

UNDT/2010/132, Wang

UNAT Held or UNDT Pronouncements

While the change of the country of home leave referred to in ST/AI/367 is stated to be permanent, it is not unconditional, but subject to the Secretary-General being satisfied of the three specified conditions, which include its consistency with the purposes and intent of staff regulation 5.3. Former staff rule 105.3 gave internationally recruited staff the opportunity to take home leave to visit their home country at UN expense. Providing staff rule 105.3 (d) that the country of home leave shall be the country of the staff member's nationality, the logical corollary is that if a staff member is residing in his or her country of nationality, there is no entitlement to home leave. Staff rule 105.3 does not contain an express provision for changing the original home country from the one designated as an exception under staff rule 105.3 (d) when circumstances change, but it may be reasonably inferred from staff rules 104.7 (c) and 104.8 that the reference in the ST/AI/367 to "permanent" change should not as a matter of policy be interpreted to mean that that decision can never be changed. The ability of the Secretary-General to revoke a previous exception does not render staff rule 105.3 (d) nugatory. The Secretary-General continues to have the discretion to make exceptions, but is bound by the above-mentioned conditions. It would be contrary to the purpose and intent of the regulations that such an exception should be permanent and immutable. Staff members are entitled to enjoy entitlements acquired by the application of an exception, but only for as long as the circumstances meet the conditions of the exception. If those circumstances materially change, the staff member may lose those acquired rights. The fact of the applicant moving to his country of nationality was good reason for the Secretary-General to reassess his eligibility for the exception. As former UNAT stated in Judgment No. 781, Shaw et al. (1996), where it was held that "[s]taff regulation 3.2 (a) unequivocally excludes from the education grant benefit staff members who reside in the country of which they are nationals. Hence, the Secretary-General is entitled to refuse the applicant's claim for a continuation of the exception to his place of home leave and to reject his application for the education grant. The respondent has consistently acknowledged that it made an error in

advising the applicant that he was entitled to the education grant. As a result, the applicant received two years worth of the education grant to which he would not otherwise have been entitled. That is adequate compensation for the error made and the consequences to the applicant. Outcome: The application was dismissed.

Decision Contested or Judgment/Order Appealed

The applicant relinquished his Chinese citizenship when he acquired the Austrian nationality. This was before he entered to the service of the UN Secretariat, in the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), Bangkok. At his request the Human Resources Management Service (HRMS), ESCAP, approved a change in the applicant's place of home leave from Vienna to Shanghai, based on former staff rule 105.3 (d) (iii) a), which provides for an exception to the general rule that the country of nationality is the country of home leave of a staff member, in compelling and exceptional circumstances, and under certain conditions. The applicant was subsequently selected for a position in UN Office at Vienna. Before moving to Vienna, he inquired with HRMS, UNOV, and was repeatedly reassured that he would be entitled to education grant for his daughter. After he took up his assignment in Vienna, UNOV informed him that he was entitled neither to education grant nor to home leave, as he was serving and residing in his country of nationality. It was further stated that the designation of China as his country of home leave had not been made in accordance with the rules and a PA was issued retroactively recording Vienna as his place of home leave. The Administration granted to the applicant two extra academic years of education grant on account of the wrong advice given by HRMS, UNOV.

Legal Principle(s)

N/A

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Wang

Entity

UNOV

Case Number(s)

UNDT/GVA/2010/016

Tribunal

UNDT

Registry

Geneva

Date of Judgement

25 Jul 2010

Duty Judge

Judge Shaw

Language of Judgment

English

French

Issuance Type

Judgment

Categories/Subcategories

Benefits and entitlements

Education grant

Home leave

Applicable Law

Administrative Instructions

- ST/AI/367

Former Staff Rules

- Rule 103.20
- Rule 104.7
- Rule 104.8
- Rule 105.3
- Rule 5.3

GA Resolutions

- A/RES/470-V
- A/RES/49/241