



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1300

Case No. 1383

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Dayendra Sena Wijewardane, Vice-President, presiding; Mr. Kevin Haugh; Ms. Brigitte Stern;

Whereas at the request of a staff member of the Economic and Social Commission for Western Asia (hereinafter referred to as ESCWA), the President of the Tribunal extended to 31 January 2004 the time limit for the filing of an application with the Tribunal;

Whereas, on 23 January, 16 April and 9 August 2004, respectively, the Applicant filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 19 November 2004, the Applicant, after making the necessary corrections, again filed an Application containing pleas which read as follows:

“II. **PLEAS:**

... [A]s a Syrian citizen I was not allowed to travel to Iraq. ... In order to *ONLY avoid the political difficulties and my personal fears*, I took the steps to change my original nationality to Lebanese, ... as soon as I was allowed to do so for my safety.

I would like to be considered a Syrian national ...

ESCWA's move to Iraq was the main reason for changing my Syrian nationality, otherwise I would have never taken any steps toward changing my original nationality. I have closer ties and I am mo[re] closely associated to Syria than to Lebanon. ..."

Whereas at the request of the Respondent, the President of the Tribunal granted an extension of the time limit for filing a Respondent's answer until 31 March 2005;

Whereas the Respondent filed his Answer on 24 March 2005;

Whereas the statement of facts, including the employment record, contained in the report of the Joint Appeals Board (JAB) reads, in part, as follows:

“Employment History

... The [Applicant] joined the Organization on 7 November 1977 on a three-month fixed-term appointment (...) as a local recruit at the G-3 level with [ESCWA], Beirut, Lebanon. Her nationality was Syrian. Her [fixed-term appointment] was regularly extended [and she was promoted a number of times]. ... On 28 December 1981, the [Applicant] married a Lebanese national and changed her name ...

... In 1981, ESCWA was relocated to Baghdad, Iraq. Effective 1 July 1982, the [Applicant] was transferred to Baghdad and became an international recruit eligible for the related entitlements. Effective 3 November 1982, [her] nationality was changed for [United Nations'] purposes from Syrian to Lebanese at her request. [The Applicant became a Lebanese national under Lebanese law which provides that a spouse of a Lebanese man acquires Lebanese nationality one year after marriage.] The [Applicant's fixed-term appointment] was converted to a probationary appointment effective 1 January 1985 and to a permanent appointment effective 1 October ...

... Effective 1 August 1991, following relocation of ESCWA to Amman, Jordan, the [Applicant] was reassigned to Amman. Her place of home leave continued to be Beirut, Lebanon. ...

... Effective 8 September 1997, the [Applicant] was transferred to Beirut, Lebanon, as ESCWA was relocated there. ...

Summary of facts

... In a memorandum dated 14 April 1999 to [the] Chief, Personnel Section, ESCWA, the [Applicant] requested the approval by ESCWA of her request to once again be considered by the Organization as a Syrian national. She explained that when she changed her nationality from Syrian to Lebanese in 1982, it was done '[i]n the interest of avoiding the difficulties affecting, at that time, all Syrian nationals wishing to travel to Baghdad, ...' She continued that now that ESCWA had moved back to Beirut, Lebanon, 'I find myself compelled at this stage to revert back to my original

nationality Syrian. By doing so I will also be able to iron [out a] few things recently emerged at home including the settlement of inherited property’.

... In a memorandum dated 20 August 1999[, the Office of Human Resources Management (OHRM) advised] that:

‘[o]n the basis of the information provided, OHRM sees no compelling reason for changing the previous determination that the staff member is “most closely associated” with Lebanon, which is the only basis in the rule on which the [United Nations] recognized her Lebanese nationality’

... [and] concluded ... that the ESCWA Administration should explain to the [Applicant] that OHRM’s determination was for [United Nations’] purposes only and that she still maintained the nationality of any other states for which she acquired that status. On 30 August ..., [the Applicant was informed] of OHRM’s decision to deny her request to change her nationality for [United Nations’] purposes.

