14 August 2017, the Applicant became a permanent resident of the United States. As of that date, she was no longer eligible to receive the benefits and entitlements normally paid to international staff members working for the Organization in the United States.

66. The Tribunal recalls that in August 2016, the Applicant had also signed the USCIS Form I-566 requesting the change of her status from that of a "non-immigrant" G-4 visa holder to that of an "immigrant" and permanent resident in the United States. Having examined copies of the Form P.45 that the Applicant signed in February 2019 and May 2020 to request for the education grant, the Tribunal finds that she clearly knew that as a permanent resident of the United States, she was no longer eligible to receive the benefits and entitlements normally paid to international staff members. This position is supported by the fact that on signing the Form P.45, for example, the Applicant falsely stated that she was still a G-4 visa holder. It is clear that she was aware that if she had stated that she was now a permanent resident of the United States, the Organization would not have paid her the benefits requested.

67. Accordingly, the Tribunal finds that it has been established by clear and convincing evidence that between April 2017 and December 2020, despite not being eligible, the Applicant did in fact submit claims and did receive payments in the total amount of USD130,954.53 for education grant and home leave entitlements.

Did the Applicant provide false information regarding her U.S. visa status between April 2017 and June 2020?

68. It is further asserted in the sanction letter that on at least two occasions between April 2017 and June 2020, the Applicant, in support of her education grant claims, provided false information regarding her visa status in the United States.

69. The Applicant maintains that she relied on the advice she received from the Income Tax Unit reassuring her that "it takes time" for the system to "catch up" with the paperwork; that she could maintain her international staff benefits and entitlements until the Organization's records were updated; that the payments she received for the education grant and home leave travel would not be recovered from her salary; and that she was not liable for income tax payments to the United States Government until her status was changed in the Organization's records. The Applicant also avers that she has not received any international staff benefits from the Organization since becoming a

United States citizen in 2021 and that she expected she would be "allowed to correct any past oversights" through the recovery agreement. However, while she believed she was engaged in good-faith discussions regarding the reimbursement, the Administration had already initiated an investigation against her.

70. The Respondent submits that the material facts underpinning the allegation that the Applicant provided false information regarding her United States visa status in support of her education grant claims "are not disputed". He points out in his closing statement that the Applicant stated in the P.45 forms she submitted in February 2019 and May 2020 that she was on a G-4 visa, but she "knew that this statement was false in view of her earlier acquisition of U.S. permanent resident status" in August 2017.

71. The Tribunal recalls that during the case management discussion ("CMD") on 3 February 2025, the Applicant stated that she had identified her status on the P.45 forms in February 2019 and May 2020 as a G-4 visa holder because the G-4 visa she had previously obtained had not yet expired. However, the Tribunal also observes that on 16 August 2016, the Applicant had filed a USCIS Form I-566 requesting the adjustment of her non-immigrant status, and a USCIS Form I-508 to apply for permanent resident status in the United States and that in August 2017, she received notification that her application was approved. Thereafter, she became a permanent resident of the United States and was no longer on a G-4 visa. Moreover, the USCIS records show that on 3 January 2018, the Applicant re-entered the United States using her permanent resident card and not her G-4 visa.

72. The Tribunal therefore concludes that it has been established by clear and convincing evidence that on at least two occasions between April 2017 and June 2020, the Applicant provided false information regarding her visa status in the United States in support of her education grant claims.

Whether the established facts legally amount to misconduct

73. It is stated in the sanction letter that based on a review of the entire record, the USG/DMSPC concluded that the allegations against the Applicant are established by

clear and convincing evidence and that through her conduct, the Applicant violated staff regulations 1.1(f), 1.2(b), 1.2(q), and staff rules 1.5 and 1.7.

74. Staff regulation 1.1(f) provides that the privileges and immunities enjoyed by staff members of the United Nations are conferred in the interests of the Organization and grants the Secretary-General the exclusive power to decide whether such privileges and immunities may be waived.

75. Pursuant to staff regulation 1.2(b), "[s]taff members shall uphold the highest standards of efficiency, competence and integrity. The concept of integrity includes, but is not limited to, probity, impartiality, fairness, honesty and truthfulness in all matters affecting their work and status".

76. In accordance with staff regulation 1.2(q), staff members "shall use the property and assets of the Organization only for official purposes and shall exercise reasonable care when utilizing such property and assets".

77. Further, as stated at para. 46 above, staff rule 1.5 sets out the obligation of staff members to provide the Secretary-General with relevant and required information regarding any changes affecting their status. This includes any change in their permanent residency status or change in nationality. Staff rule 1.5 also states that staff members are "personally accountable for the accuracy and completeness of the information they provide".

78. Furthermore, under staff rule 1.7, staff members are required to "exercise reasonable care in any matter affecting the financial interest of the Organization, its physical and human resources, property and assets".

79. Moreover, the Tribunal recalls that sec. 5.1 of 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) provides that "staff members intending to acquire permanent resident status in any country other than that of their nationality

or who intend to change their nationality must notify the Secretary-General of that intention before the change in resident status or in nationality becomes final".

80. Additionally, as noted earlier, under sec. 5.2 of ST/AI/2000/19, staff members who are or become permanent residents of the United States are required to sign a waiver of the rights, privileges, exemptions and immunities which would accrue to them as staff members of the United Nations, but under sec. 5.3, "[s]uch staff members must first request permission to sign the waiver" and when a permanent resident card is issued to a staff member, "she or he must take it to the Office of Human Resources Management to be recorded".

81. The Applicant maintains in the application that "[her] actions were neither willful nor deliberate as evidenced by the record and were in line with Staff Rule 1.5(c), and therefore do not amount to misconduct". She argues that she "had a lawful justification for [her] conduct" including the fact that she expected that her lawyer would forward the Form I-508 to the Organization on her behalf. She avers that at every step of the way, she "took proactive actions" in her interactions with her colleagues in OHR and the Income Tax Unit. She also asserts that she relied on the advice she received from staff of the Income Tax Unit who assured her that until her residency status was updated in the Organization's records, she was eligible to continue receiving international staff member benefits.

82. The Applicant further submits in her rejoinder that the "inconsistency in the information provided by different departments within the [O]rganization raises questions about the clarity and consistency of the policies and procedures regarding tax liability and entitlement to international benefits for permanent residents" of the United States.

83. Moreover, in her closing statement the Applicant notes that "in accordance with [her] understanding of the Staff Rules", she was in fact the one who in March 2021 "took the initiative" to inform the Organization of her intention to apply for United States citizenship.

84. The Respondent contends in his reply that the Applicant's conduct, "as established by the undisputed facts, amounts to serious misconduct". According to the Respondent, this "involved substantive violations of multiple Staff Regulations and Rules that ultimately adversely reflect on her integrity". He argues that by signing the waiver of the rights, privileges, exemptions and immunities pertaining to her office, the Applicant violated staff regulation 1.1(f) and that her action "constitutes an unlawful exercise of the Secretary-General's exclusive political prerogative" because "she waived what was not hers to waive".

85. The Respondent further asserts that the Applicant's failure to inform the Organization of her changed residency status in the United States, "despite several opportunities to do so", was a "severe" breach of her obligation under staff rule 1.5, which provides that staff members "shall be held personally accountable for the accuracy and completeness of the information they provide". Furthermore, the Respondent submits in his closing statement that "the Applicant engaged in dishonest conduct, thereby irreparably damaging the trust relationship between her and the Organization" and that this "renders her continued employment intolerable".

86. The Tribunal recalls that the purpose of the G-4 visa granted to the Applicant as an internationally recruited staff member based in the United States was to enable her to perform her functions on behalf of the Organization. Consequently, any modification of the Applicant's visa status while working for the Organization in the United States necessarily required, at minimum, that the Organization be notified in a timely manner. The relevant Staff Regulations and Rules along with the Administrative Instruction cited above imposed on the Applicant the obligation to properly notify the Organization of her intention to change her visa and residency status prior to her taking any action in that regard. However, the evidence before the Tribunal shows that the Applicant failed in her obligation to: (a) request he Secretary-General's permission prior to signing the Form I-508 waiver of certain rights, privileges, exemptions and immunities; (b) inform OHR as soon as possible in writing of the date she signed the Form I-508; (c) notify the Organization of her intention to apply for a change in her

residency status in the United States before the change became final; and (d) present her permanent resident card, once it was issued, to OHR for recording.

87. Additionally, the Tribunal observes that not only did the Applicant knowingly and intentionally conceal relevant information about her changed residency status from the Organization, but she also willfully provided false information. For instance, on the copies of the Form P.45 that the Applicant used to apply for the education grant in February 2019 and May 2020, she stated that she was still a G-4 visa holder even though she had been granted permanent resident status in the United States more than a year earlier and had re-entered the United States with her "Green Card" in January 2018.

88. The Tribunal has considered the Applicant's assertion that she expected her lawyer to notify the Organization on her behalf. However, the disclosure obligations under staff rule 1.5 are personal and cannot be passed on to a representative. Each staff member is held "personally accountable" for the accuracy and completeness of the information he or she provides and the failure to comply with this requirement is a clear violation of the rules. As the Appeals Tribunal has stated, "[a] failure by a staff member to comply with his or her disclosure of information obligations under the Charter of the United Nations, the Staff Regulations and Rules or other relevant administrative issuances, or to observe the standard of conduct expected of an international civil servant, is undeniably misconduct" (*Rajan* 2017-UNAT-781, para. 37).

89. The Tribunal has also reviewed a copy of the USCIS Form I-508 and notes that in its Part 2 (Waiver Statement), the Applicant was required, among other things, to make the following declaration: "as I seek to acquire or retain lawful permanent resident status, I hereby waive and understand that I will no longer be eligible for any and all diplomatic rights, privileges, exemptions, and immunities that would otherwise be granted to me under any law or executive order because of my occupational status". The Tribunal considers that by signing and submitting this form in August 2016, the Applicant knew that she would "no longer be eligible" to receive any of the benefits or entitlements that would otherwise accrue to her by virtue of her status as an

international civil servant. Thus, she intentionally refrained from informing the Organization of her changed status in order that she could improperly continue receiving those benefits.

90. Based on the foregoing, the Tribunal finds that the Applicant violated staff regulation 1.1(f) by waiving the privileges and immunities conferred on her in the interests of the Organization without the prior permission of the Secretary-General. She violated staff regulation 1.2(b) by failing to uphold the highest standards of integrity and by demonstrating a lack of honesty and truthfulness in matters affecting her work and status. She also violated staff regulation 1.2(q) by failing to exercise reasonable care when utilizing the Organization's property and assets, including the funds she wrongfully received as education grant and home leave payments when she was not eligible to receive them. Further, the Applicant violated staff rule 1.5 by failing to provide the Organization with relevant and required information and by failing to promptly notify the Secretary-General, in writing, of the change affecting her residency status in the United States. Finally, the Applicant violated staff rule 1.7 by failing to exercise reasonable care in a matter affecting the financial interests of the Organization through her submission of claims to receive financial benefits for which she was no longer eligible. These actions were "contrary to the professional standards of conduct expected of an international civil servant of the United Nations" (*Kavosh* 2025-UNAT-1550, para. 125).

91. Accordingly, the Tribunal finds that the established facts in this case legally amount to misconduct on the part of the Applicant.

Whether the sanction is proportionate to the offence

92. According to the sanction letter, after taking into account mitigating and aggravating factors, the USG/DMSPC decided to impose on the Applicant the disciplinary measure of separation from service with compensation *in lieu* of notice, and without termination indemnity, in accordance with staff rule 10.2(a)(viii).

93. The Applicant submits in the application that "it is not clear what facts led the Administration to apply such a disproportionate and harsh sanction, so long after the alleged misconduct and even as the alleged error was being mitigated". She also asserts that "similarly situated staff members have not been terminated from service for issues concerning change in immigration status while receiving benefits which may be due to the conflicting language in Rule 1.5(c)". Moreover, she argues that "[t]here was not in fact any loss to the [United Nations] as alleged, and in fact […] the [United Nations] had absolved itself from paying the Applicant's taxes".

94. The Applicant also states that the Administration "changed what is an administrative measure to correct an error, into a 'disciplinary' matter in order to create a cause to unfairly justify termination of [the Applicant's] permanent appointment while absolving itself of its own responsibilities toward [her] for reimbursement of taxes". She maintains that despite her "good-faith commitment" to reimburse the payments she was not eligible to receive, she was "unfairly separated". She therefore requests "an award for moral damages as well as compensation for losses [she has] incurred due to involuntary termination prior to retirement with regards to termination indemnity and pension benefits".

95. In her closing statement, the Applicant argues that the decision to terminate her employment "was neither proportionate nor procedurally correct as [both parties] had already come to an agreement for recovery which had been going on for close to 21 months [February 2022-November 2023], and therefore was unlawful".

96. On his part, the Respondent argues in his reply that the seriousness of the Applicant's misconduct "warrants the imposition of the disciplinary measure of separation from service". In his view, the Applicant's dishonest conduct, in and of itself, justifies the decision to terminate her employment relationship with the Organization. This decision is not arbitrary and is "consistent with the Secretary-General's past practice in cases involving failings in integrity, including submission of inaccurate or false information in entitlement claims". Moreover, "in making her decision, the USG/DMSPC considered all relevant factors, including aggravating and

mitigating factors, attending the misconduct". For instance, while the Applicant's long service with the Organization was considered a mitigating factor, this was not sufficient to offset the weight of the "multiple aggravating factors found to be present in her case". These included the Applicant's actions resulting in several violations of the Staff Regulations and Rules; her engagement in repeated misconduct; and her unreasonable delay in updating her residency status resulting in significant financial loss to the Organization.

97. Moreover, the Respondent asserts in his closing statement that the USG/DMSPC's decision to recover the financial loss from the Applicant's final entitlements is in line with the Organization's legal framework. Under staff rule 10.1(b), where it is established that a staff member's conduct was willful or reckless and resulted in financial loss to the Organization, the staff member may be required to reimburse the Organization either partially or in full. "This decision is also in line with sections 1(a), 2.2 and 3.1 of ST/AI/2009/1 [Recovery of overpayments made to staff members] and Staff Rule 3.16(d)(ii)".

98. The Tribunal is of the view that in light of the severity and the repeated nature of the Applicant's misconduct, the disciplinary measure of separation from service with compensation *in lieu* of notice, and without termination indemnity, imposed on her in accordance with staff rule 10.2(a)(viii), was not disproportionate. It is clear from staff regulation 1.2(b) cited above that staff members are required to uphold the highest standards of integrity, and this includes probity, impartiality, fairness, honesty and truthfulness "in all matters affecting their work and status". The evidence before the Tribunal shows that on multiple occasions, the Applicant betrayed a serious lapse of integrity not only by failing to disclose relevant and required information to the Organization, but also by willfully providing inaccurate or false information. As the Appeals Tribunal has consistently stated, "any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal". (See, for instance, *Rajan*, para. 37; *Payenda* 2021-UNAT-1156, para. 38; *Saleh* 2022-UNAT-1239, para. 33).

99. The Tribunal is also satisfied that in arriving at the contested decision, the USG/DMSPC considered mitigating factors such as the Applicant's length of service and her willingness to enter into a repayment agreement with the Organization. However, the Tribunal further notes that in the USG/DMSPC's view, these were significantly outweighed by the aggravating factors, including the repeated nature of the Applicant's misconduct and the duration over which she concealed relevant and required information from the Organization.

100. The Tribunal therefore finds that the sanction was proportionate to the offence and finds no reason to interfere with it.

Whether the staff member's due process rights were respected

101. It is asserted in the sanction letter that the Applicant's "procedural fairness rights were respected throughout the investigation and disciplinary process", that she was given the opportunity to respond to the allegations against her, and that she was informed of her right to seek the assistance of the Office of Staff Legal Assistance or private counsel. The annex to the sanction letter outlines the steps taken during the investigation and the disciplinary process.

102. In her application, the Applicant states that the OIOS investigation "focused on inculpatory and not exculpatory information and failed to interview one or more persons who could have substantiated the fact that an administrative matter was being turned into a disciplinary one intentionally maliciously and *ultra vires*". She submits that she had engaged in "good-faith conversations" with Human Resources Partners and staff members of the Income Tax Unit who provided her with guidance to sign a new waiver in 2021 to "remedy the unintentional situation surrounding the signing of [her] initial Form I-508" in 2016. She further argues that "[t]here was not in fact any loss to the [United Nations] as alleged, and in fact the [United Nations] had absolved itself from paying the Applicant's taxes".

103. The Applicant also questions "whether the Secretary-General had the authority and acted in good faith in terminating [her permanent appointment] contrary to Staff

Rule 13.1(a)". Additionally, she asks whether the decision to separate her from service was "malicious, tainted with bad faith, extraneous factors, abuse of authority, or any other vitiating factors". In her view, the Organization appears to have "a policy of selective enforcement of residency rules, since similar errors have not resulted in dismissal of other staff members". She alleges that the Administration "changed what was an administrative measure to correct an error, into a 'disciplinary' matter in order to create a cause to unfairly justify termination of [her] permanent appointment while absolving itself of its own responsibilities toward […] the staff member for reimbursement of taxes".

104. It is the Applicant's submission that it was unfair for the Administration to decline to use the initial Form I-508 that she had signed on 16 August 2016 to cover her tax liability for the period from 2017 to 2020, but to then use the same document "to justify recovery of those international benefits" that the Applicant received during the period after she became a permanent resident of the United States, including the education grant and home leave entitlement payments.

105. In her closing statement, the Applicant contends that "the contested decisions were both procedurally flawed and substantively unjust" and that her case is connected to the Organization's "historical malice" towards her in relation to a "previous matter". She also questions the "legitimacy" of the actions undertaken by a former Human Resources Partner who was brought back from retirement and was tasked with handling the Applicant's case in this instance. She submits that OIOS deliberately failed to interview this retiree who could have been "a crucial witness in the investigation". It was this Human Resources Partner who in May 2021 requested the Applicant to sign a new Form I-508 despite the fact that the original one she had signed in August 2016 could have been obtained from her lawyer.

106. Finally, the Applicant considers that it was "notable" that OIOS was able to find and interview her lawyer even though she had not been requested to provide his contact information. She surmises that OIOS must have retrieved the contact information from the original Form I-508 waiver that the lawyer had submitted to the

Organization on her behalf in 2016, but the Administration still required her to sign a new waiver with a new date in "an attempt to give itself 'cover' for its own errors". As a consequence, she has ended up "paying the full price for what was also an administrative error".

107. On his part, the Respondent submits in his reply that the USG/DMSPC's decision to separate the Applicant from service was "reasonable, fair, legally and procedurally correct, and proportionate". He asserts that "[t]he Applicant's procedural fairness rights were respected throughout the investigation and disciplinary process". In the Respondent's view, "[n]o substantial procedural irregularities that will render the Applicant's separation from service unlawful attended the investigation and disciplinary process". For instance, during the investigation, the Applicant was interviewed and asked about material aspects of the case, and she had the opportunity to submit additional written statements relating to matters for which she was interviewed. During the disciplinary process, the Applicant was informed of the allegations against her and was provided all the documentation in support of the allegations. Moreover, the Applicant was afforded the opportunity to comment on the allegations and was granted an extension of time to submit her comments. She was also informed that she had the right to seek the assistance of counsel, and accordingly engaged an external counsel to assist her in the preparation of her comments. In making the contested decision, the USG/DMSPC took into consideration the Applicant's statements made during the investigation as well as the comments she submitted in response to the allegations.

108. The Tribunal recalls that after receiving the report of possible misconduct implicating the Applicant in June 2021, OIOS opened a formal investigation and started collecting evidence. OIOS interviewed the Applicant as part of the investigation and gave her the opportunity to present her side of the story. On 27 March 2023, OIOS finalized its investigation report and referred the Applicant's case to OHR for appropriate action. On 18 July 2023, the Applicant was presented with formal allegations of misconduct and invited to respond. After requesting and receiving an

extension of time, she submitted her comments on the allegations on 25 September 2023. On 11 December 2023, the Applicant received the sanction letter imposing on her the disciplinary measure of separation from service with compensation *in lieu* of notice, and without termination indemnity.

109. The Tribunal finds nothing in the record of the present case to substantiate the Applicant's assertion that the investigation into her misconduct and the disciplinary process were orchestrated by agents of the Administration seeking to harass or to retaliate against her on account of her role in the Staff Union or her involvement in previous litigation against the Administration. The Tribunal is equally unpersuaded by the Applicant's argument that her agreement to the recovery of entitlement payments should have precluded the Organization from holding her accountable for her misconduct. The fact that she agreed to reimburse the Organization for the education grant and home leave payments she received does not cancel the fact that she was ineligible to receive those payments in the first place. Similarly, the Tribunal does not consider that the failure by OIOS to interview one Human Resources Partner affected the outcome of the investigation and disciplinary process, as the weight of evidence on record points clearly to the Applicant's misconduct.

110. Based on the foregoing, the Tribunal is satisfied that Applicant's due process rights were respected during the investigation and the disciplinary process.

Conclusion

111. The application is dismissed in its entirety.

(Signed)

Judge Francis Belle

Dated this 30th day of July 2025

Entered in the Register on this 30th day of July 2025

(Signed)

Isaac Endeley, Registrar, New York