

Introduction

1. The Applicant contests the decision by which the Office of the United Nations High Commissioner for Refugees (“UNHCR”) considered that he was not eligible for consideration for conversion of his fixed-term appointment to an indefinite appointment.

2. He requests rescission of the contested decision.

Facts

3. The Applicant was recruited by UNHCR in Cairo, Egypt, an A duty station, in March 2002 for a fixed-term contract at the Professional level. His contract was extended several times. In 2005, he was reassigned to Accra, Ghana, a B duty station.

4. In January 2006, he was appointed to a post in Rumbek, Southern Sudan, an E duty station. However, his post was discontinued on 31 December 2006 and his appointment was extended in Southern Sudan by two months. After accepting a temporary contract in Geneva in February 2007, the Applicant was reassigned to a new post there in June 2007.

5. In an internal memorandum of 21 January 2011 entitled “One-Time Review for the Granting of Indefinite Appointments” (IOM/04-FOM/05/2011), the High Commissioner for Refugees informed UNHCR staff that in view of the entry into force of the new Staff Regulations and Rules on 1 July 2009, a one-time review would be initiated in order to consider candidates who met the eligibility requirements as of 30 June 2009 for consideration for conversion from a fixed-term appointment to an indefinite appointment. Paragraph 12(b) of the memorandum also stated that in order to be eligible, Professional staff must have served a minimum of two years in a D or E duty station.

6. Pursuant to this memorandum, by email dated 23 February 2011, the Director of the Division of Human Resources Management indicated that the staff members who met the eligibility requirements for consideration for conversion to

Translated from French

Parties' submissions

14. The Applicant's contentions are:

- a. As at 30 June 2009, he had more than seven years of service, thereby fulfilling one of the eligibility criteria for the one-time review;
- b. He served in a number of duty stations in compliance with the expectation that staff members rotate on a regular basis. He served in an E duty station for 13 months, and it was because his post was discontinued that he was unable to meet the two-year requirement. Notwithstanding his own efforts to remain at that duty station, UNHCR was unable to allow him to remain there, and he is now being penalized for that reason. Yet, the purpose of the one-time review is to reward staff members who have demonstrated their commitment to UNHCR, including in dangerous duty stations, and the Applicant's work history makes it clear that he has such a commitment;
- c. Since indefinite appointments are considered career appointments and since the General Assembly, while underlining in its relevant resolutions the importance of the concept of career service in the United Nations, has never suggested that the granting of career appointments should be made contingent upon two years of service in a particular category of duty station, the High Commissioner's imposition of such a requirement was *ultra vires*;
- d. While General Assembly resolution 51/226 states that five years of continuing service do not confer the automatic right to a permanent appointment and that "other considerations, such as outstanding professional performance, the operational realities of the organizations and the core functions of the post" should be duly taken into account, the "other considerations" should have a reasonable nexus to the concept of career service. This is not true of the contested requirement in this case since the criterion of two years of service in a designated duty station is

contingent upon the outcome of a selection process that does not take staff members' wishes into account;

e. Application of the contested criterion excludes staff members who have demonstrated an objective interest in serving in D or E duty stations but were never selected for those positions and staff members who have served in such duty stations but were unable to complete two years of service as a result of events outside their control. Thus, application of the contested criterion precludes "reasonable consideration" of requests for conversion of appointments. Such consideration should be based on criteria that are within the staff member's control or that have some reasonable nexus to the concept of career service and are applicable to all staff members without distinction;

f. The Deputy High Commissioner for Refugees has already authorized exceptions to the contested criterion and the circumstances of the three staff members who benefited from those exceptions are not sufficiently different from the Applicant's to warrant a less rigid application of the contested criterion;

g. Concerning the issue raised by the Tribunal on its own motion, he concurs with the Respondent's observations.

fixed-term appointments upon completion of five years of continuing good service shall be given every reasonable consideration for a career appointment". Former staff rule 4.12(b)(iii) and current staff rule 13.4(b) state that the status of staff members who meet the eligibility criteria for a permanent appointment will be considered "taking into account all the interests of the Organization". Furthermore, resolution 51/226 states that considerations other than five years of continuing service should be taken into account in awarding a permanent contract and, in light of the operational considerations of UNHCR, the requirement of two years of service in a D or E duty station, which provides an incentive for staff to assume functions in the deep field, is a reasonable consideration with a view to career service;

c. The requirement of two years of service in a D or E duty station has a reasonable nexus with the concept of career service. A strict rotation policy for UNHCR staff both satisfies the Office's operational requirements and the need for burden-sharing among its professional staff and gives staff working at headquarters an understanding of field realities;

d. The requirement of two years of service in a D or E duty station has been a crucial part of the legal framework governing the granting of indefinite appointments for an extended period of time. It was introduced under the former Staff Rules and was expressly stipulated in the Procedural Guidelines for Appointments, Postings and Promotions promulgated on 3 November 2003. Consequently, it does not constitute a new limitation to the applicable provisions and the Applicant had long been aware of it;

e. The contested criterion allows for reasonable consideration of requests for conversion of appointments. It was applied without distinction to all staff who were subject to rotation;

f. The General Assembly did not intend to confer on staff the right to conversion of their appointments to indefinite appointments and the Administration has discretionary authority in that area;

g. The circumstances of the staff who were granted indefinite appointments despite not having served ~~the~~ deep field were substantially different from those of the Applicant. Even if he had been in the same situation as those staff members, that would have had no impact on his chances of being granted an indefinite appointment since the number of contract conversions was unlimited;

h. Concerning the issue raised by the Tribunal on its own motion, the one-time review exercise for the granting of indefinite appointments in accordance with internal memorandum IOM/04-FOM/05/2011 addresses the acquired rights of UNHCR staff and does not violate any higher-ranking law.

Consideration

16. The Tribunal, through its Order No. 178 (GVA/2011) of 19 October 2011, raised on its own motion the issue of the lawfulness of conversion of fixed-term appointments to indefinite appointments by UNHCR as provided in the internal memorandum of 21 January 2011. However, in light of the written observations submitted by the parties and their oral observations during the hearing, the Tribunal considers that there is no further ~~need~~ to consider the issue that it raised.

17. Therefore, it must now consider the arguments submitted by the Applicant in contesting the lawfulness of the High Commissioner's decision not to convert his fixed-term appointment to an indefinite appointment.

18. The Applicant first maintains that the High Commissioner ~~acted~~ ^{advised} in requiring at least two years of service in a D or E duty station for conversion of a staff member's fixed-term appointment ~~to~~ indefinite appointment, as he did in his internal memorandum IOM/04-FOM/05/2011 of 21 January 2011, since this criterion was not envisaged by the General Assembly.

19. Internal memorandum IOM/04-FOM/05/2011 of 21 January 2011, entitled "One-Time Review for the Granting of Indefinite Appointments", refers to the Procedural Guidelines for Appointments, Postings and Promotions, promulgated

Translated from French

24. While the Applicant goes on to maintain that it was the UNHCR Administration that prevented him from meeting the requirement of two years of service in a D or E duty station since his position in one such duty station was discontinued, this circumstance has no bearing on the lawfulness of the contested decision since it is clear that UNHCR deliberately chose to give a career advantage to staff who met the established criteria.

25. Lastly, while the Applicant maintains that staff members who did not meet the criterion of service in D or E duty stations were nevertheless awarded indefinite appointments, he provides no evidence in support of his allegations. Although the High Commissioner, in his defense, admits that exceptions were made for medical reasons, it appears that internal memorandum

Translated from French

Case No. UNDT/GVA/2011/051

Judgment No. UNDT/2012/013