... In a memorandum dated 3 February 2000 to [the] Chief, Administrative Law Unit, OHRM, [the Chief, Personnel Section, ESCWA,] stated that:

‘[w]hen ESCWA was transferred from Baghdad to Amman in 1991, where the political circumstances referred to by the staff member no longer existed, [the Applicant] did not request to revert back to her original nationality. It is only 15 years later after ESCWA was relocated back to Beirut and to facilitate the settlement of inheritance claims [in] Syria that the staff member is now requesting reversion to her original nationality.’

She continued that:

‘[i]n 1983, the change of nationality was approved on the grounds that [the Applicant] was most closely associated with Lebanon in accordance with [the] staff rule; I see no evidence that this relationship has changed and I fail to see the close association of [the Applicant] with Syria’.

...”

On 25 February 2000, the Applicant lodged an appeal with the JAB in New York. The JAB adopted its report on 20 January 2003. Its considerations, conclusions and recommendations read, in part, as follows:

“Considerations

16 The Appellant maintained that ... there were no rules against permitting her to revert to her Syrian nationality for [United Nations’] purposes. ...

...

26 Staff rule 104.8(b) provides that:

‘[w]hen a staff member has been legally accorded nationality status by more than one State, the staff member’s nationality for the purposes of the Staff Regulations and these Rules shall be the nationality of the State with which the staff member is, in the opinion of the Secretary-General, most closely associated’.

27 The Panel considered that in [the] case of a staff member with multiple nationalities, it was within the authority of the Secretary-General to determine [the] nationality of a country with which the staff member is most closely associated to be his or her nationality for [United Nations’] purposes. It also considered that, when she asked for another change of her [United Nations’] nationality from Lebanese back to Syrian, the Appellant had the duty to demonstrate ... how circumstances had changed so fundamentally that Syria had replaced Lebanon as the country with which she was most closely associated.

28 The Panel concluded that the Appellant had failed to provide the requisite evidence in support of her request for reverting to her Syrian nationality ...

29 In that connection, the Panel noted that the Appellant had requested a change of her [United Nations’] nationality from Lebanese to Syrian partly because of her unsettled inheritance claim in Syria, which has been ‘delayed due to some family matters’. Nevertheless, the Panel saw no evidence that there was any need for the [Applicant] to change her nationality for [United Nations’] purposes from Lebanese to Syrian in order to pursue her inheritance claim in Syria, because she was still a Syrian national in the eyes of the Government of Syria, despite her Lebanese nationality for [United Nations’] purposes. It is the Panel’s understanding that, as a Syrian national, the Appellant enjoys all the rights of a Syrian citizen, including the right to initiate her inheritance claim in Syria.

Conclusions and recommendations

...

31 The Panel ... *unanimously agreed* that, when the Appellant failed to demonstrate to the satisfaction of the Secretary-General her stronger ties to Syria, it was reasonable for the Administration ... not to accede to her request for another change of her [United Nations’] nationality to Syrian.

32 [The] Panel therefore makes no recommendation in respect of the present appeal.”

On 28 July 2003, the Officer-in-Charge for the Department of Management transmitted a copy of the JAB report to the Applicant and informed her that the Secretary-General agreed with the JAB’s findings and conclusions and had decided to accept its unanimous decision and to consider the case closed.

On 19 November 2004, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. ESCWA made a mistake in approving the Applicant's change of nationality on the sole ground that she was "most closely associated" with Lebanon. In fact, security considerations were her primary concern.
2. ESCWA indicated no criteria other than her marriage to a Lebanese national, in determining her nationality.
3. No rule or regulation prevents a staff member from reverting to his or her nationality of origin as recognized by the Organization at the time of their recruitment.

Whereas the Respondent's principal contention is:

The decision of the Administration not to approve the Applicant's request to revert to her Syrian nationality for the purposes of the United Nations was appropriate and fully justified under the applicable rules.

The Tribunal, having deliberated from 4 to 28 July 2006, now pronounces the following Judgement:

I. The Applicant, born in Lebanon but Syrian by nationality, was hired by the United Nations in Beirut, Lebanon, in 1997 as a G-3 local staff member in ESCWA. She married a Lebanese man on 28 December 1981. In that year, ESCWA relocated to Baghdad and the Applicant was moved to Baghdad as an international recruit. ESCWA relocated twice more, first in 1991, when it moved to Amman, Jordan, and a second time when it moved to Beirut in 1997. The Applicant was reassigned to the new duty station each time the Commission moved.

The Applicant is petitioning the Tribunal for restoration of her Syrian nationality for United Nations' purposes which, effective 3 November 1982, she had exchanged for Lebanese nationality. According to her, she needs this change for succession purposes and because her children are embarking on higher education. Financially, the children's education makes it necessary for her to receive again the education grant and expatriation benefit payable to international recruits which she lost in 1997 on being appointed to Beirut. Her request was rejected by the Administration on 20 August 1999 and, on 20 January 2003, by the JAB, the recommendation of which was endorsed by the Secretary-General on 28 July 2003.

II. The Tribunal must determine whether the Administration was wrong to refuse this second change of nationality. In order to do so, it must refer to the relevant parts of the Staff

Rules governing the nationality of employees of the Organization, in particular staff rule 104.8 (b), which reads:

“[w]hen a staff member has been legally accorded nationality status by more than one State, the staff member’s nationality for the purposes of the Staff Regulations and these Rules shall be the nationality of the State with which the staff member is, in the opinion of the Secretary-General, most closely associated”.

This rule gives the Administration the authority to decide which nationality, among those held by staff members who have two nationalities or more, is most germane. The Tribunal will not substitute its judgement for the discretion of the Administration in determining applicable nationality, unless the latter’s powers are exercised in an arbitrary or abusive manner. Thus, a further change of the Applicant’s nationality will be possible only if the Administration made a mistake in its determination in 1982 or if fresh evidence showing that the Applicant now has closer ties with another State has come to light since then. The Tribunal will therefore proceed to ascertain whether there was such a mistake or there is such fresh evidence.

III. The Tribunal will first determine whether the decision taken by the Administration in 1982 was incorrect. It must first point out that, as stated in its Judgement No. 62, *Julhiard* (1955), its capacity for review is as follows:

“[t]he Tribunal can, *without substituting its judgement for that of the Secretary-General*, consider whether, having regard to the circumstances, it was reasonable for the Secretary-General to conclude that the Applicant was most closely associated with one State rather than with another”. (Emphasis added.)

In the present case, the Tribunal observes that the Administration appears to have accepted the Applicant’s request in 1982 without any special scrutiny. It should, however, be made clear that the Administration is not required to make extensive inquiries into the most germane of a staff member’s nationalities if the staff member personally, and of his or her own free will, requests modification of his or her status within the Organization. Indeed, the Tribunal finds that the Administration is justified in presuming that the nationality which a staff member wishes to adopt is appropriate, when such request is based on one of the standard criteria for acquisition of nationality such as marriage or place of birth.

With respect to the Applicant’s personal circumstances, the Tribunal observes that she does in fact appear to have fairly close ties with Lebanon. It is established that she was born in Lebanon (Beirut, 1951) and worked there between November 1977 and November 1981 but,

above all, that she married a Lebanese national on 28 December 1981. The Tribunal notes that the Applicant's marriage was the main consideration on which the Administration relied in its determination, and that it is part of the group of considerations set out above. Hence, and in view of the pertinence of the factual evidence adduced, the Tribunal fails to see in what respect the Administration's 1982 decision might be said to be tainted by an error of judgement. The Administration was therefore correct in acceding to the Applicant's request in 1982.

IV. The Applicant is now highlighting security considerations which, she claims, have motivated her to request the change. She draws attention to the sensitive political situation between Syria and Iraq during the period when she first changed nationality, and explains that

“[t]he main reason why I changed my Syrian nationality was that ESCWA had moved to Iraq ... *SOLELY in order to avoid political problems and allay my personal fears* did I take steps to acquire Lebanese - my husband's - nationality once I was allowed to, for my own security”.

