



Before: Teresa Bravo

Registry: Geneva

Registrar: René M. Vargas M.

WAEZI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION PENDING
MANAGEMENT EVALUATION**

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Yehuda Goor, AAS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a photographer with the Strategic Communications Service, United Nations Assistance Mission in Afghanistan (“UNAMA”), filed an application for suspension of action of the decision to not renew his appointment beyond 30 June 2022, unless he reported for duty in the country office by 1 July 2022. The Applicant further disputes his Personal Security Risk Assessment (“PSRA”).

Facts

2. On 5 June 2022, the Applicant was informed by the Chief of Human Resources Officer (“CHRO”), UNAMA, that he needed to report for duty in Kabul by 1 July 2022, otherwise his contract would not be renewed, and he would be separated from UNAMA.

3. After some back and forth communications between the Applicant and the CHRO, he was advised on 23 June 2022, that his Special Leave Without Pay (“SLWOP”) would end on 30 June 2022, and that he needed to inform Human Resources of his decision on returning to work, or not. He was also advised that he was not entitled to any additional remuneration in relation to his security evacuation dated August 2021.

4. On 24 June 2022, the Applicant replied to the CHRO requesting referral to the Management Evaluation Unit (“MEU”) for “both the remuneration aspect and the issue of my safety should I return to Afghanistan”.

5. On 30 June 2022, the Applicant filed a motion for interim measures. The Tribunal noted that the Applicant’s intention was to suspend the implementation of an administrative decision. Hence, the filing should have been an application for suspension of action pending management evaluation. Accordingly, the Applicant was instructed to correct his application and file the missing documents, which he did later on the same day.

6. On the same day, the Applicant also filed a management evaluation request of the contested decision.

7. On 1 July 2022, the Tribunal served the application to the Respondent who submitted his reply on 5 July 2022.

Parties' contentions

8. The Applicant argues that the decision not to renew his contract beyond 30 June 2022, is in breach of the Organization's duty of care. He is one of UNAMA's locally recruited staff members evacuated in August 2021 due to security risks. He argues that his well-being and safety are being overlooked as a result of an incorrect security assessment. Thereafter, the Applicant contests the UNDSS decision regarding his return to office and his PSRA in the framework of the United Nations Security Policy Manual ("SPM") that resulted in him not qualifying for Security Evacuation Allowance ("SEA").

9. On the other hand, the Respondent submits that the application is not receivable *ratione materiae* under art. 2.2 of the Tribunal's Statute, as the Applicant's appointment was administratively extended until 31 July 2022. Considering that UNAMA has not taken any administrative decision to separate the Applicant on 30 June 2022, there is no decision to suspend, and, accordingly, the application is moot. In addition, the challenge to the PSRA is also not receivable *ratione materiae* because it does not constitute an administrative decision and it was not subjected to a timely request for management evaluation.

10. Should the Tribunal find the application receivable, the Respondent submits that it lacks merit, as the three cumulative conditions for granting an order for suspension of action under art. 2.2 of the Statute have not been met.

Consideration

Motion for Interim Measures

11. A motion for interim measures under art. 10.2 of the Tribunal's Statute is meant to provide, at any time during the proceedings, temporary relief to either

party where the contested administrative decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. Thus, it is a measure limited to when there are ongoing proceedings before this Tribunal. It is not the instant case. The Applicant is seeking to suspend the implementation of an administrative decision, which can only be determined through an application for suspension of action pending management evaluation under art. 2.2 of the Tribunal's Statute.

12. In light of this material error in filing, the Registry advised the Applicant to immediately correct his application, which he did by filing an application for suspension of action pending management evaluation.

13. Therefore, the Applicant's motion for interim measures is rejected and the Tribunal will only examine his application for suspension of action pending management evaluation.

Motion for suspension of action pending management evaluation

14. Art. 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage. These requirements are cumulative, and the burden of proof rests on the Applicant.

15. In this case, the Respondent objects to the receivability of the application. He argues that there is nothing to suspend since the Applicant was granted an administrative extension of his contract until 31 July 2022, and that the PSRA is not an administrative decision which in any case, it was not subjected to a timely management evaluation request.

16. Having examined the evidence on record, the Tribunal notes that the Applicant's contract was renewed effective 1 July 2022 until 31 July 2022. Thereafter, there is no decision to suspend, and accordingly, the application is not receivable on lack of material grounds.

17. In addition, the Tribunal underlines that a management evaluation request is one of several mandatory and cumulative requirements linked to applications for suspension of action, as well as for applications on the merits. It is for the Applicant to comply with this requirement.

18. Concerning the Applicant's challenge to the PSRA and the fact that he did not receive SEA, the Tribunal notes that these issues are not reviewable under an application for suspension of action because there is nothing to suspend in this regard. The legality of those decisions, if receivable, can only be determined in an application on the merits following a management evaluation request. For this, the Tribunal advises the Applicant to seek legal assistance.

Conclusion

19. In view of the foregoing, it is ORDERED THAT the application is rejected.

(Signed)

Judge Teresa Bravo

Dated this 7th day of June 2022

Entered in the Register on this 7th day of June 2022

(Signed)

René M. Vargas M., Registrar, Geneva