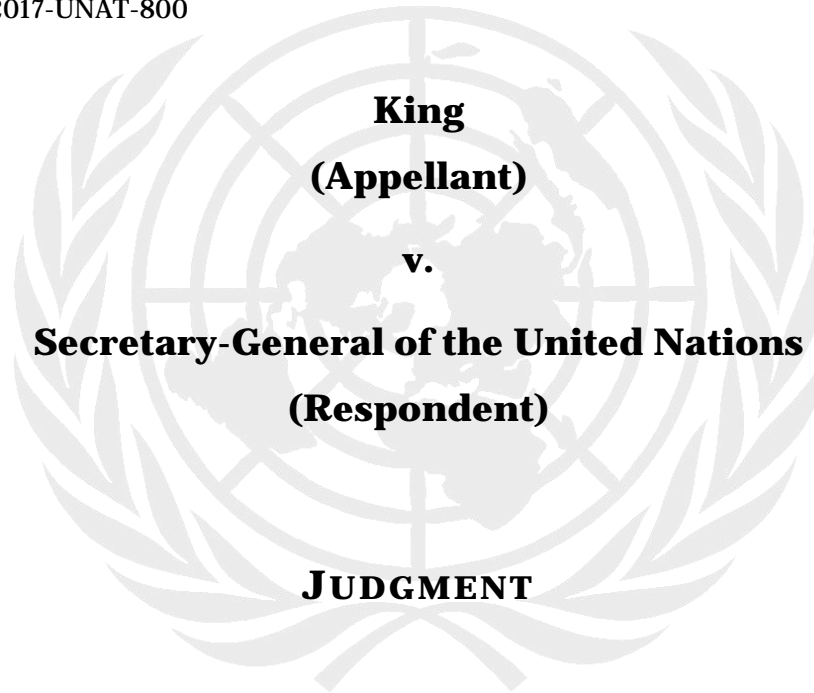




# **UNITED NATIONS APPEALS TRIBUNAL TRIBUNAL D'APPEL DES NATIONS UNIES**

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Judgment No. 2017-UNAT-800



**King  
(Appellant)**

**v.**

**Secretary-General of the United Nations  
(Respondent)**

## **JUDGMENT**

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|------------|---|
| Before:    | Judge Sabine Knierim, Presiding<br>Judge Deborah Thomas-Felix<br>Judge Martha Halfeld |
| Case No.:  | 2017-1085   |
| Date:      | 27 October 2017   |
| Registrar: | Weicheng Lin  |

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|--------------------------------|----------------------|
| Counsel for Mr. King:          | Self-represented     |
| Counsel for Secretary-General: | Francisca Lagos Pola |

**JUDGE SABINE KNIERIM, PRESIDING.**

1. The United Nations Appeals Tribunal (Appeals Tribunal) has before it an appeal against Judgment on Receivability No. UNDT/2016/045, rendered by the United Nations Dispute Tribunal (UNDT or Dispute Tribunal) in Nairobi on 27 April 2016, in the case of *King v. Secretary-General of the United Nations*. Mr. Prince King filed the appeal on 16 June 2017, and the Secretary-General filed his answer on 22 September 2017.

**Facts and Procedure**

2. Mr. King is a national of Sierra Leone. He entered into service with the United Nations on 26 January 1998 at the United Nations Headquarters in New York where he worked until 7 March 1999. During that time, he held a G-4 visa. Mr. King was subsequently reappointed to various peacekeeping missions, including the African Union-United Nations Mission in Darfur (UNAMID), where he served until he reached the mandatory retirement age in August 2014.

3. Mr. King requested that upon separation he travel to his place of home leave and place of recruitment, New York. When UNAMID Human Resources requested Mr. King to confirm his travel itinerary to New York, Mr. King responded via e-mail stating that he did not have a visa to travel to the United States and since he is “returning to his place of recruitment, which is employment based travel, [he] must have a letter from the [United Nations] requesting issuance of a visa to return to New York”.

4. On 3 September 2014, Mr. King was provided with an itinerary for travel to New York and was informed by the Chief Human Resources Officer (CHRO) that “it is a staff member’s responsibility to ensure that they have valid travel documents – appropriate visas, UNLPs [laissez passer] and national passport to undertake travel to any country”. The CHRO also informed Mr. King that the Organisation could not request the G-4 visa for him because he was neither assigned to work in the United States nor was he traveling there for official business.

5. On 8 September 2014, Mr. King sought management evaluation. On 15 June 2015, the Management Evaluation Unit (MEU) rejected his request for management evaluation, as per the provisions of Administrative Instruction ST/AI/2000/19 (Visa status of non-United States staff members serving in the United States, members of their households

and their household employees, and staff members seeking or holding permanent resident status in the United States), on the ground that he did not have a legal right to retain the G-4 visa status acquired during his appointment in United Nations Headquarters in New York after he was employed outside the United States. Under the same Administrative Instruction, he did not have a right to request and obtain a G-4 visa for his repatriation to the United States given that he was being separated and was not travelling to the United States on official business. In the absence of any right to a G-4 visa the MEU determined that his request had no direct effect on the terms of appointment and his request was not receivable.

