



Before: Judge Eleanor Donaldson-Honeywell

Registry: Nairobi

Registrar: Abena Kwakye-Berko

KHAN

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

ORDER ON CASE MANAGEMENT

Counsel for the Applicant:

Self-represented

Counsel for the Respondent:

Marisa MacLennan, UNHCR

Zuzana Kovalova, UNHCR

Introduction

1. The Applicant is a staff member of the United Nations High Commissioner for Refugees (“UNHCR”).

2. He filed an application on 7 September 2020 to contest the following decisions: (i) non-authorization of his medical evacuation when he was acutely ill; (ii) non-authorization for an escort to accompany him during his medical travel; (iii) denial of security evacuation allowance for his family; and (iv) failure to convert his administrative status to security evacuation following his medical travel.

3. The Respondent filed his reply to the application on 12 October 2020 moving the Tribunal to dismiss the application on jurisdictional grounds as it was not timely and in any event the decision was lawful and justified on the merits.

4. The Applicant filed comments in response to the Respondent’s reply on 18 October 2020.

5. On 21 September 2021 at a scheduled case management discussion (“CMD”), the Tribunal issued Order No. 184 (NBI/2021) for management of these proceedings. The Tribunal explained why it considered this matter suitable for alternative dispute resolution, which would allow for an amicable conclusion based on factors not limited to the regulatory framework.

6. The parties had previously engaged in some *inter partes* discussions and further efforts were encouraged. Counsel for the Respondent was directed to effect further relevant disclosures to the Applicant and to seek instructions from her client on i) whether he is amenable to this matter being resolved *inter partes* or ii) for it to be referred to the Office of the United Nations Ombudsman and Mediation Services (“UNOMS”) for their assistance in resolving this dispute.

7. The Respondent complied with both directions. The further disclosure was filed by submission dated 24 September 2021. At paragraph 9 of the submission the Respondent sought leave to amend his reply to correct the statement made therein at paragraph 27 that “relevant facilities were not available in Sudan.”

8. By motion filed on 27 September 2021, the Applicant sought permission to file comments in response to the Respondent's submission.

9. On 1 October 2021 the Respondent filed a submission informing the Tribunal that he respectfully declines to resolve this matter *inter partes* or with the assistance of the Ombudsman.

Considerations and Order

10. The Tribunal takes note of the position taken by the Respondent. As mediation can only effectively be engaged in when *both* parties are willing, the Respondent's submission on this issue leaves litigation as the only available option.

11. The Tribunal will therefore proceed to determination of this application.

12. Having reviewed the submissions in the application, the Respondent's reply and the Applicant's comments included in his motion filed on 18 October 2020, the Tribunal considers that this case can be determined by Judgment on Receivability based on the documents on record. This is so because these submissions by both parties have comprehensively addressed the issue of receivability.

13. There will be no determination on the merits at this stage.

14. Neither the Applicant nor the Respondent have provided sufficient basis for grant of the motions referred to above which were filed after the CMD.

15. The Tribunal therefore Orders as follows:

- a) The Respondent's motion dated 24 September 2021 to amend his reply is dismissed;
- b) The Applicant's motion dated 27 September 2021 seeking leave to comment in response to the Respondent's disclosure submission is dismissed; and
- c) The Tribunal will proceed to determination of this case based on the documents on record.

Case No. UNDT/NBI/2020/73

Order No. 210 (NBI/2021)

(Signed)

Judge Eleanor Donaldson-Honeywell

Dated this 5th day of October 2021

Entered in the Register on this 5th day of October 2021

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi