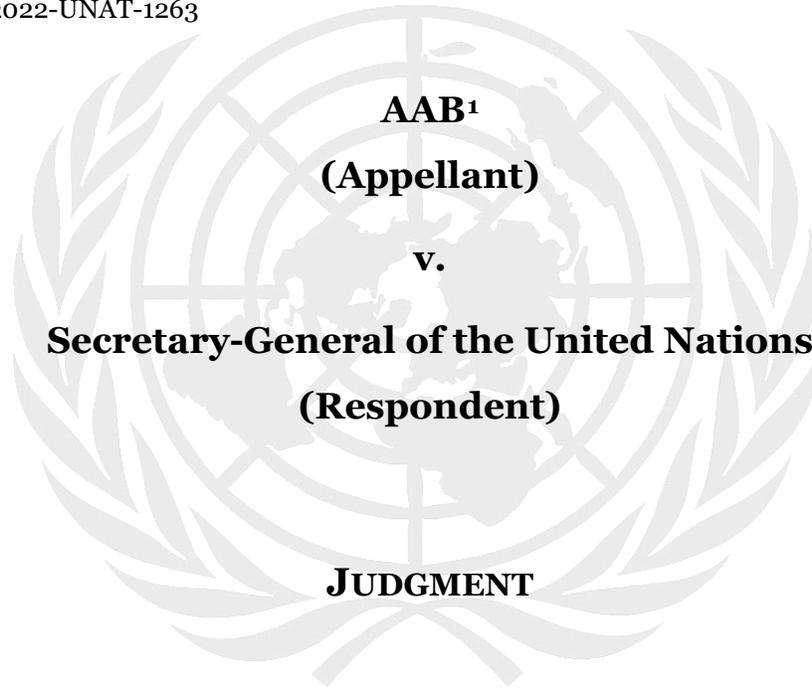




**UNITED NATIONS APPEALS TRIBUNAL  
TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2022-UNAT-1263



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Before:	Judge Martha Halfeld, Presiding Judge Graeme Colgan Judge John Raymond Murphy
Case No.:	2021-1572
Date of Decision:	1 July 2022
Date of Publication:	19 August 2022
Registrar:	Weicheng Lin

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Counsel for Appellant:	Sètondji Roland Adjovi
Counsel for Respondent:	Amanda Stoltz

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<sup>1</sup> This unique three-letter substitute for the party's name is used to anonymize the Judgment and bears no resemblance to the party's real name or other identifying characteristics.

**JUDGE MARTHA HALFELD, PRESIDING.**

1. AAB, a former staff member of the Office of the High Commissioner for Human Rights (OHCHR), contested before the United Nations Dispute Tribunal (UNDT) the following purported decisions: (a) OHCHR's decision to cease all contact with AAB following her separation; (b) the Organization's failure to comply with its obligation to repatriate AAB upon her separation; (c) the Administration's failure to inform AAB about the efforts undertaken to facilitate the issuance of a valid national passport; and (d) the Organization's failure to assert its privileges and immunities.
2. By Judgment No. UNDT/2021/044 dated 28 April 2021, the UNDT dismissed the application finding AAB's challenges to each of the contested decisions moot and/or not receivable.
3. AAB has filed an appeal.
4. For the reasons given below, we dismiss the appeal.

**Facts and Procedure**

5. AAB joined OHCHR on a temporary appointment in 2017. Her temporary appointment expired on 30 September 2018.
6. On 2 July 2018, AAB informed OHCHR that she had received information indicating that she had been "blacklisted" in her home country because of her work with OHCHR and requested assistance in obtaining "an immigration status in the host country". She stated that her national passport was due to expire shortly and that she was unable to renew it due to her blacklisting.
7. On 4 July 2018, AAB was informed that her case was being reviewed by the Safety and Security Section (SSS). On 23 July 2018, having consulted with the SSS and the United Nations Office in Geneva, OHCHR informed AAB that the Organization was not in a position to support her in filing an immigration petition with the host country or to apply for political asylum as this was not compatible with her status as a United Nations staff member. OHCHR offered AAB two possible courses of action: (a) To repatriate her to the place of recruitment (a third country) or her country of nationality as soon as possible but at the latest before the date of expiration of her passport, 12 August 2018. In that case, the Administration would make arrangements to allow AAB to telecommute until the expiry of her temporary appointment. The Administration

stated that it would only be able to extend AAB's appointment if she held a valid national passport for the period of her employment; or (b) To terminate her contract by the date of expiration of her national passport. With this option, OHCHR stood ready to repatriate AAB and process her travel as per her instructions to the country of nationality or anywhere else in the world up to that cost. Repatriation travel would be done upon AAB's request and within a period of two years from the end of her contract.

