TABLE OF CONTENTS

4. Detailed [illegible]

8. The Tribunal has reviewed the application in the light of the Statute and Rules of the Tribunal and the jurisprudence of the Appeals Chamber.

9. On 15 April 2016, the Applicant filed an application containing various pleas. The Respondent filed his answer on 15 June 2016.

Facts

Employment with the Organization

10. The Applicant joined the Organization in 1994 at the P-3 level. On 20 May 2004, the Applicant was promoted to the P-4 level effective 30 June 2009.

11. The Applicant held the post of Legal Officer, P-4, in the Office of Legal Affairs, Treaty Section, from 20 April 2014 until 6 February 2015. Effective 1 February 2015, the Applicant was reassigned to the post of Legal Officer, P-4, in the Office of Legal Affairs, Codification Division.

15 August 2013 report of the ACABQ (A/68/7)

12. On 15 August 2013, the Advisory Committee on Administrative and Budgetary Questions ("ACABQ") issued its report A/68/7 (First report on the proposed programme budget for the biennium 2014-2015), in which it made observations and recommendations on, inter alia, the budget of DGACM.

13. At para. I.107, the report stated that the ACABQ's attention had been drawn to a number of instances where staff members had been temporarily assigned to higher level functions for periods of time in excess of 12 months. The ACABQ was informed that OHR was

Abolishments

I.106 A [illegible] 99 [illegible]
[illegible] 4 [illegible] 56 [illegible]
[illegible] 39 [illegible]
[illegible], as [illegible]

…

(c) [illegible] 39 [illegible]
[illegible] 22 [illegible] [illegible]
[illegible]

…

I.107 [illegible]
[illegible]
[illegible]
[illegible]
s

[illegible] 468/246 [illegible]

5. A [illegible]

Secretary-General's approval of termination of appointments

16. By [illegible] 31 December 2013, [illegible] Secretary-General [illegible] Chief of Staff/DMSPS dated 30 December 2013, [illegible] Staff Rule 9.3(a)(i) [illegible] Staff Rule 9.6(a)(i)."

Although the Secretary-General [illegible] Article 34 of [illegible] Staff Regulations [illegible] Staff Rules [illegible]

Termination letter of 31 December 2013

17. By letter dated 31 December 2013, [illegible] DGACM, the Applicant was informed that:

> [illegible] 27 December [illegible] Secretary-General [illegible] 2014-2015, [illegible] 2 of [illegible] of 59 posts in the Registry [illegible] Mechanism [illegible] Department [illegible]

DGACM

Termination of permanent appointment

23. The Applicant's employment was terminated on 20 April 2014, allegedly because he was found to be under the age of 18 years when he was appointed. The Applicant's position is that he was not under the age of 18 years when he was appointed and that the termination of his employment was therefore unlawful. The Applicant seeks reinstatement and compensation for lost salary. The Application was filed on 15 September 2014, and the Applicant's Statement of Case was filed on 15 October 2014.

Applicant's submissions

24. The Applicant's submissions can be summarised as follows:

a. The Applicant was employed by the Government of Vanuatu on a permanent basis as a Customs Officer on 23 December 1999, which was confirmed by the Public Service Commission's Decision No. 54/249. The Applicant's employment was terminated by the Director General of the Ministry of Finance and Economic Management (DGACM) on 20 April 2014 allegedly because he was found to be under the age of 18 years when he was appointed by the Public Service Commission's Decision No. 54/249;

b. The Applicant's employment was terminated in breach of section 13.1(a),

[illegible] 2014-2015 [illegible] 31 Dec 2013 [illegible]
2 July 2014, DGACM [illegible] 19 [illegible]
[illegible]
[illegible]
Al[illegible]e 19 [illegible]
[illegible]
[illegible]

e In 2013, DGACM [illegible]
[illegible]
7 Feb 2014, [illegible]
[illegible] G-6 [illegible]
[illegible] DGACM [illegible]

f [illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]
[illegible]

g The Appeals Chamber considers that

h The Tribunal in DGACM in 2014 and

GA in May 2013, after

Applicable law

Applicable law on termination of permanent appointments

26. Article 1.2(c)

General rights and obligations

(c) The Tribunal

27. [illegible]

Regulation 9.3

(a) [illegible]

(b) [illegible]

28. [illegible]

Rule 9.6

Termination

Definitions

(a) [illegible]

Consideration

Receivability

35. [illegible]

36. [illegible]

37. [illegible]

Overview of relevant case law

38. As already noted in the Appellant's grounds of appeal, in *Masri* 2016-UKUT 626 (para 30), it was held that the Tribunal is not entitled to allow an appeal on a ground which was not relied upon by the Appellant. However, in the Appellant's skeleton argument for the hearing before me, reliance was placed on *Dumornay* [2010] UKUT 00004 (IAC) and on the United Nations Children's Fund ("UNICEF"), which was granted permission to intervene in that appeal. At paragraphs 30-34 of the skeleton argument, it was submitted that the Tribunal was entitled to allow an appeal on a ground not relied upon by the Appellant. UNICEF submitted that:

> … Decision-makers and courts must take into account the best interests of the child as a primary consideration when making decisions that affect children, including when they are considering whether to grant permission to appeal …

40. In *Bye* [2009] UKUT 00083 (IAC), the Tribunal found that the Upper

[illegible]

bona fide [illegible]

41. In *Shashaa* [illegible] 2009/034 (against the United Nations Development Programme (UNDP), on 25 [illegible] 27 [illegible] 39, [illegible] UNDP [illegible] [illegible]

42. In *Mistral Al-Kidwa* [illegible] 2011/199 (against UNICEF; on 50 [illegible] 74, [illegible] UNICEF's [illegible]

43. In *Tolstopiatov* [illegible] 2010/147 (against UNICEF; on [illegible] UNICEF [illegible]

[illegible]

48. In *El-Kholy* UNDT/2016/102 [illegible]

52. It is [illegible] 9.6(a), (c) and (e) [illegible] 13.1(d) [illegible]

68. [illegible]

…

89. …

49. In *Hassanin* ND/T/2016/181 …

13.1 … DGACM. … *inter alia*, …

50. In *Tiefenbacher* ND/T/2016/183, …

13.1(c)

Former UN Administrative Tribunal

51. In Judgment No. 85, *Carson* (1962) (UNICEF), the UNAT 8–11 UNAT

52. UNAT In Judgment No. 679, *Fagan* (1994) (UNICEF), the UNAT XI 109.1(c), UNAT

53. In Judgment No 1409, *Hussain* (2008) (quoted with approval in the NDP, the NAT held that section 109.1(c) requires a *bona fide* intention to apply for and obtain permanent residence. The purpose of the requirement is to ensure that the applicant is genuinely committed to living in New Zealand.

54. In Judgment No 910, *Soares* (1998) (quoted with approval in the NDP, the NAT held that the purpose of the IR Act is to regulate the entry of persons into New Zealand. The Act is not intended to provide a means for persons to circumvent the immigration policy of New Zealand (see also Judgment No 447, *Abbas* (1989); Judgment No 1128, *Banerjee* (2003)).

55. A key purpose of the NAT is to uphold New Zealand's obligations under the UNICEF and the NDP, the NAT has adopted a 170 TD.00043 Tc 0 Tw 1 NDP

Ai [illegible] In [illegible] L [illegible] O

56. In *El-Kholy* UNDT/2016/102, the Dispute Tribunal [illegible]

[illegible] Ai [illegible] [illegible]

L [illegible] ("ILOAT").

57. In Judgment No. 1782 (1998), paragraph 11, the ILOAT [illegible]

> [illegible] 110.02(a) [illegible] the United Nations [illegible]
> D [illegible]
> [illegible]
> [illegible]
> [illegible] In
> [illegible] (Judgment [illegible] 346:

63. [illegible] *Gordon* (1953)). [illegible] *Carson* (1962)).

Alleged breach of General Assembly resolution 54/249

64. [illegible] 23 December 1999.

65. [illegible]

> *The General Assembly*,
>
> …
>
> 59. *Requests* [illegible]
>
> 60. *Welcomes* [illegible]
>
> …

62. *Emphasizes* the need for ...

66. The Advisory Committee, in its report of 27 December 2013, ...

67. General Assembly resolution 68/246 ...

The General Assembly,

...

18. *Also endorses*, ... 2014-2015.

68. ... resolution 54/249 ... 14 ... 54/249 ... 62 ... 2000-2001. ... "*should* ..." ... *shall* ... resolution 68/246, ...

27 December 2013, 6 p.m.

71. [illegible] Application [illegible]
Act [illegible]54/249.

Authority to terminate the Applicant's contract

72. [illegible] Application [illegible]
to [illegible] in the Application [illegible]
[illegible]9.3(a)(i) [illegible] [illegible]9.6. However [illegible] [illegible]13.1(a), [illegible]
[illegible]

> (a) A [illegible] [illegible] a [illegible]
> [illegible] 30 June 2009 [illegible]
> [illegible] [illegible]13.3([illegible] e) to 13.4(b) [illegible]
> [illegible]
> Effective 1 July 2009, [illegible]
> [illegible]
> [illegible] [illegible] [illegible]

73. In [illegible] the Applicant [illegible]
[illegible] [illegible]
[illegible]

> 15. [illegible]
> [illegible] of 30 June 2009 [illegible]
> [illegible]
> [illegible] (ie
> [illegible]., [illegible]
> [illegible]9.3([illegible]). [illegible]
> [illegible]
> …
> 17. [illegible]
> [illegible] 30 June 2009 [illegible]
> [illegible]
> [illegible] [illegible]13.1(a), [illegible]

Compliance with the requirements of staff rule 13.1

79. [illegible]

80. [illegible]

[illegible] 11 [illegible] [illegible]/2010/3, [illegible] [illegible] Mr [illegible] [illegible]

85. It is [illegible] the Applicant [illegible] 13.1 [illegible]

86. [illegible] *El-Kholy*, [illegible] the Applicant [illegible]

[illegible]

87. [illegible]

[illegible]

[illegible] As [illegible] *El-Kholy*,

> [illegible] 11.2(c).

90. [illegible] R[illegible] 13.1 [illegible] A[illegible] (ILOAT Judgment No. 3437 (2015)).

91. [illegible] 13.1(c)–(e) [illegible] 10.6(e).

Relief

92. By [illegible] 69/203, [illegible] 18 December 2014 [illegible] 21 January 2015, the General Assembly [illegible] 10.5 of the [illegible]

> 5. As [illegible]
>
> (a) R[illegible] [illegible]

96. [illegible] *Bowen* 2011-UNAT-183, [illegible] *Warren* 2010-UNAT-059 [illegible] (see also *Koh* UNDT/2010/040; *Tolstopiatov* UNDT/2011/012; *Cohen* 2011-UNAT-131). It [illegible]

97. In [illegible] 10.5(a) and (b) of [illegible]

98. As [illegible]

Orders

99. [illegible]

100. [illegible]

101. [illegible]

102. [illegible]

103. [illegible]

(*Signed*)

[illegible]

[illegible]

[illegible]

(*Signed*)

[illegible]