

Introduction

1. On 21 December 2015, the Applicant, a Syrian national residing in Beirut, Lebanon, filed an application challenging the implied employment as a Research Assistant with the Economic and Social Commission for Western Asia (ESCWA) in Beirut.

2. The Applicant is seeking compensation in the amount of 15 months net base salary at the GS-6 step 2 level, which includes moral damages in the amount of three months net base salary and 12 months net base salary for the breach of contract.

Facts

3. In October 2014, the Applicant applied for the position of Research Assistant at the GS-6 level with ESCWA. The vacancy announcement for this position stated as follows under the heading :

Appointment against this post is on a local basis; candidates shall be recruited in the country of the duty station, irrespective of nationality and length of time the candidate may have been in the country. If no suitable candidate is identified, overseas candidates will be considered subject to a passing grade on the relevant entry-level examinations at the duty station.

4. On 10 August 2015, the Applicant received a written offer of employment which she accepted and returned to ESCWA on 13 August 2015.

5. On 23 September 2015, the Applicant reported for duty with ESCWA in Beirut.

6. During the check-documents, the Administration became aware that the Applicant, although a legal resident of Lebanon, was restricted from working in Lebanon.

7. During a meeting that took place on 28 September 2015, the Chief Human Resources Officer of ESCWA (CHRO/ESCWA) informed the Applicant that she

could no longer work for ESCWA since she did not have a work visa or permit. The Applicant was requested to turn over her security pass and leave the premises immediately

b. The Applicant accepted the offer of appointment unconditionally and she satisfied all the conditions demanded by the Administration. Consequently, a valid contract was formed between her and the Administration.

c. Since no requirement for obtaining a work visa was placed on the Applicant by either the Letter of Offer or subsequent communication with the Administration, ESCWA was obligated to retain her services once selected and recruited.

d. The non-performance of the Administration towards the Applicant was due to its failure to communicate material requirement prior to her recruitment, specifically, that for the GS post of Research Assistant, she was required to obtain a work permit herself.

e. Given that the Applicant is a Syrian national escaping persecution, the Administration was more readily capable, pursuant to the Staff Rules, of obtaining the necessary work permit to allow her to work for ESCWA.

f. The Administration entered into a contractual obligation regardless of any domestic legislation governing work permits in Lebanon. As a result, if the contract runs contrary to individual local laws, it is the contract which must have supremacy.

g. The Applicant suffered damages due to the Administration comply with its contractual obligations and she is, therefore, entitled to compensation. The Administration failed to act with due diligence and fairness. It was for the Administration to undertake due diligence and to obtain the relevant work permit. She had a legitimate expectation of working with ESCWA.

Respondent's contentions

38.

a. The application is not receivable *ratione materiae* because the Applicant does not challenge an administrative decision as defined in art. 2.1 of the UNDT Statute. The Tribunal lacks jurisdiction because no final administrative decision has been taken. Preparatory decisions can only be disputed in light of the final decision.

b. ESCWA has not initiated the process to separate the Applicant from corrective action in not allowing her to work illegally does not constitute a termination of her appointment within the meaning of the Staff Regulations and Rules.

c.

Receivability

40. The Respondent submits that the application is not receivable *ratione materiae*, because the Applicant does not challenge an administrative decision as defined in art. 2.1 of the UNDT Statute. He also claims that the Tribunal lacks jurisdiction because no final administrative decision has been taken as the Applicant had not been given any notice of termination.

41. Article 2.1(a) confers jurisdiction on the Tribunal to hear applications appealing administrative decisions that are alleged to be in non-compliance with the

to the ESCWA Travel and Visa Section to process her work permit², that the Administration became aware that she, although a legal resident of Lebanon, was restricted from working in the country. This was clearly an error on the part of the Administration for which the Applicant should not be penalized.

49. Following the meeting of 28 September 2015 whereby the Applicant was informed that she could no longer perform her duties in ESCWA, there were several email exchanges between the Applicant and the Administration in relation to the work permit. The evidence shows³ that the Applicant unsuccessfully tried to obtain a work permit from the Lebanese authorities and that the only permit that she could get was a residency permit which did not give her the right to work in Lebanon except for working for her aunt as her sponsor⁴. While the Administration gave her two weeks as of 16 October 2015 to submit a valid work permit, it did not take any action, at that stage, to assist her in obtaining the work permit. The Respondent submits that on 21 December 2015, ESCWA filled the position for which the Applicant had been recruited with another candidate from the same recruitment process and that this candidate assumed his duties on 18 January 2016. Therefore, the position for which the Applicant had been recruited was no longer available as of 21 December 2015 and the Respondent cannot claim terminated.

50. The evidence shows that it was not until 22 February 2016⁵, that is, almost five months after the meeting of 28 September 2015 and after the Applicant had filed an application before this Tribunal, that the Administration took corrective action by offering the Applicant a position similar to the one for which she had been initially selected.

51. According to the email dated 22 February 2016 from the CHRO/ES63.69 508 Tc[0JET42.71 0 0

requested the necessary visa from the Ministry of Foreign Affairs (MFA) of Lebanon. However, it was not certain that the MFA would have granted her the work permit that was required. In his testimony, Mr. Makhmudov, explained that in accordance with the Host Country Agreement with Lebanon, ESCWA does not request work visas for locally recruited staff and that ESCWA had not sponsored the work permit of any locally recruited staff. However, he

licensed psychiatrist in Lebanon. The Tribunal reviewed the report submitted and considered that it is not convincing evidence of a traumatic experience that may have
atic Stress Disorder. that
while , the
Applicant started working in the Al-Hora group on 1 October 2015, therefore, the
deemed unreliable and no award of compensation will be
granted in this regard.

64. During the trial, the Applicant submitted into evidence testimony that she lost an employment opportunity in the Embassy of Rwanda in Cairo because she had accepted and being appointed as Research Assistant at the G-6 level in ESCWA. The Tribunal reviewed the evidence and considers that the email dated 13 September 2015 submitted by the Applicant is, in fact, an invitation to the Applicant to express her interest in the vacancy; it was not a formal offer of employment as it does not state a position, a salary or a period of employment. Even considering that the email dated 13 Septembe
20 September 2015 to the Ambassador shows that she declined the alleged offer due to personal reasons

. Furthermore, the Tribunal notes that by the time of the 13 September 2015 email, the Applicant had already accepted the position at
of opportunity has no basis.

65. Having said the above, the Tribunal finds that the manner in whiching said eC1T1 0 0 1 11