8. These options were discussed between AAB and the Chief of Human Resources, OHCHR, among others, at a meeting held on 7 August 2018. It was further proposed that while being a staff member, AAB could be escorted by a United Nations Security Officer when travelling to her home country for the purpose of renewing her passport. AAB was informed that as per the SSS' assessment, the risk she incurred upon return to her home country was considered "low".

9. On 23 August 2019, AAB filed an application with the UNDT contesting the following purported decisions: (a) OHCHR's decision to cease all contact with AAB following her separation; (b) the Organization's failure to comply with its obligation to repatriate AAB upon her separation; (c) the Administration's failure to inform AAB about the efforts undertaken to facilitate the issuance of a valid national passport; and (d) the Organization's failure to assert its privileges and immunities.

10. On 28 April 2021, the UNDT issued Judgment No. UNDT/2021/044 dismissing the application finding AAB's challenges to each of the contested decisions either moot or not receivable.

11. As to AAB's challenge of the alleged decision to cease all contact with her following her separation and the Administration's alleged failure to inform her about the efforts undertaken to facilitate the issuance of a national passport, the UNDT found that the Administration did not, in fact, cease communication with AAB after her separation from service following the expiration of her temporary appointment and that this ground of appeal was, therefore, moot. The UNDT further held that after AAB's separation, she was not entitled to receive any further assistance from the Organization with respect to the renewal of her passport. Therefore, the Administration's lack of response did not have an impact on AAB's terms of employment, and there was no appealable administrative decision.

12. Turning to the alleged failure by the Organization to comply with its obligation to repatriate AAB upon her separation, the UNDT noted that AAB had declined the options offered for her relocation and decided to remain in the territory of the duty station after the expiration of her appointment and continued to request the Organization's assistance to renew her passport from there. The UNDT recalled that AAB had no right to be assisted by the Organization with the renewal of her passport as she was no longer a staff member of the Organization and therefore no longer enjoyed functional immunity. The Organization's failure to assist her in this respect did, therefore, have no impact on her terms of her employment with the Organization. Moreover, the UNDT concluded from the facts on record that AAB had neither been repatriated nor traveled outside the duty station because she had failed to provide the required information. There was therefore no decision from the Administration not to repatriate her, which was capable of judicial review and as such, this aspect of the application was also not receivable.

13. Finally, the UNDT dismissed as not receivable AAB's assertion that the Organization had failed to assert its privileges and immunities. The UNDT recalled that a staff member's privileges and immunities cease with his or her separation from the Organization. AAB did not challenge any failure of the Organization to assert its privileges and immunities while she was still in its employment. Moreover, as AAB no longer enjoyed privileges and immunities following her separation, there could be no decision from the Administration not to assert such privileges and immunities after that date.

14. On 27 June 2021, AAB appealed Judgment No. UNDT/2021/044 to the United Nations Appeals Tribunal (Appeals Tribunal or UNAT). The Secretary-General filed an answer to the appeal on 7 September 2021.

## **Submissions**

### **AAB's Appeal**

15. The UNDT made several errors of law. First, a subject-matter cannot be both non-receivable and moot. When a matter is not receivable, there is no justification to consider whether it is moot. However, if a matter is moot, one has to assume that it would have been receivable if it was not moot. In paragraph 15 of the Judgment, the Tribunal had already found that the matter was not receivable. However, in paragraph 20 of the Judgment, the Tribunal went further to find that the matter was moot. If the matter was not receivable, axiomatically there was no reason to further

assess whether it was live or not. This further step in the UNDT's reasoning shows that it was not convinced about its own finding on non-receivability. The motivation is therefore defective.

16. Secondly, the UNDT stated, as a general rule, that the Organization does not have any obligation vis-à-vis AAB after the expiration of her contract. This is not legally correct. The Organization has several obligations vis-à-vis former staff members, but the specific obligations vary on a case-by-case basis. In the current case, the continuity from the time of employment to the time after employment generated an obligation for the Organization that the UNDT failed to recognize.

17. The Organization brought AAB into the duty station, and it has an obligation to repatriate her upon separation to a safe place. Since AAB could not be repatriated to her home country, the Organization was obligated to find an alternative place and assist her by facilitating all the prerequisites to do so, including assisting with the provision of travel documents and authorizations. It is legally wrong to consider that the Organization did not have any such obligation because the employment had ceased, especially when it was fully aware of the risk before the expiration of the contract.

18. AAB also submits that the UNDT violated her right to a fair trial. It is uncontested that the Secretary-General only challenged receivability in part. Yet, the UNDT, in judging that the application was not receivable in its entirety, failed to give an opportunity to AAB to provide her response on the aspects that the Secretary-General did not challenge. As a consequence, her right to be heard was violated.

19. Finally, AAB submits that the UNDT failed to define the administrative decision to review in her case. Indeed, the core issue became the ground for non-extension of the contract, the lack of a valid passport. The refusal to assist AAB before the expiration of her contract was the critical piece, not whether the Organization had any obligation to assist once the contract had expired. The UNDT should have considered her application receivable, and discussed the merits, namely whether the non-extension of the contract on the ground of lack of valid passport in these circumstances was lawful.

20. The UNDT erred in procedure by failing to rule on AAB's motion dated 27 January 2020 seeking leave to reply to the reply to the application so as to rebut several claims contained within the reply with additional facts. AAB requests that UNAT admit the evidence and responses

contained in Annex 3, pursuant to Articles 2(5) and 8(1) of the Appeals Tribunal's Statute and Article 10(1) of its Rules of Procedure. The evidence was properly presented at trial and should have been admitted and considered by the UNDT. The filing of the motion to the UNDT containing the rebuttal evidence and additional facts, the lack of reasoning for the exclusion of the evidence in the Judgment and the substance of the additional evidence fulfil the exceptional circumstances required to admit additional evidence. Moreover, the evidence is only "new" to the extent that it was incorrectly not considered by the UNDT and its substance is such that it would assist the Appeals Tribunal in reaching its decision. If UNAT considers that the first instance tribunal is more appropriate to consider and take the additional facts into account, including the rebuttal of the facts contained in the Secretary-General's reply, it could consider remanding the case to the UNDT for full and proper consideration of all the evidence presented, including that contained within the 27 January 2020 motion.

21. The UNDT also erred in fact, resulting in a manifestly unreasonable decision, by misconstruing the factual case. AAB was not seeking the support of the Organization to secure an asylum but to protect her right to work through her legal status in a foreign country. All other issues were ancillary. In addition, the UNDT mistakenly limited the subject matter to a time when it was comfortable to state the non-receivability. However, each issue started while AAB was still a staff member and the UNDT failed to see the continuity. Looking at the issues in isolation would not do justice to AAB. For instance, bearing in mind the security threat, it was not possible for AAB to accept repatriation to her home country. Yet the UNDT considered that AAB's action of not completing check out procedures to enable the unacceptable repatriation as a fact against her.

22. AAB asks that UNAT find the application receivable and rule on the merits considering the specific circumstances of the case (urgency); and alternatively, should the Appeals Tribunal consider that the additional facts and arguments submitted in the 27 January 2020 motion should have been considered in the UNDT Judgment, to remand the case to a different UNDT Judge to consider both receivability and merits.

### **The Secretary-General's Answer**

23. The UNDT correctly dismissed the application. The UNDT considered the applicable law and the evidence and correctly concluded that AAB's claims were either moot or not receivable. The UNDT's conclusions regarding AAB's claims and its dismissal of her

application were reached in accordance with the applicable legal framework, including relevant jurisprudence, and the facts of the present case.

24. The UNDT correctly dismissed AAB's challenge of the alleged decision to cease all contact with her following her separation and the Administration's alleged failure to inform AAB about the efforts undertaken to facilitate the issuance of a national passport. There was no decision to cease contact with AAB. In fact, the Administration continued to contact her following her separation until January 2019. In any event, any failure to provide continued assistance with respect to the renewal of her passport would have had no impact on her terms of employment, as nothing in the terms and conditions of her appointment, including in the legal framework governing it, obligated the Administration to assist her with the renewal of her passport following her separation from service. The UNDT therefore correctly found this ground of appeal moot and the impugned decision not receivable. In that regard, it is not an error of law to find a matter both moot and not receivable and, any if an error was found to exist, it would not, in itself, bring into question the motivation of the UNDT.

25. The UNDT correctly dismissed AAB's claims regarding the Administration's alleged failure to comply with its obligation to repatriate AAB as not receivable. The UNDT concluded, based on the facts and evidence before it, that there had been no decision not to repatriate AAB that was capable of judicial review and that the claims in that regard were not receivable. The UNDT also recalled that any alleged failure to assist AAB with the renewal of her passport would have had no impact on her terms of employment, insofar as her temporary appointment had expired and nothing in the terms and conditions of her appointment, including in the legal framework governing it, obligated the Administration to assist her with the renewal of her passport following such separation from service.

26. There is no merit to AAB's contention that the UNDT erred by failing to recognize that the Administration had an obligation to AAB after the expiration of her contract. At the time of the application, there had been no decision not to repatriate AAB. The fact that she had not been repatriated or travelled outside the duty station was the result of her rejecting any of the options offered to her for her relocation prior to the expiry of her national passport and her subsequent failure to provide the required information. The UNDT therefore correctly held that AAB's claims were not receivable. Furthermore, on 22 December 2019, AAB advised the Administration that she had obtained a valid Burundian national passport, ostensibly issued on 8 October 2019; she, nevertheless, failed to finalize the separation formalities within the two-year period following her

separation, pursuant to the requirements contained in Staff Rule 7.3. Therefore, the entitlement to return travel would now be subject to exceptional approval, should AAB intend to leave Geneva and, thus, seek to finalize such separation formalities.

27. The UNDT did not violate AAB's right to a fair trial. Contrary to AAB's contention, the UNDT did not err in law and violate her right to be heard by dismissing the application in its entirety as not receivable. The contention that the UNDT failed to give AAB an opportunity to provide her response on aspects of the application that the Respondent did not challenge as not receivable, is without merit in light of the inherent jurisdiction of the UNDT to determine issues of receivability. The UNDT has an inherent jurisdiction to determine issues of receivability even in the absence of pleadings by parties on this issue. Moreover, the Statute of the UNDT prevents it from considering cases that are not receivable.

28. The UNDT correctly defined the administrative decisions for review. AAB does not present any arguments to support her claim that the UNDT failed to define the administrative decision to review; that the critical issue was the Administration's refusal to assist AAB before the expiration of her temporary appointment; and that the UNDT should have considered, on the merits, whether the non-extension of her temporary appointment on the ground of lack of valid passport was lawful. Moreover, AAB did not formulate her challenge before the UNDT in this manner, nor were the allegations regarding the non-extension of her temporary appointment (on the alleged ground of lack of a valid passport) raised in her request for management evaluation. The UNDT, therefore, correctly determined the scope of the administrative decisions challenged by AAB.

29. The UNDT did not err in procedure. Contrary to AAB's contention that the UNDT failed to consider the 27 January 2020 motion and that the evidence presented therein should have been admitted and considered, the UNDT did issue an Order in response to the motion, granting leave to file a response to the reply and admitting the documents attached to that submission into the record. This ground of appeal is therefore moot and should be dismissed. Even in the event that the UNDT had decided not to admit the motion or the evidence presented therein, this decision would not have affected the Judgment on receivability in this case. Having found the application non-receivable, the UNDT correctly did not consider the application on its merit.

30. The UNDT did not err in fact. AAB does not provide any explanation in support of her allegation that the UNDT "misconstrued the factual case" and that she was not seeking the support of the Organization to secure asylum but to protect her right to work through her legal status in a

foreign country and, thus, failed to meet her burden in satisfying the UNAT that the UNDT's Judgment is defective and that the alleged error of fact resulted in a manifestly unreasonable decision.

31. The Secretary-General requests UNAT to affirm the Judgment and to dismiss the appeal in its entirety.

### **Considerations**

#### *Oral hearing*

32. As a preliminary matter, AAB filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Appeals Tribunal's Statute and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). In the present case, AAB's justification for an oral hearing is based on the "continuously changing" circumstances of the case. Therefore, a hearing would allow the Appeals Tribunal to fully master those facts and the sequence of events, as well as to obtain an update on the current situation before making any determination.

33. Despite AAB's arguments, there is nothing in the appeal which could indicate the continuously changing circumstances referred to by AAB. Rather, the factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. Moreover, we do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. Thus, the request for an oral hearing is denied.

#### *Merits of the appeal – the receivability of the application*

34. AAB contends that the UNDT erred on a question of law when it considered the application non-receivable and moot. She claims that, if the matter was not receivable, there was no reason to further assess whether it was moot or not. Thus, the "consideration" part of the Judgment is flawed.

35. This argument is, however, groundless. It is true that the UNDT did not need to go further in its assessment of whether it was moot, once having found that the application was not receivable. However, it is not uncommon that judicial decisions state extra arguments which corroborate the outcome of the judgment, so that the losing party could perhaps be either convinced of the

correctness of the judgment or more comforted by those additional arguments. Moreover, this additional consideration was not consequential for the outcome of the judgment, which dismissed the application on grounds of receivability.

36. AAB further claims that her right to a fair trial before the UNDT had been violated because, since the application was found not to be receivable, she was not afforded the opportunity to “provide her response [to] the aspects that the Respondent did not challenge”.

37. AAB needs to be reminded first, that there is no provision in the UNDT Statute or Rules of Procedure which generally entitles an applicant to file a rejoinder. The direction of the proceedings is incumbent upon the presiding Judge and should be exercised in accordance with the applicable legal framework, as was the case here. Second, the receivability of an application is a preliminary matter which is assessed before the merits of the case. When an application is thus considered not to be receivable, the UNDT does not need to go beyond this threshold in the proceedings by granting further submissions of the parties to comment on the merits of the discussion. The principles of economy and efficiency in the proceedings should apply to these situations in order to avoid distractions and contribute to the fair and expeditious disposal of the case.

38. AAB further maintains that the UNDT failed to define that the core issue became the ground for the non-extension of her contract, namely the lack of valid passport, noting that the refusal to assist her before the expiry of her contract was the critical factor, not whether the Respondent had any obligation to assist her once the contract had expired. She then states that the purpose of the application was to consider “whether the non-extension of the contract on the ground of lack of valid passport in these circumstances was lawful”.

39. AAB seems to have changed her mind by now contesting a different administrative decision from the original four, as detailed by the UNDT. Her new identification of the contested administrative decision, i.e. the non-extension of her contract due to the expiry of her passport has been raised for the first time on appeal. As highlighted by the UNDT in its Judgment, what AAB challenged was the following: (a) the alleged OHCHR decision to cease all contact with AAB following her separation; (b) the Organization’s failure to comply with its obligation to repatriate AAB upon her separation; (c) the Organization’s failure to inform AAB about the efforts undertaken

to facilitate the issuance of a valid national passport; and (d) the Organization's failure to assert its privileges and immunities.<sup>2</sup>

40. AAB did not formulate her challenge before the UNDT in this manner, nor were the allegations regarding the non-extension of her temporary appointment (on the alleged ground of lack of a valid passport) raised in her request for management evaluation. Only now on appeal has AAB raised the issue that the contested administrative decision was the non-renewal of her appointment due to the expiry of her passport. This issue cannot be introduced for the first time on appeal, on pain of infringement of the two-tier principle of administration of justice.<sup>3</sup> Moreover, it is established case law that requesting management evaluation is a mandatory first step in the appeal process.<sup>4</sup> The Appeals Tribunal has noted many times that the requirement of management evaluation assures that there is an opportunity to quickly resolve a staff member's complaint or dispute without the need for judicial intervention.<sup>5</sup> Our jurisprudence is clear that, being a mandatory first step before coming to the internal justice system, the request for management evaluation or decision review provides the Administration with the opportunity to reassess the situation and correct possible mistakes or errors with efficiency.<sup>6</sup> In the present case, there was no request for management evaluation of the decision not to renew AAB's appointment. There was hence no error in the UNDT's Judgment when it determined the scope of the administrative decisions challenged by AAB.

41. AAB also contends that the UNDT committed an error in procedure, since there was no mention in its Judgment referring to the motion which she had filed in January 2020 in response to the Respondent's reply to her application, which is a clear indication that the UNDT did not consider it. She claims that the evidence submitted with the motion should have been considered

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<sup>2</sup> Impugned Judgment, para. 1.

<sup>3</sup> *Ho v. Secretary-General of the United Nations*, Judgment No. 2017-UNAT-791, para. 37; *Haimour and Al Mohammad v. Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East*, Judgment No. 2016-UNAT-688, para. 38; *Staedtler v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-547, para. 25; *Simmons v. Secretary-General of the United Nations*, Judgment No. 2012-UNAT-221, para. 61.

<sup>4</sup> *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

<sup>5</sup> *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13, citing *Amany v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-521, para. 17, in turn citing *Servas v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-349, para. 22 and citations therein.

<sup>6</sup> *Vukasović v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-699, para. 13; *Faye v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-654, para. 31; *Gehr v. Secretary-General of the United Nations*, Judgment No. 2013-UNAT-293, para. 27.

by the UNDT when it made its final determination. AAB fails to understand that the UNDT did take her motion into consideration when it issued Order 37 (NY/2021). Moreover, the UNDT is not obliged to cite in its judgment every motion or piece of evidence presented by the parties. Rather, when determining a case before it, the UNDT must present its consideration in a clear and judicious way in order to afford the parties an understanding of its line of reasoning before reaching its conclusion in the judgment. One of the objectives of the considerations in a judgment is to provide reasons to the parties for the outcome of the judgment so that they can either: (a) be persuaded of the correctness of the judgment; or (b) appeal against the judgment. It is not mandatory for the UNDT, however, to make determinations on issues which it considers inconsequential to the outcome of a case.

42. In the present case, the UNDT found that the application was not receivable and thus did not assess the merits of the case or the evidence produced in the records which is related to the merits. A remand to the UNDT to assess the merits of the application or the evidence submitted before it is ordinarily only applicable once a judgment on receivability is overturned, which is not the case at hand. Furthermore, AAB does not indicate how this piece of evidence would have had any bearing on the outcome of the case, which was dismissed on grounds of receivability.

43. Regarding the receivability of the application, AAB contends that the Organization's obligations *via-à-vis* former staff members do not fully cease after the expiration of the contracts, since the continuity of the time after the appointment generated an obligation that the UNDT failed to recognize. Referring to the return travel expenses of a staff member on separation from service and to the repatriation grant, AAB makes her case that the Organization has the obligation to repatriate her upon separation to a safe place. In her view, since she could not be repatriated to her home country, the Organization was obligated to find an alternative place and assist her with travel documents and authorizations.

44. AAB also maintains that she did not seek asylum due to the expiry of her passport, but she sought her right to work through her legal status in a foreign country while she was still a staff member of the Organization. She insists that there was a security threat with her repatriation to her home country, i.e., her life was endangered, and this is why she did not complete the check-out procedures when she was separated from work. AAB then states that the substance of the situation was that the Respondent refused to have any communication regarding how to assist her effectively with the renewal of her passport, and that she was abandoned by the Organization and "*jeopardized her dignity*".

45. As previously held in the Appeals Tribunal's jurisprudence, for an administrative decision to be assessed before the internal justice system, the appellant must identify and challenge it, ordinarily via management evaluation first, and only then before the tribunals. In the present case, however, AAB seems to be uncertain about which administrative decision to challenge. Whereas the UNDT identified four (alleged) administrative decisions in its Judgment, AAB has raised in her appeal at least two new ones: the non-renewal of her appointment due to the expiry of her passport, as discussed above, and now the refusal to assist her effectively with the renewal of her passport, neither of them had been previously subject to management evaluation. This finding would be sufficient to affirm the UNDT Judgment that the application was not receivable.

46. What the Appeals Tribunal could gather from the present case is that the Organization offered the available resources to support AAB in light of her request of assistance to renew her passport in her home country while she was still a staff member. The Organization consulted SSS, considering AAB's concerns for her own safety, and found that the risk she would incur upon return to her home country was low.<sup>7</sup> Despite this, the Organization offered a list of options to her, which would include:(a) a security escort when travelling to her home country for the purpose of renewing her passport; (b) repatriation to her place of recruitment (Nairobi, Kenya) or to her country of nationality as soon as possible, but at the latest before the passport expiry date on 12 August 2018, so that she could be allowed to telecommute until the expiry of her temporary appointment; and (c) termination of her appointment at the date of expiry of her national passport, in which case she would have been entitled to termination indemnities, together with repatriation to her country of nationality or anywhere else in the world, upon her request and within a period of two years from the end of her temporary appointment.<sup>8</sup>

47. AAB declined the options offered to her<sup>9</sup> and her contract expired on 30 September 2018.<sup>10</sup> Since the risk she would incur upon returning to her home country was considered to be low by the Organization, it was AAB's burden to provide evidence of the threat to her life in the event that she returned to her home country in order to renew her passport. However, AAB's allegation that she could not be repatriated to her home country when the options were offered to her was not supported by evidence. There was hence no justification for not having accepted any of the courses of action offered by the Organization while she was still a staff member. Nor has there been any

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<sup>7</sup> Impugned Judgment, paras. 5, 7 and 8.

<sup>8</sup> *Ibid.*, para. 7.

<sup>9</sup> *Ibid.*, para. 22.

<sup>10</sup> *Ibid.*, para. 9.

indication that she challenged the decision not to support her in her filing of an immigration petition with the host country or to apply for political asylum, while she was still a staff member of the Organization.<sup>11</sup>

48. AAB's allegation that there was no response by the Organization to her request for assistance by the Organization with respect to the renewal of her passport while she was still a staff member is therefore without merit. The evidence in the record indicates the opposite. It was therefore incumbent on AAB to accept one of the options offered to her; or to rebut the Administration's "low" risk assessment. She failed to do so.

49. The Appeals Tribunal thus finds no error in the identification of the contested administrative decisions by the UNDT and the way it referred to them after AAB's separation, where, after having refused all the courses of action offered to her, she was no longer entitled to receive any further assistance from the Organization with respect to neither the renewal of her passport nor her repatriation, nor the assertion of the Organization's privileges or immunities.

50. The alleged lack of information about the efforts undertaken to facilitate the issuance of a valid national passport *after AAB's separation* cannot be considered an administrative decision challengeable before the internal justice system; nor can the lack of assistance in obtaining the renewal of AAB's passport, *once her appointment had expired*. This is because these alleged inactions were neither performed within the duration of the appointment, nor related to the appointment. Also, having been challenged only once the appointment had expired, they were entirely disconnected to her former appointment. The UNDT was thus correct in its finding that the decision not to assist or inform AAB was thus not reviewable. Consequently, the application was not receivable.<sup>12</sup>

51. Further, the Appeals Tribunal does not find any error in the UNDT finding that the list of the possible courses of action detailed in the e-mail of 23 July 2018 cannot be described as a "contested decision", as there was no decision as such. It must be remembered here that "the key characteristic of an administrative decision subject to judicial review is that the decision

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<sup>11</sup> *Ibid.*, para. 7.

<sup>12</sup> *Ibid.*, para. 15.

must ‘produce[] direct legal consequences’ affecting a staff member’s terms and conditions of appointment”.<sup>13</sup>

52. In the present case, the list contains options presented to AAB to tackle the issue of the expiry of her passport during the course of her appointment. Since it was then for *her* to decide between the two options, and not for the Administration, there was no challengeable administrative decision. Moreover, even if there was an administrative decision subject to judicial review, there is no evidence, as indicated by the UNDT, that the decision had been previously challenged by management evaluation.<sup>14</sup>

53. Having considered all of AAB’s submissions, the Appeals Tribunal finds that she has failed to demonstrate that the UNDT committed any error of law, fact or procedure in reaching its decision and thus the appeal fails.

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<sup>13</sup> *Kazazi v. Secretary-General of the United Nations*, Judgment No. 2015-UNAT-557, para. 28, citing *Lee v. Secretary-General of the United Nations*, Judgment No. 2014-UNAT-481, in turn citing former Administrative Tribunal Judgment No. 1157, *Andronov* (2003), para. V and *Andati-Amwayi v. Secretary-General of the United Nations*, Judgment No. 2010-UNAT-058, para. 17.

<sup>14</sup> Impugned Judgment, para. 22.

**Judgment**

54. The appeal is dismissed and Judgment No. UNDT/2021/044 is affirmed.

Original and Authoritative Version: English

Decision dated this 1<sup>st</sup> day of July 2022 in New York, United States.

*(Signed)*

Judge Halfeld, Presiding

*(Signed)*

Judge Colgan

*(Signed)*

Judge Murphy

Judgment published and entered into the Register on this 19<sup>th</sup> day of August 2022 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar