



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2015/046

Judgment No. UNDT/2015/049

Date: 11 June 2015

Original: English

Before: Judge Nkemdilim Izuako

Registry: Nairobi

Registrar: Abena Kwakye Berko

TRUDI

v.

SECRETARY GENERAL  
OF THE UNITED NATIONS

JUDGMENT ON RECEIVAB D56.8 Tm 2TJ ET Q Q q BT

## Introduction

1. In an Application dated 13 March 2015, the Applicant contests the decision to withdraw an offer of appointment issued by the Office for the Coordination of Humanitarian Affairs (OCHA).

2. The Respondent filed a Reply to the Application on 16 April 2015. The Respondent argued that the Application is not receivable as the Applicant is not a staff member of the Organization.

3. The Tribunal, in accordance with art 9 of the Tribunal's Rules of Procedure, has determined that an oral hearing is not required in determining the preliminary issue of receivability and will rely on the Parties' pleadings and written submissions.

## Procedure

4. On 4 February 2015, by Order No. 150 (NBI/2015), the Applicant was directed to file her submissions in response to the issue of receivability by 2 May 2015.

5. On 10 May 2015, the Applicant informed the Tribunal that she had addressed the issue of receivability in her Application and has no further observations.

## Facts

6. On 4 June 2014, OCHA issued a one-year offer of appointment to the Applicant as a Humanitarian Affairs Officer at the P4 level in Syria. The offer was subject to medical and security clearances, security training certificates, confirmation of diplomas and satisfactory reference checks.

7. On 10 June 2014, the Applicant accepted this offer.

8. A laissezpasser was issued to the Applicant as a United Nations official in July 2014.

9. On 6 July 2014, OCHA asked the Applicant to send various documents so that an application for a Syrian visa could be made. She submitted her visa application to the Office of the Regional Coordinator in Damascus on 6 July 2014 and was informed the next day that it had been submitted to the Ministry of Foreign Affairs.

10. On 29 October 2014, OCHA informed the Applicant that the offer of appointment was withdrawn due to the refusal of a visa by the Syrian authorities.

11. The Applicant requested management evaluation of this decision on 30 November 2014. On 20 January she received a response from the Under Secretary General for Management, upholding the decision to withdraw the offer and awarding compensation of one month net base salary at the P-3 level.

Respondent's submissions on receivability

12. Under its Statute, the Dispute Tribunal's jurisdiction is limited to ruling on applications filed by staff members or former staff members of the United Nations.

13. The Dispute Tribunal lacks jurisdiction to hear the Application because the Applicant is not a staff member of the Organization. Pursuant to staff rule 4.2, the effective date of appointment of a staff member is either the date he or she enters into official travel status to assume their duties or, if no official travel is involved, the date on which the staff member reports for duty. The Applicant never entered into official travel to the duty station and she never received and signed a letter of appointment, which are preconditions to being appointed as a staff member.

14. By operation of staff r



denies the potential staff member a working visa, he or she would not be permitted to lawfully work in the duty station. As the application to secure a visa for the Applicant was denied, she did not fulfil this condition and is therefore not legitimately entitled to similar rights as staff members.

18. The Respondent submits that in accepting the Management Evaluation Unit's recommendation to uphold the contested decision, the Secretary General





sense. Access to the new system of administration of justice for persons who formally are not staff members must be limited to persons who are legitimately entitled to similar rights to those of staff members. This may be the case where a person has begun to exercise his or her functions based on acceptance of the offer of employment. Having expressly treated this person as a staff member, the Organization must be regarded as having extended to him or her, the protection of its administration of justice system. This may also be the case where the contracting party proves that he or she has fulfilled all the conditions of the offer and that his or her acceptance is unconditional, i.e. no issue of importance remains to be discussed between the parties.

29. Applying the test to the present case, the Tribunal finds that the Applicant's acceptance of the offer of employment was unconditional and that the OCHA Administration expressly treated the Applicant as a staff member. As submitted by the Applicant, laissezpasser was issued to her as a "UN official"



Entered in the Register on this<sup>th</sup> day of June 2015

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Abena KwakyeBerko, Registrar, Nairobi