The Tribunal appreciates the possible force of this reasoning but finds that for the Applicant to be able to rely upon it now, she would have had to raise such an argument when she first asked to change her nationality.

It appears from the material on file that these reasons were not mentioned in 1982. One may, with justification, ask, therefore, why the Applicant did not make use of the argument in her first request, but limited herself to mentioning her marriage to a Lebanese man; when she did change nationality in 1982, from Syrian to Lebanese, no security consideration was mentioned. Instead, the Applicant referred to her recent marriage to a Lebanese national. Under Lebanese law, the wife of a Lebanese national automatically acquires Lebanese nationality after being married for one year. In the present case, the Tribunal notes that it was indeed a year after her marriage on 28 December 1981 that the Applicant applied to change her nationality. The Tribunal thus confirms that the Administration took no account of any security considerations when, in 1982, it determined which nationality should be considered germane for the purposes of the United Nations.

V. The Tribunal will next consider whether the Administration was correct to refuse the second change of nationality in 1999. It has already observed that security considerations were not explicitly mentioned in 1982. Even had they been, the Tribunal fails to see how working in Beirut, under different conditions of security than in Baghdad, would have been relevant to a decision regarding her nationality for United Nations' purposes. The risks to which the

Applicant is exposed appear to vary depending on the State in which she is working, and the Tribunal cannot, therefore, see how her many moves and changes of duty station might have brought about changes in her personal circumstances that would tie her more closely to a country other than that whose nationality she had chosen for United Nations' purposes. There has been no change in the Applicant's personal situation that would lead one to suppose she now has closer ties to Syria than to Lebanon.

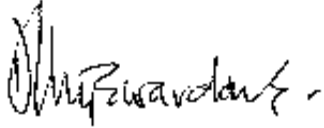
VI. The Tribunal must, of course, take note of the fact that the change of nationality from Syrian to Lebanese in 1982 was not undertaken to secure additional benefits. When it took effect, ESCWA was based in Iraq and the Applicant would have been entitled to the status of an international recruit whichever nationality she utilised, and would therefore have been entitled to the education grant and expatriation benefit in any case. The same cannot be said of the second request to change nationality. Had the Applicant's security really been the reason for her change of nationality, it would have been more logical for her to ask to revert to Syrian nationality when ESCWA moved to Amman in 1991. She did not make such a request, however, until the Commission transferred to Beirut in 1997. Her real motives are therefore open to question. She may well speak of her family in Syria and her frequent visits as justification for her ties with that State, but the gist of her argument is the loss of the education grant and expatriation benefits; the attendant consequences for her children's education; the fact that she cannot provide from her own resources; and that, besides, as she contends, "marriage institution also is not a waterproof protection for a woman particularly in the Middle East". It is thus clearly apparent that the Applicant only really decided she wanted to revert to her former nationality when she lost the additional benefits and her internationally recruited status.

The Tribunal concludes that the Applicant's principal motive for changing nationality was her marriage, not the security considerations alluded to, which she raised only at a later stage. The file does not indicate any change in marital situation despite the concerns which the Applicant appears to express about marriage as an institution. Since there has been no change in the Applicant's marital status, it is logical to conclude that her personal situation has not been so affected by her reassignment as to warrant a further change in nationality.

VII. In conclusion, the Tribunal wishes to state that it is not acceptable to seek to profit by successive changes in nationality and status within the Organization in order to obtain maximum benefits from the entitlements and other advantages accorded by the Administration to internationally recruited staff.

VIII. The Tribunal therefore rejects the Application in its entirety.

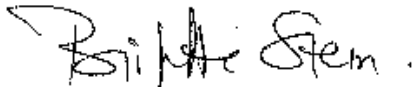
(Signatures)



Dayendra Sena Wijewardane
Vice-President, presiding



Kevin Haugh
Member



Brigitte Stern
Member

Geneva, 28 July 2006



Maritza Struyvenberg
Executive Secretary