

I.
v.
UNESCO

125th Session

Judgment No. 3938

THE ADMINISTRATIVE TRIBUNAL,

Considering the complaint filed by Ms K. I. against the United Nations Educational, Scientific and Cultural Organization (UNESCO) on 5 November 2015, UNESCO's reply of 11 April 2016, corrected on 18 April, the complainant's rejoinder of 22 July, corrected on 31 July, and UNESCO's surrejoinder of 31 October 2016;

Considering Articles II, paragraph 5, and VII of the Statute of the Tribunal;

Having examined the written submissions and decided not to hold oral proceedings, for which neither party has applied;

Considering that the facts of the case may be summed up as follows:

The complainant challenges the decision not to confirm her appointment due to the rejection of her application for a work visa by the authorities of the country of her duty station.

The complainant, a Japanese national, was selected for a P-3 Project Officer post in UNESCO's Office in Beirut (Lebanon). By an email of 22 April 2015 she was informed of the procedure to be followed to apply for her work visa.

On 11 June the complainant received her Letter of Appointment for a one-year fixed-term contract. The letter stated that, in order for the appointment to be confirmed, she had to complete formalities with respect to visa requirements. Attached to the letter was an annex which

indicated that she should contact the nearest Embassy of the country of her duty station to apply for a work visa. It was further stated that she should not arrive at her duty station without having ensured with the Embassy that her status would allow her to take up her duties.

On 12 June the complainant signed the Letter of Appointment and returned it to the Bureau of Human Resources Management (HRM). That same day she informed UNESCO's Beirut Office of her intention to enter Lebanon on a tourist visa since she could not obtain a visa from the Embassy of Lebanon in Tokyo. The Beirut Office replied that if she entered Lebanon on a tourist visa the Ministry of Foreign Affairs and Emigrants (hereinafter "the Ministry") would not grant her a residence permit.

On 15 June the complainant advised UNESCO that she had submitted her work visa application to the Embassy of Lebanon in Tokyo. On 19 June she entered Lebanon on a tourist visa for family reasons.

HRM notified the complainant on 5 August 2015 that the Lebanese authorities had advised the Beirut Office that they had declined her application for a work visa. On 13 August HRM informed the complainant that, as one of the conditions of the offer of appointment had not been met, the offer had lapsed. On the same day the complainant wrote an email to the Director, HRM, asking for her intervention.

On 14 August the Director of the Beirut Office explained to the Director, HRM, that the main reason the complainant's work visa had been declined was that she had entered Lebanon on a tourist visa whilst the Ministry was assessing her application and that she had gone to the Ministry herself to accelerate the process, while she should normally have resided outside the country during the whole process.

On 7 September 2015 the complainant submitted a request for review of the decision of 13 August. By a letter of 8 October 2015 the Director, HRM, informed her that the Director-General was not able to reinstate the offer of appointment, on the grounds that obtaining the work visa was a condition for appointment to the post and that alternative measures had already been taken as the project had to be implemented without delay. The letter indicated that the complainant

did not have access to internal appeal mechanisms nor to the Tribunal since she was not, and never had been, a UNESCO staff member.

On 5 November 2015 the complainant filed a complaint with the Tribunal, challenging the decision of 13 August 2015. She asks the Tribunal to order her reinstatement in the Project Officer post for a minimum of two years. She claims material damages under several heads and moral damages.

UNESCO submits that the complaint is irreceivable *ratione personae* and, subsidiarily, that it is irreceivable for failure to exhaust internal remedies. On the merits, UNESCO argues that the complainant's claims are devoid of merit and excessive, and adds that her reinstatement is, in any case, not possible.

CONSIDERATIONS

1. The determinative issue in this case is whether the complainant was a UNESCO official when she filed her complaint with the Tribunal within the meaning of Article II, paragraph 5, of the Tribunal's Statute. It provides that the Tribunal is "competent to hear complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of provisions of the Staff Regulations". UNESCO submits that as the complainant is not and never was a UNESCO official, her complaint to the Tribunal is irreceivable. The complainant submits that upon signing the Letter of Appointment she was formally recruited by UNESCO and, therefore, entitled to have access to the Tribunal. She argues that the parties entered into a contractual agreement in good faith and that the processing of the work visa was a formality requiring no further agreement.

2. According to the 10 June 2015 Letter of Appointment, the offer of the appointment was "subject to medical clearance by UNESCO's Medical Officer and to any other clearance(s) as necessary". The letter goes on to state that "[o]nce you become a UNESCO staff member, you will be subject to the Organization's Staff Regulations and Staff Rules" and then details the rights and obligations upon becoming a staff member.

Lastly, the author of the letter states that “I look forward to receiving your acceptance and, upon completion of all formalities as necessary, to welcoming you as a staff member of UNESCO”. Annex 1 to the letter sets out the “Requirements”, namely, medical clearance, visa requirements and security clearance. Regarding the visa requirements, the letter states:

“In order for us to confirm your appointment, as well as for you to be able to work at UNESCO, you must contact the nearest Embassy/Consulate of the country of your duty station to obtain a visa that will allow the local authorities to issue a working permit for you. You should not arrive at your duty station (whatever your nationality) without having ensured with the Embassy/Consulate that your status will allow you to take up your duties in Beirut. Should you encounter any difficulties in obtaining your visa, please contact your Human Resources Officer without delay.”

The complainant signed the “Acceptance of the Offer of Appointment” on 12 June 2015.

3. The Letter of Appointment makes it abundantly clear that the complainant’s appointment was conditional on the complainant obtaining a work visa for Lebanon. Having regard to the statement in the Annex to the letter that “[i]n order for us to confirm your appointment, as well as for you to be able to work at UNESCO”, it is equally clear that the visa requirement was an essential term of the contract, that obtaining the visa was the sole responsibility of the complainant and that the appointment would not be confirmed until the visa requirement was met.

4. The complainant contends, however, that her work visa was denied because of UNESCO’s administrative negligence. She maintains it was denied because UNESCO had not submitted a *Note Verbale* to the Ministry requesting the issuance of a work visa for her. In support of this assertion, she claims that she was informed by other UN colleagues who are in contact with the Lebanese Office of General Security officials that this was the reason her work visa was declined. The complainant also submits that it was UNESCO’s responsibility to provide the necessary support and assistance to facilitate the processing

of her work visa, which was not done. The record does not support either of these assertions.

5. Based on the many email exchanges between the complainant and the UNESCO Beirut Office, the officials in Beirut were looking forward to having the complainant as a colleague as soon as possible and responded in a timely manner to her questions concerning the process to obtain the visa. In particular, in an exchange of emails on 12 June 2015, the complainant informed the Beirut Office that she was intending to travel to Beirut for family reasons on 19 June. She added that the Embassy of Lebanon in Tokyo told her that they could not approve a visa and that she had to apply to the Ministry in Lebanon. She asked how she should proceed and stated that if the visa could not be arranged she could enter Lebanon on a tourist visa. After contacting the Ministry to verify the process, the Beirut Office advised her that she had to submit an application for a six-month work visa at the Embassy of Lebanon in Tokyo based on her Letter of Appointment. The Embassy of Lebanon in Japan would then refer her work visa application to the Ministry in Beirut for approval.

6. The complainant responded that she had been told by the Embassy in Tokyo that she had to apply for her work visa directly to the Ministry in Beirut, but that she would speak to the Embassy again. She also stated that she was not sure how long it would take to get the visa, but she had some important personal business in Beirut requiring her travel to Beirut on 19 June regardless. She enquired whether it was possible to organize a work visa in Beirut and then, when it was ready, travel out of the country, for example, to Cyprus or Jordan and then re-enter Lebanon with a work visa. The Beirut Office Director replied the same day stating:

“Clarification: You may enter in Lebanon whenever you want but be aware of the following, if you enter in Lebanon with a Tourist visa:

1. [The Ministry] will not grant you Residence permit for Lebanon, therefore, you will not be able to start working for UNESCO Beirut without this Permit.

2. You cannot have a Residence card from [the Ministry] if you enter the country with a Tourist visa.

Hope the above clarifies and advise you to request the Work Visa in Japan as explained to us this morning by [the Ministry] in order not to delay your entry on Duty with UNESCO Lebanon.”

7. The complainant submitted her work visa application at the Embassy of Lebanon in Tokyo on 15 June. On 19 June, she travelled to Beirut on a tourist visa. In early July, the record shows that the UNESCO Beirut Office was in regular contact with the Ministry to expedite the visa process. On 4 July, the complainant advised the Beirut Office that she was going to the Ministry to also ask for an acceleration of the visa process. As an aside, at that point in time, she was hoping to attend a meeting at the Beirut Office scheduled for 22-23 July. She added:

“Since I am already in Lebanon with my family, now on my one-month tourist visa, I was going to ask [the Ministry] how to get a work visa without going back to Japan, where I initially applied. They are usually able to send the visa to the passport control at the airport, so I can collect it, once going out and return to Lebanon again.”

8. On 6 July, the complainant advised the Office that she had been to the Ministry and was told that her application had been sent to General Security for approval that would take another twenty days. In a 21 July 2015 communication, the Directorate General of General Security advised the Ministry of Foreign Affairs and Emigrants that the complainant’s request for an entry visa was not approved and asked the Ministry to inform the Embassy of Lebanon in Tokyo.

9. On 5 August, HRM advised the complainant that the Office of General Security had declined her work visa request. The complainant replied on 11 August stating that she had made her own inquiries with the Office of General Security in Beirut and was informed that her work visa was declined because the Ministry had not “receive[d] a Sponsor Letter (Note Verbale) from UNESCO requesting the issuance of a work visa” to her in Tokyo. She was also informed that if the *Note Verbale*

was provided by UNESCO, then the Office of General Security would approve her visa.

10. That same day, HRM contacted the Chief of Protocol at the Ministry regarding the process for granting a work visa. HRM reported:

“[T]he Ministry insisted that the selected candidate should apply from abroad in any Lebanon Embassy and attach **the Offer of Appointment** from UNESCO which the candidate did in Tokyo. In the mean-time, as it is usually performed in Lebanon, the file was sent to the General Security Office in Lebanon which screens the requests before granting or not the visa. The decision of General Security Office is then transmitted to the Embassy where the candidate initiates the request through the Ministry of Foreign Affairs. No need for a *note verbale* to the General Security and/or the Ministry of Foreign Affairs, as the request comes along with an official Offer of Appointment from our organization. The Letter of Appointment signed by an official of UNESCO by itself, constitutes a sponsoring letter, as clearly indicated [by] the Chief of Protocol of the Ministry of Foreign Affairs. The reasons for the General Security to grant or not the Work visa is therefore unknown to [UNESCO] as the Security screening is usually confidential.”

11. On 13 August, HRM advised the complainant that the Beirut Office was informed by the Lebanese authorities that they would not issue her an entry visa and that “[c]onsequently, [...] our offer [of] appointment is ‘caduque’ [void] as this is one of the conditions to enter on duties with the medical examen [sic].”

12. It is observed that the officials at UNESCO did everything they could to support and to assist the complainant in obtaining a work visa and specifically warned her about the adverse consequences of entering Lebanon on a tourist visa while her application for a work visa was being processed. Moreover, there is no evidence that UNESCO had to submit a *Note Verbale* or a “Sponsor Letter” to the Ministry, indeed, the evidence is to the contrary. As the complainant’s appointment was conditional on her obtaining a work visa, her appointment was not confirmed. It follows that as she was not a UNESCO official, her complaint is irreceivable and will be dismissed.

DECISION

For the above reasons,
The complaint is dismissed.

In witness of this judgment, adopted on 27 October 2017, Mr Giuseppe Barbagallo, President of the Tribunal, Ms Dolores M. Hansen, Judge, and Sir Hugh A. Rawlins, Judge, sign below, as do I, Dražen Petrović, Registrar.

Delivered in public in Geneva on 24 January 2018.

GIUSEPPE BARBAGALLO

DOLORES M. HANSEN

HUGH A. RAWLINS

DRAŽEN PETROVIĆ