6. On 6 July 2015, Mr. King's counsel wrote to the current Under-Secretary-General of the Department of Field Support (USG/DFS) and requested a response to Mr. King's standing request that his place of repatriation be recognized as the United States and a proper travel authorization be issued so that he may proceed to leave Sudan. Counsel informed the USG/DFS that if he did not receive a response by 21 July 2015, he would consider this as a negative administrative decision.

7. On 24 July 2015, having not received a response from the USG/DFS, Mr. King submitted a second request for management evaluation through his counsel. He specified the administrative decision to be evaluated as: "The decision rejecting [his] request to recognize the United States as the proper place of repatriation and to issue proper travel authorization so that [he] may proceed with [his] relocation from Sudan and finalize [his] separation from service". On 30 July 2015, the MEU informed Mr. King's counsel that on 15 June 2015, it had already responded to the issues raised in the 24 July 2015 request for management evaluation.

8. On 28 August 2015, Mr. King filed an application before the UNDT. The Secretary-General filed his reply on 1 October 2015. On 27 April 2016, the UNDT rendered its Judgment, which dismissed Mr. King's application in its entirety as not receivable both *ratione temporis* and *ratione materiae*. The UNDT held that Mr. King's application to the UNDT was filed out of time. The UNDT identified the CHRO's e-mail to Mr. King of 3 September 2014 as the contested administrative decision wherein the CHRO unequivocally informed Mr. King that the Organisation could not request a G-4 visa on his behalf. Pursuant to Article 8(1) of the UNDT Statute, Mr. King had 90 days from the date the response from the MEU was due, namely, 5 March 2015. However, he filed well out of time on 28 August 2015.

The UNDT also held that Mr. King's second request for management evaluation was a reiteration of his first request and did not reset the clock. In finding Mr. King's application not receivable *ratione materiae*, the UNDT found that Mr. King failed to identify any direct legal consequence affecting his terms or conditions of appointment or any other breach of the relevant Regulations or Rules arising from the impugned decision. The UNDT further found that the Administration provided Mr. King with a written travel authorization as set forth in Staff Rule 7.4 and with a certification of service as set forth in Staff Rule 9.12. Any challenge to decisions relating to travel authorization and certificate of service is moot and not receivable.

9. On 27 April 2016, the UNDT sent the Judgment to Mr. King's counsel. Also on 27 April 2016, Mr. King's counsel, by way of e-mail, informed Mr. King of the UNDT Judgment and informed Mr. King that he had 60 days to file an appeal before the Appeals Tribunal.

10. On 16 June 2017, Mr. King filed an appeal before the Appeals Tribunal and included a request for interim relief.

11. On 11 August 2017, the President of the Appeals Tribunal issued Order No. 295 (2017), rejecting Mr. King's motion for interim relief, on grounds that Mr. King failed to show, as required by Article 9(4) of the Appeals Tribunal's Statute (Statute), that the interim measure requested was consistent with the UNDT Judgment under appeal. The President held that Mr. King's request for the issuance of a letter for a G-4 visa would not be consistent with the UNDT Judgment, which dismissed his application against the Administration's refusal to issue him a letter for a G-4 visa.

12. On 22 September 2017, the Secretary-General filed his answer to the appeal.

### **Submissions**

#### **Mr. King's Appeal**

13. Mr. King submits that the UNDT exceeded its jurisdiction in deciding that he did not have a legal right to a G-4 visa after 21 July 1999 when he left the United States. The UNDT has violated United States law and international treaties between the United Nations and the United States. The UNDT's decision constitutes indefinite deportation, exile, and trafficking on the pretext of recruitment abroad that has caused him to be indefinitely removed from the

United States, his domicile. Various treaties and the United States immigration code permit the United Nations to deploy a G-4 visa holder temporarily abroad on assignment while maintaining their residency and property left behind in the United States. Denying him a G-4 visa to return is a violation of United States treaties and law. The United Nations is encouraging him to request a B1/B2 visitor/transit visa to return to the United States, which is an inappropriate visa and would constitute visa fraud.

14. Mr. King also contends that the UNDT failed to exercise its jurisdiction as the UNDT should have ensured that contractual documents relating to his terms and conditions were tendered into evidence. The UNDT should have also verified the authenticity and accuracy of the Secretary-General's assertions. The Secretary-General withheld evidence, namely, Administrative Instruction ST/AI/2000/19, from the UNDT. Mr. King asserts that per his appointment letter of 15 July 1999, his G-4 visa was not cancelled because of his assignment abroad as it was an appointment of limited duration. Under United States law, he must return to the United States to cancel his G-4 status and have a change of status out of G-4 for himself and his dependents. Mr. King asserts that he is a United States resident and is subjected to the laws, rights and privileges of the United States government and under United States law he is entitled to return to the United States and change his visa status. Mr. King also claims that numerous documents such as various United Nations administrative issuances, United States legal documents, and his letters of appointment were not tendered as evidence. Lastly, Mr. King claims that the UNDT erred in assessing the timeline, namely, that the last correspondence from the MEU was not 20 October 2014 but on 15 January 2015 when the MEU discussed his case with the Office of Staff Legal Assistance.

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

15. The Secretary-General submits that Mr. King's appeal is time-barred and therefore not receivable to the Appeals Tribunal. In accordance with Article 7(1)(c) of the Statute, Mr. King was required to file his appeal within 60 calendar days of the receipt of the Judgment of the Dispute Tribunal. The UNDT issued its Judgment on 27 April 2016, but Mr. King did not file his appeal until 16 June 2017, more than one year beyond this statutory deadline. While Article 7(3) of the Statute provides that the Appeals Tribunal may decide in writing upon a written request of the Appellant to suspend or waive the deadlines in exceptional cases, Mr. King did not submit such a request nor demonstrate exceptional circumstances that the Appeals Tribunal could consider warranting a waiver of the statutory time limit.

16. The Secretary-General further submits that even if the Appeals Tribunal were to accept the appeal, the UNDT correctly dismissed Mr. King's application as not receivable *ratione temporis* and *ratione materiae*. In particular, the UNDT rightly found that Mr. King filed his application before the UNDT outside of the 90-day deadline. The UNDT also correctly dismissed Mr. King's application *ratione materiae*. Under Section 1(1) of ST/AI/2000/19, the G-4 non-immigrant visa is granted to officials of, or persons employed by, international organisations while stationed on official business in the United States. It follows that Mr. King did not have a right to request and obtain a G-4 visa to the United States for travel after retirement as he was neither assigned to work for the United Nations in the United States nor was travelling there for official business. In the absence of such a right to obtain a visa, the UNDT correctly determined his appeal was not receivable *ratione materiae*.

17. In light of the foregoing, the Secretary-General requests that the Appeals Tribunal affirm the UNDT Judgment and dismiss the appeal in its entirety.

### **Considerations**

18. As a preliminary matter, Mr. King filed a request for an oral hearing. Oral hearings are governed by Article 8(3) of the Statute and Article 18(1) of the Appeals Tribunal's Rules of Procedure (Rules). 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.

19. Mr. King's appeal is not receivable *ratione temporis* as he did not file it within the prescribed time limits.

20. Article 7 of the Appeals Tribunal's Statute, in relevant parts, reads as follows:

1. An appeal shall be receivable if:

- (a) The Appeals Tribunal is competent to hear and pass judgement on the appeal, pursuant to article 2, paragraph 1, of the present statute;
- (b) The appellant is eligible to file the appeal, pursuant to article 2, paragraph 2, of the present statute; and
- (c) The appeal is filed within 60 calendar days of the receipt of the judgement of the Dispute Tribunal or, where the Appeals Tribunal has decided to waive or suspend that deadline in accordance with paragraph 3 of the present article, within the period specified by the Appeals Tribunal.

...

3. The Appeals Tribunal may decide in writing, upon written request by the applicant, to suspend or waive the deadlines for a limited period of time and only in exceptional cases. The Appeals Tribunal shall not suspend or waive the deadlines for management evaluation.

4. Notwithstanding paragraph 3 of the present article, an application shall not be receivable if it is filed more than one year after the judgement of the Dispute Tribunal.

21. We note that the UNDT Judgment was issued and sent to Mr. King's counsel on 27 April 2016. On the same day, counsel informed Mr. King of the Judgment and that he had 60 days to file an appeal before the Appeals Tribunal, hence until 26 June 2016. However, Mr. King filed an appeal before the Appeals Tribunal on 16 June 2017. He gave no explanation why his appeal was sent that late nor did he file a written request to waive the time limits. Mr. King filed his appeal more than one year after the issuance of the UNDT's Judgment. Even if Mr. King had requested a waiver of the time limit on the basis of exceptional circumstances, his appeal is time-barred by Article 7(4) of the Statute and is therefore not receivable.<sup>1</sup>

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<sup>1</sup> *Choi v. Secretary-General of the United Nations*, Judgment No. 2016-UNAT-651, paras. 20 and 21.

**Judgment**

22. The appeal is dismissed and Judgment No. UNDT/2016/045 is affirmed.

Original and Authoritative Version: English

Dated this 27<sup>th</sup> day of October 2017 in New York, United States.

*(Signed)*

Judge Knierim, Presiding

*(Signed)*

Judge Thomas-Felix

*(Signed)*

Judge Halfeld

Entered in the Register on this 8<sup>th</sup> day of December 2017 in New York, United States.

*(Signed)*

Weicheng Lin, Registrar