

Introduction

1. On 12 September 2023, the Applicant, a staff member of the Department of Operational Support in New York, filed an application in which he contested protect staff members

2. On 3 October 2023, the Respondent filed a motion on receivability in which he challenged the receivability of the application and requested

Facts

First appealed decision

7. By letter dated 5 January 2022, 37 staff members, including the Applicant, requested the Secretary- for action by the United Nations on removing the discriminatory restrictions imposed by host country government on the [United Nations] staff -five miles radius travel restrictions from the Colu -4 Visa renewal time of four months or longer compared to [United Nations] staff members nationals G-4 visa duration of one year or less compared to [United Nations] staff members nationals of other countries; (upon arrival at an airport: many Russian colleagues were escorted to the special US

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

It is more than one year since you received our petition however we have not received any response so far.

The absence of a response from your side for so long shows us that our concerns and requests are being ignored, and the fact of the

Second appealed decision

11. On 28 March 2023, the Applicant emailed AA (a United Nations staff member, name redacted for privacy reasons), copying in BB (another United Nations staff member, name redacted for privacy reasons), stating as follows:

Dear [AA],

Moreover, as I informed you during our meeting, I was approached by persons who stated that they were agents of the Counter Intelligence Division o recruit me to work for them but I did not cooperate with them. I

Host Country Agreement and other relevant legal documents and I am concerned that my non-

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continue to have concerns, we would strongly encourage you to be in touch with the focal point in DSS with any additional information you may have to share. Unfortunately, DOS does not have a mandate to investigate such issues.

24. On 3 May 2023, the Applicant emailed the Deputy Secretary-General and the Chef de Cabinet, copying BB, as follows (emphasis in original copy omitted):

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

I hope this email finds you well.

I am very sorry for bothering you but my current situation forces me to escalate my request to you because I am concerned that I could be subject to retaliatory actions for reporting the attempt of host-country law enforcement to recruit me.

Background:

1. On 28 March 2023 I reported to [AA, title redacted for privacy

In addition, I do not have any concerns regarding my personal physical safety on the [United Nations] grounds.

Therefore, I request that you provide me with name and contact details of the focal point who will help with protection from vindictive retaliatory actions of the host country government.

26. On 9 May 2023, the Applicant emailed the Deputy Secretary-General and the Chef de Cabinet, copying BB, stating as follows:

Your Excellencies, [the Deputy Secretary-General and the Chef de Cabinet],

This is an urgent follow-up to my request below.

March 2023. It has been six weeks since then and to date I have not got any meaningful adequate response to my request for help except for referring me to UNSSS in New York which was useless because:

a. The SSS mandate is to ensure my personal physical safety on the UN grounds only and for me, the UN grounds in New York are the safest place in the USA.

b. The [United Nations] Security and Safety Service could only record my statement but did not have any capacity to conduct a proper investigation with the required forensic research.

c. They would only be able to hand over my case to local law enforcement, which was one of the most probable participants in my case and it would be the same as the handover of the crime investigation to the criminal who had committed that crime.

There is a real threat for me and my family that we could be subject to retaliatory actions from the host-country government which could include delays in the G-4 visa renewal, refusal to renew the G-4 visa, provocation aimed to discredit me by fabricating a criminal case against me or even physical elimination of myself for reporting the attempt of host-country law enforcement to recruit me.

Please, help.

27. On 18 May 2023, AA emailed the Applicant, copying BB and DD, stating as follows:

Dear [The Applicant],

I hope this message finds you well.

After discussions with [Executive Office of the Secretary-General], I am replying to your message to [the Deputy Secretary-General and the Chef de Cabinet]. Regarding the status of your visa, as mentioned to you this week by [two Assistant Secretary-Generals, names redacted for privacy reasons], the issue is being discussed with the host country at the most senior levels and [Office of Legal Affairs], DOS and [Department of Management Strategy, Policy and Compliance] are continuously engaged on this matter not only for Russian nationals but for staff of all nationalities facing the same issue of visa delays. We in DOS are also once again checking on the status of your visa through our own channels.

Regarding your personal safety, as we had previously noted, if you have concerns about your safety you should be in touch directly with DSS. There is no mechanism outside of DSS through which to carry out investigations or provide personal protection. Additionally, from the limited information provided, we understand that DSS have not been able to establish any credible threat to you or your family. sure DSS would be happy to re-engage with you should you have additional information or wish DSS to refer the matter to local law enforcement.

28. On 3 August 2023, the Applicant emailed AA, copying BB and DD, stating as follows:

Dear [AA],

I met today with DSS focal point and he informed me that SSS NY is not aware of any threat and risk

30. On 8 August 2023, the Applicant emailed AA, copying BB, stating as follows (emphasis in the original omitted):

Dear [AA],

In your email on behalf of [the Deputy Secretary-General and the Chef de Cabinet] the limited information provided, we understand that DSS have not been able to establish any credible threat to you or your family .

This means that a specific DSS official provided you with this information.

However, DSS focal point did not agree with these findings and was not aware of these conclusions.

Therefore, I would like to ask you who in DSS provided you with that information?

31. On 8 August 2023, the Applicant emailed AA, copying BB, stating as follows:

Dear [AA],

This is a polite follow-up to my email below.

As a former security professional, I have grounds to doubt the credibility of the information (Probably even in the existence of proper threat and risk assessment which is supposed to be conducted in such cases) in your email rb3(0 612 792 reWgTQ1.00000912 0 612 792 re[(On)re[(d762 792 tyw23 4

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d. [redacted] was informed of the two negative decisions by the Deputy Secretary General, to whom [redacted] email was addressed, and that it was the Deputy Secretary General to whom the latest matters in dispute .

e. It is not the role of the Dispute Tribunal [redacted] fic decisions the Applicant wishes to contest [redacted] indicates the

fails to precisely identify the contested administrative decisions that were allegedly taken on that day or thereafter [redacted] failure to identify the final administrative decisions he disputes deprives the Respondent of mount a defense .

no fact or controversy that is within the subject matter jurisdiction of the Dispute Tribunal .

g. [redacted] allegations of a discriminatory policy of the host country against staff members who are of Russian nationality, are not receivable .

h. [redacted] allegations focus on visa restrictions the Government Russian nationality and on alleged delays in the host government issuing him a visa Organisation by the Government of the United States are not part of the terms [redacted] , referring to *Dolgopolov* 2021-UNAT-109. a visa is a result of an administrative procedure held by a h [redacted] , and [t] Organization cannot be held accountable for any delay of the host country in

issuing a visa , with reference to the Dispute Tribunal in *Mollaoglu* UNDT/2022/125.

i. The Organization

visa request The Organization requested visas for the Applicant and his spouse in January 2023, and the host country granted the request for the visas in May 2023 . The Organization had no control over the time the host country took to conduct its internal policies with respect to the issuance of the visas, or any restrictions the host country imposed on the visas .

j. The Applicant

. This claim is exceedingly general and fails to specify what administrative decision the Organization made that was allegedly unlawful, and had a direct negative impact of appointment or contract of employment . Neither the Dispute Tribunal nor the Respondent should have to speculate as to the specific decision the Applicant wishes to contest .

k. To the extent the Applicant intends for the Application to be a complaint against the Organization for an alleged failure to act in accordance with ST/S

Dispute Tribunal with jurisdiction to adjudicate allegations the Applicant brings against the host country's government .

m. To the extent the Applicant alleges that the host count

for the application was adopted after the appeal judgment and constitutes therefore new legislative measure that could not have been taken into consideration by the Appeals Tribunal. The double negative decisions that the Applicant has challenged in this application occurred within a new legal framework that was not in place at the time of the judgment referred to, and must be considered .

Legal framework on receivability of appealable administrative decisions before the Dispute Tribunal (ratione materiae)

Deciding what is and what is not a decision of an administrative nature may be difficult and must be done on a case-by-case basis and will depend on the circumstances, taking into account the variety and different contexts of decision-making in the Organization. The nature of the decision, the legal framework under which the decision was made, and the consequences of the decision are key determinants of whether the decision in question is an administrative decision. [reference to footnote omitted] What matters is not so much the functionary who takes the decision as the nature of the function performed or the power exercised. The question is whether the task itself is administrative or not.

38. In *Ovcharenko et al.* 2022-

The first appealed decision

41. In the application, the Applicant presents the the discriminatory policy of the host country against staff members who are of Russian The specifics of this complaint concern delay in visa processing, limitations on to 25 miles around the United Nations headquarters, and the length of the visa granted to him.

42. any action to ensure that all staff members, him including, are treated equally, when the staff rules protect such equal treatment

43. In the Tribunal s view, however, the decision of failure to take any action to ensure that all staff members, including the Applicant, are treated equally applies to other staff members as well. It was not specifically addressed to the Applicant as an individual. This removes the first contested decision from the ambit of art. 2.1(a) of the Statute of the Dispute Tribunal.

44. And, as rightly argued by the Respondent, the provisions of ST/SGB/2019/8, on which the Applicant seeks to base his claim are only enforceable against persons, and not governments. The Tribunal therefore has no jurisdiction to adjudicate complaints against a host country's government.

45. The Tribunal moreover fully agrees with the Respondents legally founded submissions that: (a) Organisation by the Government of the United States are not part of the terms and conditions of employment (see in line herewith, the Appeals Tribunal in *Dolgopolov* 2021-UNAT-1093, para. 41); (b) procedure held by a host country in accordance with its own internal policies (similarly, see the Dispute Tribunal in *Mollaoglu*. UNDT/2022/125, para. 28, holding that : issuance of visas a result of an administrative procedure held by a

host country in accordance with its own internal policies); (c) the Organization cannot be held accountable for any delay of the host country in issuing a visa to the

50. The Tribunal finds that the contested decision is not an administrative decision which directly impacts the Applicants terms of appointment or contract of his employment.

Conclusion

51. The Respondent s alleged failur
by the law enforcement agency of the host country to recruit [him] as its agent against
his co *ratione materiae*.

52. The application is dismissed for lack of receivability.

(Signed)

Judge Margaret Tibulya

Dated this 24th day of April 2024

Entered in the Register on this 24th day of April 2024

(Signed)

Isaac Endeley, Registrar, New York