



UNITED NATIONS DISPUTE TRIBUNAL

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Case No.: UNDT/NBI/2022/112  
Order No.: 164 (NBI/2022)  
Date: 18 November 2022  
Original: English

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**Before:** Judge Agnieszka Klonowiecka-Milart  
**Registry:** Nairobi  
**Registrar:** Abena Kwakye-Berko

ROESKE

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON A MOTION FOR  
EXTENSION OF TIME TO FILE  
APPLICATION**

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**Counsel for the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
UNHCR

## Introduction

1. The Applicant serves as a Senior Protection Officer at the P-4 level with the United Nations High Commissioner for Refugees (“UNHCR”).
2. On 14 November 2022, she filed a motion for extension of time to file an application, by which she plans to challenge her supervisor’s decision to reject her request for telecommuting.<sup>1</sup>

## Facts

3. On 1 January 2022, the Applicant was offered a fixed-term appointment (“FTA”) with UNHCR at the Bujumbura, Burundi duty station. The FTA end date was 31 December 2024.<sup>2</sup>
4. On 23 February 2022, the Applicant was appointed on a fast track to the UNHCR duty station in Pemba, Mozambique.<sup>3</sup>
5. On 28 March 2022, the Applicant arrived at the Pemba duty station and on 28 April 2022, went on Rest & Recuperation (“R&R”) and annual leave (“AL”).<sup>4</sup>
6. On 11 May 2022, during a WhatsApp call with her supervisor, the Applicant requested authorization to telecommute from the United States of America (“USA”), invoking serious and compelling personal circumstances, namely a serious sickness of her immediate family member.<sup>5</sup>
7. The same day, on 11 May 2022, the Applicant’s supervisor rejected the Applicant’s request.<sup>6</sup>

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<sup>1</sup> Motion, section VII, page 4.

<sup>2</sup> Annex entitled *Roeske\_3 year-Contract Letter\_2022\_2024* (Letter of Appointment).

<sup>3</sup> Annex entitled *HR special work const. request msg* (email dated 10 June 2022 from Jose Fischel Andrade).

<sup>4</sup> *Ibid.*

<sup>5</sup> Annex entitled *220710\_Roeske\_Management Evaluation Request\_Telecommuting\_Final*.

<sup>6</sup> *Ibid.*, see also annex 2.

8. On 23 May 2022, the Applicant wrote to the UNHCR Chief of Staff Welfare Section (“CSWS”) requesting for a special constraint for an initial period of six months and a reduction in her Standard Assignment Length (“SAL”) to release her from her assignment at the Pemba duty station.<sup>7</sup>The Applicant further requested the UNHCR Special Constraints Panel (“SCP”) and the Division of Human Resources (“DHR”) to consider her requests for telecommuting from the USA. The Applicant requested DHR to take into account her special constraint and approved leave plan until 10 June 2022. In the alternative, she asked to be granted Special Leave with Full Pay (“SLWFP”).<sup>8</sup>

9. By email dated 10 June 2022, the Head of the UNHCR sub office Pemba asked the Applicant if she planned to return to work from annual leave on 13 June 2022 or if she was considering placement on Special Leave Without Pay (“SLWOP”) so that the operation could search for a candidate on a temporary appointment before advertising her position.<sup>9</sup>

10. By a letter dated 21 June 2022, the SCP recognized the Applicant’s situation as a special constraint. The SCP recommended shortening the Applicant’s SAL as of 1 July 2022 and to consider her eligibility for positions or temporary assignments with convenient travel connections to the USA or for those that could be undertaken remotely from the USA.<sup>10</sup> The SCP informed the Applicant that she would be placed on SLWOP for any periods of non-employment unless reassignment or on TA.<sup>11</sup>

11. On 10 July 2022, the Applicant submitted her request for a management evaluation of the contested decision (“MER”).<sup>12</sup>

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<sup>7</sup> Annex entitled *Special constraint Roeske* (request for special constraint and SAL reduction dated 23 May 2022).

<sup>8</sup> *Ibid.*

<sup>9</sup> Annex entitled *HR Special Work Constraint Request*.

<sup>10</sup> Annex entitled *SCP letter Roeske, Special Constraints Panel recommendation* dated 21 June 2022.

<sup>11</sup> *Ibid.*

<sup>12</sup> Motion, section VI, page 4, para 1. Annex *Roeske Management Evaluation Request*.

12. On 11 November 2022, the management evaluation entity in the UNHCR Deputy High Commissioner's Office ("HQME") replied to the Applicant's query informing that her MER was still under consideration.<sup>13</sup>

13. On 14 November 2022, the Applicant filed the present motion for extension of time to file an application.<sup>14</sup> She requested 90 calendar days from the date she will have received the management evaluation response or 90 calendar days from 22 November 2022, whichever is earlier.<sup>15</sup> She motivates her motion by the desire to respond to the arguments of the HQME.

### **Consideration**

14. Article 8.1(d)(i) of the UNDT Statute, provides that, the application must be filed within the following deadlines:

- a. Within 90 calendar days of the applicant's receipt of the response by management to his or her submission; or
- b. Within 90 calendar days of the expiry of the relevant response period for the management evaluation if no response to the request was provided. The response period shall be 30 calendar days after the submission of the decision to management evaluation for disputes arising at Headquarters and 45 calendar days for other offices.

15. The Applicant was notified of the contested decision on 11 May 2022. She requested management evaluation on 10 July 2022, on the last day of the deadline, and thus, should have received a reply on or around 24 August 2022 at the latest. She has not received any response on the substance. Whereas the HQME notified that her request was still under consideration, such notification had no impact on the time limit to file an application.

16. The Tribunal considers that the deadlines established under art. 8 of the UNDT Statute and the corresponding staff rule 11.2 are generous and allow for a thoughtful

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<sup>13</sup> Annex, *HQME, Management Evaluation DHC, Response*.

<sup>14</sup> Motion, section VII, page 4.

<sup>15</sup> *Ibid.*

preparation of an application in all kinds of cases and by staff members serving on all levels. Whereas the Tribunal finds it regrettable that HQME failed to respond, it notes, however, that since 24 August 2022, the Applicant must have taken into account that the management evaluation would not follow, and that she may need to file her application in the absence of it. The Applicant's case is not complex factually, and she managed to present her argument eloquently in the MER. Seeking, virtually in the last moment, and without any exceptional factor intervening, to have the time to file an application literally doubled, is baseless.

**Order**

17. The motion is refused.

*(Signed)*

Judge Agnieszka Klonowiecka-Milart

Dated this 18<sup>th</sup> day of November 2022

Entered in the Register on this 18<sup>th</sup> day of November 2022

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi