
UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2023/011
Order No.: 029 (NBI/2023)
Date: 6 February 2023
Original: English

Before: Judge Rachel Sophie Sikwese

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ELEAS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

Introduction and procedural history

1. The Applicant, an FS-5 Administrative Assistant at the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo or (“MONUSCO”) based in Entebbe, Uganda, filed an application on 27 January 2023 seeking to suspend the implementation of the decision to withdraw a 7 July 2022 conditional offer of appointment to the position of FS-5 Administrative Assistant with the United Nations Truce Supervision Organization (“UNTSO”), (Job Opening 180602) pending management evaluation.

2. The application was transmitted to the Respondent on 30 January 2023.

Officer for her and her family members' Israeli visa applications.⁴

7. By letter dated 11 January 2023, the UNTSO Chief Mission Support informed the Applicant that the offer of appointment made to her on 7 July 2022 for Job Opening 180602 was withdrawn because the process for the Israeli visa had been unusually lengthy with no guarantee that the visa would be granted.⁵

8. On 17 January 2023, the Israeli Consular Affairs Division informed UNTSO that the Applicant's visa application had been refused.⁶ On the same day, the UNTSO Chief Mission Support confirmed the withdrawal of the offer of appointment based on the Israeli visa denial.⁷

9. On 20 January 2023, UNTSO informed another candidate, who for purposes of this Order is referred to as "CB", that the Head of Department/Office/Mission had selected her for Job Opening 180602.⁸

10. On 24 January 2023, UNTSO acknowledged receipt of CB's continued interest in Job Opening 180602.⁹

11. On 27 January 2023, the Applicant requested management evaluation of the decision dated 11 January 2023 withdrawing the offer of appointment by UNTSO made on 7 July 2022.¹⁰

12. On 2 February 2023, the Tribunal directed

Parties submissions

The Applicant

13. The Applicant case is summarized below.

a. The UNTSO Administration, by its own action, revealed its improper motives when it withdrew the job offer made to the Applicant. The UNTSO Administration decided to withdraw the job offer even before there were clear indications that the Applicant's visa application would be rejected. Rather, the UNTSO

work towards rectifying those defects.

f. The Applicant fails to understand the urgent operational reason to withdraw the offer, given that her position in UNTSO is that of Assistant to the Senior Advisor, a post

The Respondent

14. The Respondent's case is summarized below.

a. The application is not receivable *ratione materiae*. The contested decision has already been implemented and is not capable of being suspended. The Dispute Tribunal lacks jurisdiction, through an application for suspension of action, to order rescission of the contested decision or to order the Applicant's appointment.

b. On 12 January 2023, UNTSO notified the Applicant of the withdrawal of the Offer because of the unusually lengthy visa process and the operational requirement to fill the position as soon as possible. Five days later, upon the Israeli government's rejection of her visa, the Chief of Mission further confirmed to the Applicant of the withdrawal of the offer. The offer was withdrawn on 12 January 2023, when the Chief of Mission notified the Applicant of the withdrawal of the offer due to the delay in Israeli visa issuance. The withdrawal went into effect as soon as it was communicated to the Applicant, and it required no further action on behalf of UNTSO to implement. As such, the withdrawal of the offer cannot be suspended.

c. In the alternative, the withdrawal was implemented upon the selection of an alternative candidate for the advertised job opening. A head of entity may select an alternative candidate in the event a selected candidate does not take up his or her functions. On 20 January 2023, UNTSO notified an alternative candidate of her selection. On 24 January 2023, the alternative candidate acknowledged her selection and confirmed her continued interest and availability for the position. The selection of the alternative candidate was implemented upon the formal notification of that candidate. The implementation of the selection decision creates a legal obligation upon the Organization to appoint the alternative candidate, provided they meet the conditions in the offer of appointment.

d. Should the Dispute Tribunal find the application receivable, it has no merit. The contested decision is lawful. The offer was conditional. Among its explicit conditions, to which the Applicant agreed, were that the offer may be withdrawn, or any contract entered into terminated or cancelled, in the event that a visa was not granted by the relevant authorities. The conditions for the withdrawal of the offer were met. The relevant authorities did not grant the Applicant a visa. The Applicant concedes that her visa clearance took a long time, six months from the time of the offer to the time of the withdrawal of the appointment. The normal release period for a staff member selected from another Mission is 60 days. The UNTSO Head of Mis

Considerations

Legal framework

15. An application for suspension of action pending management evaluation is governed by article 2.2 of the United Nations Dispute Tribunal's Statute providing that;

The Dispute Tribunal shall be competent to hear and pass judgement on an application filed by an individual requesting the Dispute Tribunal to suspend, during the pendency of the management evaluation, the implementation of a contested administrative decision that is the subject of an ongoing management

Applicant's allegations of improper dealings between UNTSO Administration and the Israeli MFA.

23. The Tribunal has noted with concern the Applicant's allegation that "the timing of the Israeli MFA visa rejection email – one day after the Applicant's response – raises the question if the Administration signalled to the Israeli Government that a rejection would be appreciated, so that the Administration could close the matter."¹⁵

24. These are grave allegations which should not be made so trivially. The alleged actions are expressly prohibited under article 100 of the United Nations Charter which stipulates that,

In the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from any government or from any other authority external to the Organization. They shall refrain from any action which might reflect on their position as international officials responsible only to the Organization

25. Further, paragraph 33 of the Standards of Conduct for the International Civil Service (2013)

Israeli MFA's decision-making process in respect of her visa application process. The documents submitted by the Applicant show no evidence of such unlawful interference. The Applicant's contention of improper influence is therefore mere speculation.

27. Counsel for the Applicant's attention is drawn to art. 4.4 of the Code of conduct for legal representatives and litigants in person¹⁷ which states that;

Legal representatives shall maintain 0 0 12 792 reWB T/F1 12 Tf1 0 0 1 135.38 547.78 A*ns sha

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(Signed)

Judge Rachel Sophie Sikwese

Dated this 6th day of February 2023

Entered in the Register on this 6th day of February 2023

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi