

Introduction

1.ction

Facts

8. On 4 June 2014, the Applicant received a letter from the Office for the Coordination of Humanitarian Affairs (OCHA) offering her a one-year appointment as a humanitarian affairs officer at the P-4 level. The offer was subject to medical and security clearances, security training certificates, confirmation of diplomas and satisfactory reference checks.

9. The applicant accepted the offer on 9 June 2014.

10. On 6 July 2014, OCHA asked the Applicant for various documents for the processing of a Syrian visa for her. She submitted her visa application to the Office of the Regional Coordinator in Damascus on the same day. The application for her visa was submitted to the Ministry of Foreign Affairs the following day.

11. The Applicant was scheduled to travel to Damascus via Beirut on 3 August 2014.

12. By 28 July 2014, she had heard nothing about her visa and asked OCHA what was happening. On 31 July 2014, she was told that the visa had not yet been issued so she should postpone her departure.

13.

Case No. UNDT/NBI/2015/046

Judgment No.: UNDT/2018/019

Applicant did not know and therefore the Respondent could not claim that it was a supervening event.

33. As a general rule, a contract is deemed to have been automatically frustrated

such notice when she had not even started performing her duties under the employment contract that would entitle her to remuneration.

42. The Tribunal in the course of reviewing the documents before it found that the Annex R1 showed that the Syrian authorities communicated to the Respondent their refusal of visa to the Applicant on 2 September 2014. The letter from the Syrian Ministry of Foreign Affairs was already received and stamped in the towards obtaining t agents until 29 October 2014 to inform the Applicant that the employment contract was frustrated as a result of denial of the visa to her.

43. It must be noted that the Applicant accepted the offer of employment on 9 June 2014. On 6 July 2014, she was asked by the Respondent to send the documents for a visa application. She promptly did so. The following day which was 7 July 2014, she was informed by email that the process for applying for her visa would start on that day. She was issued a ticket with a travel date of 3 August 2014. On 30 July 2014, she was told not to travel because she did not as yet have a visa.

44. The Applicant sent emails on 4 September, 23 September and 16 October 2014 to the Respon would enable her take up the employment in Syria. When she was finally able to speak to an official by phone on 27 October 2014, only then was she informed that her application for the Syrian visa was refused. Two days later, on 29 October 2014 that telephone conversation was then followed by a letter informing her of the refusal of her visa by Syrian authorities and a withdrawal of her offer of appointment by the Respondent.

45. s case is that the Applicant has already been adequately compensated for the delay in informing her that the offer was withdrawn because she

(Signed)

Judge Nkemdilim Izuako

Dated this 14th day of February 2018

Entered in the Register on this 14th day of February 2018

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi