



Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 1478

Case No. 1519

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,
Composed of, Mr. Dayendra Sena Wijewardane, President; Mr. Goh Joon Seng, Second Vice-President; Ms. Jacqueline R. Scott,

Whereas, on 8 February 2007, a former staff member of the United Nations, filed an Application requesting the Tribunal, inter alia:

“8. ... [To] judge:

(a) that the Applicant’s son is his ‘dependant child’ as defined in staff rule 103.24 (b) effective 16 December 2004, and direct the Respondent to notify the [United Nations Joint Staff Pension Fund (UNJSPF)] of this determination; and,

(b) as such is entitled to and is granted United Nations After Service health Insurance [(ASHI)] coverage effective on the date of the Tribunal’s decision.”

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 July 2007, and once thereafter until 31 August;

Whereas the Respondent filed his Answer on 30 August 2007;

Whereas the Applicant filed Written Observations on 21 September 2007;

Whereas, on 31 July 2009, the Tribunal requested information from the Applicant and decided to postpone consideration of this case until its next session;

Whereas on 29 August 2009, the Applicant provided the additional information requested by the Tribunal;

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 12 February 1981.

... From 2 September 1999 to 20 August 2001 he was assigned to the United Nations Mission for the Referendum in Western Sahara (MINURSO) and served at Laayoune, Western Sahara.

... On 30 September 2003 the [Applicant] separated from service on retirement from the position of Fire Captain (S-6), Security and Safety Service, Department of Management.

...

Summary of the relevant facts

[On 17 May 2001, while he was assigned to MINURSO, the Applicant fathered a child in Morocco. According to the Applicant, upon his return from mission, he sought to enrol his child in the United Nations health insurance plan. Apparently, at that time, he was directed to first report his son as a dependant with the Office of Human Resources Management (OHRM), which required the submission of a birth certificate. This, according to the Applicant proved extremely difficult, as the Moroccan Authorities refused to issue a birth certificate bearing his name as the father. There is no record of the Applicant having contacted OHRM.]

... [On] 23 May 2001, [the Applicant was advised that his] son [could not] be registered with the Moroccan Civil Administration and automatically get [the Applicant’s nationality. Registration would have to be done at his embassy/consulate and then [at the age of 18 Moroccan nationality [could] be requested.

... [On] 16 December 2004, the [Applicant requested OHRM] to include his son ... born 17 May 2001, as his dependent in order to receive on his behalf Pension and [ASHI] benefits. In his communication, the [Applicant], inter alia, explains that the delay in submitting the request has been caused by great difficulties, which he experienced while trying to obtain the birth registration documents for this child from the local authorities.

14 January 2005 – OHRM responds to the [Applicant] that based on the existing rule on retroactivity of payments and insofar as the request has been made after more than one year from the [Applicant]’s date of retirement, it was time-barred.

2 February 2005 – the [Applicant] files a request for administrative review of the decision, emphasizing inter alia that his request was based on special circumstances, that he was not making any claims for retroactive payments and that his reason for seeking dependency status for the child was [only] for Pension and After-Service Health Insurance purposes. The [Applicant] requested that “a special exception be made permitting the registration of [his] son with Organization”.

....

3 March 2005 – the [Applicant] meets with the head of the Administrative Law Unit (ALU), OHRM, who, according to the [Applicant], ‘agreed’ to revert to him ‘after re-discussing the special circumstances of the case with the OHRM officer who made the administrative decision.’

28 March 2005 – in the absence of any feedback from the head of the ALU/OHRM, the [Applicant] files with the New York JAB Secretariat a request to waive the time-limits for submitting an appeal. The [Applicant] informs the JAB Secretariat that he also forwarded to it by regular mail a request for conciliation under Staff Rule 111.2 (b).

5 April 2005 – the JAB Secretariat receives the original and six copies of the [Applicant]’s statement of appeal as well as his request for conciliation.

7 April 2005 – the [Applicant] sends an informal e-mail request to both the head of the ALU/OHRM and the head of the JAB/JDC Secretariat at Headquarters ‘to be candid with [him] as to the prompt resolution of this matter’. The [Applicant] promises not to ‘violate the confidentiality of their reply [but threatens to] pursue other avenues including those in the public arena.’

8 April 2005 – the [Applicant] receives an informal e-mail advice on behalf of the head of the JAB Secretariat on options which were still available for him to seek recognition of the child for Pension and After-Service Health Insurance purposes.

....

8 May 2005 – the [Applicant] advises the JAB Secretariat that he has still been waiting for a reply from the head of the ALU/OHRM to his conciliation request. The [Applicant] re-iterates his intention, in the case that the conciliation fails, to either seek the Respondent’s agreement to bring the case directly to the United Nations Administrative Tribunal or to take it ‘to the court of public opinion in the press.’

10 June 2005 – the Respondent seeks an extension of the established deadline for Respondent’s Reply through 31 August 2005.

14 June 2005 – the [Applicant] receives a response from the head of the ALU/OHRM, wherein he was advised that OHRM was not able to recognize the child Ihab, born 17 May 2001, as the [Applicant]’s dependant in view of the fact that the [Applicant] retired from the Organization on 30 September 2003 and his request was not made within one year required by the rule on retroactivity of payments. He was further advised that the OHRM’s position on the question of recognition did not ‘in any way affect [his] eligibility for After-Service Health Insurance or Pension Fund benefits for [his] son [because] both ... [were] governed by specific eligibility requirements.’ With regard to the after-service health insurance in particular, OHRM informed the [Applicant] that it consulted with the head of the Health and Life Insurance Section who indicated that ‘the after-service health [insurance] programme prohibit[ed] adding any dependants after the date of retirement (unless the child was born within 300 days of the staff member’s separation from service)’. With regard to the Pension Fund, OHRM reconfirmed to the [Applicant] that the UNJSPF had full autonomy with regard to the Pension Fund rules and regulations and the [Applicant] therefore should contact them directly.

19 June 2005 – the [Applicant] files a request seeking agreement of the Respondent to submit the case directly to the United Nations Administrative Tribunal on the grounds that the JAB would be incompetent to pronounce itself ‘on the compliance of member states with the Charter of the United Nations, the Universal Declaration of Human Rights, General Assembly resolutions...’. A copy of the request was also sent to the JAB Secretariat.

21 July 2005 – the Respondent does not consent to the direct submission of the case to the UNAT since the appeal “does not appear to be limited to questions of law and would require that a Joint Appeals Board establish the facts of the case.”

29 July 2005 – the [Applicant] seeks advice from the JAB Secretariat on the next step to pursue his appeal in view of the Respondent’s disagreement on direct submission of the case to the

UNAT. In his communication, the [Applicant] also mentions that he was expecting a reply from the UNJSPF to his direct request. He wonders what the impact might be of the UNJSPF's response on the hearing of his case by the JAB. Furthermore, the [Applicant] reminds the JAB Secretariat that he was ready to publish an open letter to the Respondent in the New York Times should his case is not resolved positively.

29 July 2005 – the JAB Secretariat advises the [Applicant] on the established procedure and assures him inter alia that the UNJSPF's decision on his request would have no bearing on his appeal to the JAB against the Respondent because the UNJSPF has its own rules and regulations and enjoys full autonomy in terms of decision-making. The JAB Secretariat further reminds the [Applicant] that decisions related to the participation of dependents in the After-Service Health Insurance programme were not within the purview of OHRM but within the purview of the Health and Life Insurance Section (HLIS), Office of Programme Planning, Budget and Accounts (OPPBA), Department of Management (DM).

29 July 2005 – the [Applicant], in order to ensure that there is no miscommunication or misunderstanding, writes back to the JAB Secretariat and re-iterates all the procedural steps taken by him so far. Inter alia the [Applicant] contends that he perceives the Respondent's communication of 14 June 2005 as a reply to both his request for administrative review and to the appeal.

29 July 2005 – the JAB Secretariat shares with the [Applicant] its views on the status of the appeal so far, emphasizing inter alia that following the [Applicant]'s proposal for conciliation of 28 March 2005 his appeal was suspended. From the JAB Secretariat's point of view the Respondent's reply of 14 June 2005 appeared to be the Organization's response to the [Applicant]'s proposal for conciliation and as such it provided the [Applicant] with the information about who made what decision as well as with the preliminary views on the matter of one of the decision-makers. It was suggested that the [Applicant] provide the JAB Secretariat with a written notification to the effect that the conciliation effort failed, if this was the case, and that he would like to proceed with his appeal.

1 August 2005 – the [Applicant] sends a direct request to the head of the HLIS asking to add the [Applicant]'s son ... to his After-Service Health Insurance plan as 'an exigent exception to paragraph 2 of ST/AI/394'.

22 August 2005 – the head of the HLIS denies the [Applicant]'s request on the grounds that as per paragraph 2 of ST/AI/394 the [Applicant]'s son ... was not eligible to be enrolled in ASHI because he was not enrolled under the [Applicant]'s insurance plan as of the [Applicant]'s retirement date.

22 August 2005 – the UNJSPF denies the [Applicant]'s request to record his son ... as his 'prospective UNJSPF beneficiary' on the grounds that UNJSPF Administrative Rule B.3 forbids a 'change in the records relating to the date of birth of a participant or his or her prospective beneficiaries after the date of the participant's separation'.

26 August 2005 – the [Applicant] informs the JAB Secretariat about the reply of the head of the HLIS and requests the JAB to consider all aspects of the case claiming inter alia that 'the singular cause for the inability to register the [Applicant]'s dependent on time [was] given absolutely no merit'.

....

30 August 2005 – the JAB Secretariat receives yet another additional submission dated 19 August 2005 from the [Applicant] 'made in response to the results of the conciliation', which is forwarded the same day to the Respondent.

28 September 2005 – the JAB Secretariat receives the Respondent’s request dated 23 September 2005 to extend the deadline of the Respondent’s Reply to 31 December 2005.

12 October 2005 – the [Applicant] files an application with the UNAT.

27 October 2005 – the UNAT Secretariat rejects the [Applicant]’s application since it did not comply with Article 7 of the UNAT Statute.

14 November 2005 – the [Applicant] files with the Secretary of the UNJSPF a request for review of the UNJSPF’s decision not to recognize his son for dependency status.

...”

The JAB submitted its report on 28 November 2006. Its considerations, conclusions, and recommendation read, in part, as follows:

“Considerations

63. The Panel noted that the Appellant was contesting several issues, namely: (i) refusal of ... OHRM to accept the Appellant’s application dated 16 December 2004 to recognize his son ... born [on] 17 May 2001, for Pension and After-Service Health Insurance purposes; (ii) refusal of the Health and Life Insurance Section, Office of Programme Planning, Budget and Accounts (HLIS/OPPBA) to enroll the Appellant’s son ..., in the Appellant’s after-service health insurance (ASHI) plan; (iii) refusal of the United Nations Joint Staff Pension Fund (UNJSPF) to record the Appellant’s son as his prospective UNJSPF beneficiary.

64. With regard to the OHRM’s decision, the Panel noted that the OHRM considered the Appellant’s application to be time-barred based on the provisions of Staff Rule on retroactivity of payments (103.15) since the application had been filed more than one year after the Appellant’s retirement from the Organization on 30 September 2003.

65. With regard to the HLIS/OPPBA’s decision, the Panel noted that it was based on the provisions of paragraph 2 of the ST/AI/394, which require that *‘in order to be enrolled in the after service health insurance programmes, the former staff member and his or her spouse and eligible dependent children, ... and eligible dependent children of the former staff member, must all have been covered under such an insurance scheme at the time of the staff member’s separation from service...’* with the only standing exception made *‘for a child born within 300 days of the staff member’s separation ..., provided that the other eligibility requirements are met.’*

66. Finally, with regard to the UNJSPF’s decision, the Panel noted that it was grounded on UNJSPF Administrative Rule B.3, which does not allow a change in the records relating to the date of birth of a participant or his or her prospective beneficiaries after the date of the participant’s separation and a contention that neither the Appellant nor his employing organization reported the Appellant’s son ... to the Pension Fund during the Appellant’s active UN service.

67. First of all, the Panel agreed that the UNJSPF’s decision on the eligibility of the Appellant’s son to be added as his prospective UNJSPF beneficiary, was beyond its mandate insofar as there was no question or contention that it was the Respondent’s fault that the child in question had not been reported to the UNJSPF when the Appellant was still in active service. From the available documents, it was clear that the first time the Appellant formally informed the Organization about this child was on 14 December 2004, i.e. more than 1 year after his retirement on 30 September 2003.

68. In fact, the Panel agreed that the crux of the matter in this case were not the difficulties, which the Appellant might have encountered while trying to get official birth registration

documents from the Moroccan authorities but whether or not the Appellant made an attempt to register this child as his dependent either with the mission administration or, upon return from the mission in August 2001 with the OHRM or his Executive Office.

69. In this connection, the Panel noted that in his Observations to the Respondent's Reply the Appellant claimed that upon his return to New York he went to the Insurance Unit with the hospital birth certificate and sought to enroll his son but was told first to register the child with OHRM. The Appellant contended further that when he went to the OHRM, he was told that a proper birth certificate was needed bearing the Appellant's name as the child's father. The Panel did not find the Appellant's contentions convincing, especially in the absence of any documents, such as, for example, Dependency Status Review form, which staff members are required to complete and submit to the administration with the necessary available supporting documentation in order to register changes in their dependency status. The e-mail, which the Appellant sent at that time to his mission colleague seeking advice on how to proceed was not satisfactory either. The Appellant did not provide any evidence that he, for example, followed the advice given to him by his colleague and did try to register the birth of this child and his own fatherhood with his Embassy.

70. On the issue of the Appellant's application being time-barred based on the provisions of Staff Rule 103.15, the Panel agreed that the OHRM's reply was misleading and confusing in a sense that the count-down of the time-limits under this rule should start not from the retirement date but from the date when the initial payment would have been due, in this case 21 May 2001 which was the date of birth of the child in question. Of course, if we were to count from that date, the Appellant's claim would still be time-barred. Nevertheless, with reference to the specific circumstances of the case, the OHRM's reply was somewhat misleading and inaccurate and could have been one of the reasons, which provoked the Appellant to pursue the matter as a formal litigation.

71. The Panel had the same concern about the OHRM's implied conclusion that a staff member who fails to claim a benefit within the established time-limits, loses it for good. The Panel did not agree with such interpretation of Rule 103.15. Its own understanding of the rule in question is somewhat different, namely, that a late submission of the claim only prevents retroactive payment of the claimed benefit but clearly does not result in the complete forfeiture of the said benefit.

72. The Panel also agreed that in his initial request the Appellant was indeed only seeking recognition of his child for after service health insurance and pension fund purposes rather than for being paid retroactively the UN child allowance. Again, in that sense the OHRM's reply was somewhat inadequate and not to the point.

73. With regard to the HLIS/OPPBA's decision, in addition to the fact that the Appellant failed to provide satisfactory evidence of his attempt(s) to formally register his son ... as his dependent in due time, the Panel noted that the provisions of paragraph 2 of the ST/AI/394 were quite straight-forward and did not provide for any discretion and exception. Furthermore, it was the Panel's understanding that no exceptions had ever been made to those provisions, which could be explained by the nature of the after service health insurance programmes, especially subsidized, which are all based on the previous contributory service and contributions and the amounts of premiums being based on the size of the participant's family and the number of eligible participatory dependents. Under the circumstances, any *ad hoc* and *post factum* additions to the beneficiaries would appear to be prejudicial to the interests of other participants, including both active and retired staff members and their families.

Conclusions

74. The Panel concluded that it was not competent to hear the Appellant's appeal against the UNJSPF's decision not to add the Appellant's son as his prospective UNJSPF beneficiary

insofar as the issue at hand was [the Applicant's son's] eligibility to be added effective 14 December 2004 rather than the Respondent's failure to report this child to the UNJSPF as the Appellant's dependent prior to the Appellant's retirement from the Organization on 30 September 2003.

75. The Panel further concluded that the Appellant's contention that certain *de facto* circumstances existed that warranted a legitimate exception to paragraph 2 of ST/AI/394 was irrelevant insofar as the Appellant failed to formally report his child ... to the Organization and register him as his dependent prior to his retirement from the Organization on 30 September 2003.

76. The Panel also concluded that while OHRM's initial response to the Appellant's request was misleading and confusing it did not create any damage to the Appellant's rights which would need to be compensated.

Recommendations

77. The Panel made no recommendation in support of the present appeal."

On 7 July 2006, the Officer-in-Charge, Department of Management transmitted a copy of the report to the Applicant and informed him as follows:

"The Secretary-General accepts the JAB's findings and conclusions, and has decided to take no further action on your case. "

On 8 February 2007, the Applicant filed the above-referenced Application with the Tribunal.

Whereas the Applicant's principal contentions are:

1. The Applicant's son is his "dependant child" as defined in staff rule 103.24 (b) effective 16 December 2004.
2. As such the Applicant's son is entitled to and should be granted ASHI coverage.

Whereas the Respondent's principal contentions are:

1. The Applicant failed to report his son as a dependant with the Organization prior to his retirement and cannot claim that his son be recognised as a dependent child retroactively.
2. The Applicant's son is not eligible to be enrolled in ASHI because he was not a dependant at the time of the Applicant's retirement.
3. The Applicant has failed to demonstrate the existence of exceptional circumstances.
4. There is no basis for compensation to the extent that the Respondent's actions did not cause any damage to the Applicant.

The Tribunal, having deliberated from 3 to 25 November 2009, now pronounces the following Judgement:

I. The Applicant comes before the Tribunal seeking its order to rescind the Respondent's decision prohibiting him from including his son in his ASHI. Specifically, the Applicant requests the Tribunal to find that "the Applicant's son is his 'dependent child' as defined in Staff Rule 103.24(b)" and that he is therefore "entitled to and is granted United Nations After-Service Health Insurance coverage". The Applicant asserts that extenuating circumstances beyond his control prevented him from successfully completing the required paperwork prior to his retirement, most notably the refusal of the Moroccan Government to issue a birth certificate identifying the Applicant as the child's biological father, as required by the Organization's policy, despite his continuous and on-going efforts to obtain such certificate. As redress, the Applicant asks the Tribunal to order the Respondent to enroll his son in ASHI from the date of this decision.

II. The Applicant, a Panamanian citizen, was employed by the Organization as a Security Officer from 12 February 1981 to the date of his mandatory retirement, 30 September 2003. He held a permanent appointment as of 1 March 1983. The Applicant's final mission assignment was served with MINURSO from September 1999 to July 2001. During this mission, the Applicant fathered a son, born 17 May 2001. The Applicant seeks to have his son recognized as a dependent child and to have him included in ASHI.

III. At the time of the child's birth, both the attending physician and the civil servants in Morocco refused to identify the Applicant as the boy's father on the birth certificate, because the Applicant was not a Muslim. The Applicant alleges that under Moroccan law a non-Muslim father cannot be recognized as the birth father on official documentation. On 23 May 2001, the Applicant was informed via email by a MINURSO colleague that, according to "civil matters and the applicable laws in Morocco," the child "cannot be registered with the Moroccan Civil Administration and automatically gets [the Applicant's] nationality" such that registration would have to be done at the Panamanian embassy or consulate. The Applicant immediately set about to find a way to obtain a birth certificate for his son.

IV. Upon returning from his final mission on 20 August 2001, the Applicant immediately attempted to register his son as a dependent for insurance purposes with the HLIS. Upon his first contact with HLIS at Headquarters in New York during the week of 20 August 2001, the Applicant was informed by an HLIS representative that his child must be registered with the Organization through OHRM. That day, the Applicant approached OHRM to register his son but was informed by a representative that in order to register his son as a dependent with the Organization he must have a birth certificate on which the Applicant's name appears as the father. This advice was consistent with the 2001 Questionnaire on Dependency Benefits, particularly, the chart identifying required documentation for benefits. See staff rule 103.24. According to that document, "[a]n original birth certificate must be presented when the child is claimed as a dependant for the first time".

V. From the date of the child's birth in mid-2001 until late 2004, the Applicant worked tirelessly to obtain a birth certificate. Because of the Moroccan laws, the Applicant was eventually forced to investigate and pursue other channels to obtain the documentation, including seeking the help of the Panamanian Government. The Applicant approached the Honorary Consul for Panama in Casablanca on 2 December 2002 via email. According to the Applicant, he was advised by Panamanian officials that in order to register children born abroad to Panamanian nationals, a birth certificate from the child's native country along with the name of the Panamanian parent, duly authenticated in the nearest Consulate of Panama, was required. According to the Applicant, he and the child's mother both attempted to procure the documentation from Moroccan officials but were denied on the basis of Islamic law. Adoption of the child by the Applicant apparently was also considered, but court officials refused to allow it.

VI. As the Applicant neared retirement, he sought an alternative method of registering his son with OHRM because of his ongoing difficulties in obtaining a birth certificate. Again, however, in a conversation with OHRM, he was informed that, pursuant to staff rule 103.24, he was required to produce a birth certificate with his name appearing as the father in order to register his child as a dependent with the Organization. On 26 August 2003, the Applicant met with a representative of UNJSPF, who similarly informed him that he could not add his son as a child beneficiary under the Fund without previously having registered his son as a dependent with the Organization.

VII. Between the time of the Applicant's retirement, 30 September 2003, and his first written contact with OHRM of 16 December 2004, the Applicant continued to seek the assistance of local Moroccan authorities in obtaining the birth certificate. It was not until December 2004, however, that the Applicant was able to secure a *Certificat de la Vie Individuelle* from the Moroccan interior ministry, an official document issued to children born to foreign parents in Morocco. Immediately upon receipt of the *Certificat*, on 16 December 2004, the Applicant forwarded the document along with proof of his support of the child and his renewed request for dependency status to OHRM.

VIII. On 14 January 2005, OHRM denied the Applicant's request for his son's medical coverage as time-barred on the basis that it was filed more than one year after the Applicant's retirement. Thereafter, the Applicant sought administrative review of the Organization's denial through ALU/OHRM, but his claim was rejected. The ALU/OHRM refused to recognize the child after consulting with HLIS because paragraph 2 of ST/AI/394 of 19 May 1994 clearly states that "the after-service health [insurance] programme prohibits adding any dependants after the date of retirement (unless the child was born within 300 days of the staff member's separation from service)". The Applicant's direct request to the head of the HLIS was denied on 22 August 2005 on the grounds that the Applicant's son "was not eligible to be enrolled in ASHI because he was not enrolled under the [Applicant's] insurance plan as of the [Applicant's] retirement date".

IX. The Applicant appealed the ALU/OHRM decision to the JAB, which on 25 April 2006, rendered a decision unfavorable to the Applicant. The Panel agreed with the HLIS decision, noting that the provisions of paragraph 2 of the ST/AI/394 were “straight-forward and did not provide for any discretion and exception”. The Panel noted that no such exception had ever been made to these provisions and that changes to the Applicant’s status would “appear to be prejudicial to the interests of other participants”. The Panel concluded that there was no legitimate exception warranted. In transmitting a copy of the JAB Report to the Applicant, the Officer-In-Charge of the Department of Management advised him of the Panel’s decision and noted that “the JAB did not accept your contentions concerning your attempts to register your son with the appropriate offices with the Organization upon your return to New York in August 2001”. The Applicant appealed this decision to the Administrative Tribunal.

X. The Tribunal now turns to the issue at hand. The Applicant requests that the Tribunal find that the child satisfied the requirements of a “dependent child” as defined in staff rule 103.24(b) and thus is entitled to all benefits derived from this designation, specifically, ASHI coverage. The Applicant asserts that his inability to obtain a birth certificate for his son prior to his retirement should not bar his son from being considered as a dependent. The Respondent argues that the Applicant failed to report his son prior to his retirement and thus is now time-barred.

XI. The Respondent also argues that the Applicant’s allegation that he was required to provide a birth certificate to register his son is “disingenuous”. The Respondent relies on staff rule 103.24(c), referenced below, and argues that this rule “does not make any reference to the kind of documentation required as proof of paternity”. The Tribunal notes, however, that the Respondent is mixing apples and oranges.

XII. The rules governing dependency are indeed found in staff rule 103.24. Under staff rule 103.24(b) (i), a dependent child is: “A staff member’s natural ... child ...” In addition, Staff Rule 103.24(c) provides: “A staff member claiming a child as a dependent must certify that he or she provides main and continuous support. This certificate must be supported by documentary evidence satisfactory to the Secretary-General if a child: (i) Does not reside with the staff member ...”

XIII. Applying this rule to the instant matter, the Applicant had to first prove that the child was his natural son. As he was informed by the Organization on several occasions, starting in 2001 when he first returned from the field, in order to prove that the child was his natural child so that he could be registered as his dependent, he had to provide the child’s birth certificate, identifying the Applicant as the father. Once the child was shown to be his child, via the birth certificate, then, as the child did not reside with him, the Applicant also had to certify that he provided “main and continuous support” to the child. It is with respect to this latter certification of support that the Applicant had some latitude as to the type of proof

accepted by the Secretary-General. Thus, the Tribunal finds that the Respondent's arguments in this respect are misguided and his analysis flawed. It is clear to the Tribunal that the Applicant was informed properly of the requirement to provide a birth certificate naming the Applicant as the father and also to provide evidence of the Applicant's support of his son. The Applicant did that, but unfortunately, due to circumstances beyond his control, and through no fault of his own, not until December 2004, after he had already retired.

XIV. The Tribunal finds that the well-documented efforts of the Applicant to attempt to procure the birth certificate are persuasive. It took the Applicant 15 ½ months following his retirement to get a document which constituted sufficient proof in the eyes of the Organization. When the Applicant presented the documents to the Organization, the JAB and the Secretary-General rejected his efforts as time-barred pursuant to Administrative Instruction ST/AI/394. Paragraph 2 of ST/AI/394 sets out the applicable language:

“After-service health insurance coverage is optional. It is available only as a continuation of previous coverage without interruption in a contributory health insurance plan of the United Nations. In this context, a contributory health insurance plan of the United Nations is defined to include a contributory health insurance plan of another organization in the common system under which staff members may be covered by special arrangement between the United Nations and that organization. In order to be enrolled in the after-service health insurance programme, the former staff member and his or her spouse and eligible dependent children, or the surviving spouse and eligible dependent children of the former staff member, must all have been covered under such an insurance scheme at the time of the staff member's separation from service or death. A child born within 300 days of the staff member's separation from service or death is eligible for coverage, provided that the other eligibility requirements are met.”

XV. According to the Respondent, this means that because the Applicant did not register his son with the Organization prior to his retirement, he is forever barred from adding his son to his coverage. The Tribunal finds that, although ST/AI/394 is clear on its face, in this case, the Organization knew or had reason to know that the Applicant was in the process of trying to obtain a birth certificate, in order to comply with the Rules of the Organization, which clearly required this certificate in order to register the child as a dependent.

XVI. The Tribunal has consistently supported a strict compliance with deadlines. See Judgement No. 596 *Douville* (1993); Judgement No. 1241 (2005). However, where the Organization requires documentary proof from an applicant who is, for reasons beyond his or her control, unable to supply such documentary proof in a timely fashion despite continued and consistent efforts to do so, the applicant should not be penalized for his or her attempt to comply with the Rules. In addition, both OHRM and HLIS had notice that the Applicant was in the process of attempting to obtain the required birth certificate. During the week of 20 August 2001, the Applicant met with a staff member from OHRM and a staff member from the Insurance Section who both told him that he needed to register his son and in order to do so needed a birth

certificate. Prior to his retirement, on 2 September 2003, the Applicant again met with a member of the Insurance Section as he submitted his paperwork for ASHI and discussed with the staff member his wish to have his son included in ASHI, with the same result.

XVII. While the Tribunal is mindful of the JAB's determination that the original record might not have substantiated the Applicant's contentions that he contacted the Organization in a timely fashion, the Tribunal is satisfied, based on additional evidence provided to it by the Applicant in response to its specific inquiries, that the Applicant did in fact contact the Organization on more than one occasion to notify it about his son and his intention to enroll the son as his dependent. He did this as early as 2001, when he returned from mission. The Applicant's ability to recount the names of employees and the dates upon which they spoke constitutes sufficient proof of his rebuffed attempts to register his son with the Organization. Additionally, the Tribunal has previously noted its disfavor of policies that "den[y] to staff members a social right as the one to maintain health . . . insurance without providing expressly the circumstances under which such a right would be given up or compromised". (see, Judgment No. 1333 (2007)). In this case, the Organization never informed the Applicant of the fact that if he did not provide the birth certificate before he retired, his son would be precluded from participating in the after-service medical program.

XVIII. Moreover, the Tribunal notes that while it would have been to the Applicant's advantage to document in contemporaneous writings his contacts with the Organization, the fact that he did not is not fatal to his claim. The Tribunal recognizes that staff members do not approach all encounters with an eye to subsequent litigation.

XIX. Finally, the Tribunal is further persuaded by the Applicant's documented attempts to procure birth documents from both the Moroccan and Panamanian officials, demonstrating that from the birth of his son to his procurement of the *Certificat de Vie Individuelle* on 16 December 2004, the Applicant was working vigorously and continuously to secure the birth certificate demanded by the Organization, and that the delay in obtaining it was in no way due to his action or inaction.

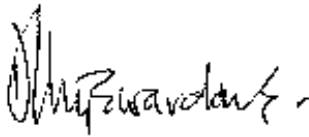
XX. The Tribunal recognizes the JAB's concerns that "*ad hoc* and *post factum* additions to the beneficiaries would appear to be prejudicial to the interests of other participants, including both active and retired staff members and their families". The Tribunal notes, however that the Applicant faced a unique situation and "the Tribunal is mindful of the very unusual and particular facts of this case and the unlikelihood of additional, similar cases arising in the future". (see, Judgement No. 1333 (2007)). Thus, the Tribunal's decision in this matter is limited solely to the circumstances in this case. Where, as here, the Organization made a demand for documentary proof from the Applicant, who consistently attempted to

comply with the demand but was unable to comply within the time limits set out by Organization, through no fault of his own, the Applicant, in these circumstances, should not be penalized.

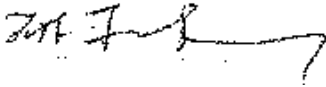
XXI. In light of the foregoing, the Tribunal:

1. Orders the Organization to recognize the Applicant's son as his child and dependent effective as of 16 December 2004 pursuant to staff rule 103.24 (b);
2. Orders the Respondent to enroll the Applicant's son in the ASHI plan effective from the date of this Judgement; and
3. Rejects all other pleas.

(Signatures)



Dayendra Sena **Wijewardane**
President



Goh Joon Seng
Second Vice-President



Jacqueline R. **Scott**
Member



Tamara Shockley
Executive Secretary

New York, 25 November 2009