Before: Judge Jean-François Cousin
Registry: Amman
Registrar: Laurie McNabb

NIEDERMAYR

v.

COMMISSIONER GENERAL OF THE UNITED NATIONS RELIEF AND WORKS AGENCY FOR PALESTINE REFUGEES

JUDGMENT

Counsel for Applicant: Self-represented

Counsel for Respondent: Lance Bartholomeusz (DLA)
Introduction

1. This is an application by Michael Niedermayr (the “Applicant”) against the decision of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, also known as UNRWA (the “Respondent”), not to register his family with the United Nations Department of Safety and Security (“UNDSS”) as United Nations (“UN”) dependents residing in Lebanon.

Facts

2. In January 2012, the Applicant’s family moved from Damascus, Syria to Beirut, Lebanon.

3. Effective 1 May 2012, the Applicant joined the Agency as a Field Safety Advisor, Damascus, Syria on a one-year fixed-term appointment. His appointment was then renewed for the period 1 May 2013 to 30 April 2014.

4. By emails dated 4 and 8 May 2012, the Applicant requested the Field Security Officer, Lebanon (“FSO/L”) to include his family in the list of UN dependents in Lebanon for security purposes.

5. By email dated 31 October 2012, the Human Resources Officer for international staff (“HRO”) informed the Applicant that it was not possible to change the legal status of his family from private to official in Lebanon since the Applicant was not a staff member assigned to the Lebanon Field Office and there was no agreement between the UN and the Lebanese Government to host families of Syria-based staff. The HRO, also informed the Applicant of the option for his family to reside in Amman, Jordan because of an agreement entered into between the UN and the Government of Jordan.

6. By email dated 22 November 2012, the Applicant requested the Director of Human Resources (“DHR”), inter alia, to register his dependents in the UNDSS security system in Lebanon.
7. In response to the Applicant’s request, by email dated 20 January 2013, the Acting Chief, Personnel Services Division ("ACPSD") informed the Applicant that the UN system does not permit his dependents to be included in the UN security system in Lebanon and that the Agency is responsible only for dependents it has installed in the duty station, in the staff member’s home country or at a third agreed location where the Agency has standing to secure a legal status for the staff member or his/her dependents.

8. Between April and June 2013, the Applicant’s dependents obtained their residency permits in Lebanon.

9. At the beginning of July 2013, the Syrian authorities withdrew the Applicant’s visa and effective, 7 July 2013, the Applicant was temporarily relocated to Beirut, Lebanon. The Applicant was to remain on duty travel status.

10. By email dated 4 September 2013, the Applicant requested again the FSO/L to process the registration of his dependents with the UNDSS in Lebanon.

11. On 7 October 2013, the Chief Human Resources Services Division ("CHRSRD") referred the Applicant to the 20 January 2013 email and reiterated that "Lebanon is not a place of evacuation for Syria based staff and as such, family members of staff whose duty station is not Lebanon cannot be installed in Lebanon under the Agency’s and the UNDSS’s care”.

12. By email dated 7 October 2013 to the CHRSRD, the Applicant repeated his request noting that he was merely requesting that his dependents be registered with the UNDSS in Beirut. He again reiterated this request in an email to the CHRSRD on 22 October 2013.

13. On 26 November 2013, the Applicant requested review of the decision not to register his family with the UNDSS as UN dependents residing in Lebanon.

14. By letter dated 26 December 2013, the Deputy Commissioner-General replied to the Applicant’s request. She concluded that the contested decision was made in full accordance with the Agency’s Staff Regulations and Rules.
15. On 20 March 2014, the Applicant submitted an application to the UNRWA Dispute Tribunal (the "Tribunal").


**Applicant’s contentions**

17. The Applicant contends that:

i) his dependents were legally residing in Lebanon when he was recruited by the Agency and their place of residency does not contravene any UN regulations;

ii) there is no rule that requires UN dependents to relinquish their home place, except if the place of residence is declared a non-family duty station. Lebanon is a family duty station;

iii) no Administrative Place of Assignment ("APA") had been designated for the Applicant. The Agency did not install his family in Lebanon but it was fully aware that his family resided there at the time of his recruitment;

iv) as stipulated in the UN Security Policy Manual, the Agency is obligated to report recognised dependents, including dependents of international staff serving elsewhere, to the Designated Official and UNDSS, so that they are accorded the same provision for security as dependents of international staff serving at the duty station. The Agency breached its responsibility; and

v) the Agency owes all staff and their dependents a duty of care. The Director of UNRWA Affairs Lebanon ("DUA/L") is accountable for the safety and security of the Applicant’s family as recognised dependents of a staff member. The DUA/L breached the UNRWA Framework for Accountability, Roles and Responsibilities.

18. The Applicant requests:
i) to have his family registered with the UNDSS in Lebanon;

ii) to be granted compensation for moral damages; and

iii) to receive an apology from the Agency.

Respondent’s contentions

19. The Respondent contends that:

i) the application is time-barred. The Applicant was informed of the contested decision by an email dated 20 January 2013 from the ACPSD but he only requested review of the decision on 27 November 2013. His request for decision review was time-barred. The email dated 7 October 2013 merely reiterates the Agency position transmitted to the Applicant on 20 January 2013;

ii) the application is not receivable because no appealable decision has been presented. The decision not to register the Applicant’s family with the UNDSS as UN dependents residing in Lebanon is not an administrative decision as it did not affect the Applicant’s terms of appointment;

iii) the Applicant contends that the impugned decision breached the provisions contained in the UN Security Management System Policy Manual and the UNRWA Security Policy Manual. However, these manuals do not create rights, rather these manuals pronounce

iv) obligations on the part of the Agency with regard to safety, security and well-being of personnel and security of the UN premises and assets; and

v) the Agency owed no obligation to the Applicant’s family because Beirut, Lebanon was neither the Applicant’s duty station nor his APA.

20. The Respondent requests the Tribunal to dismiss the application.
Considerations

21. The Applicant contests the Agency's decision not to register his family with the UNDSS as UN dependents residing in Lebanon.

22. At the outset, the Tribunal reviews the receivability of the application.

23. International Staff Rule 111.2 provides:

1. A staff member wishing to formally contest an administrative decision alleging non-compliance with his or her terms of appointment or the contract of employment, including all pertinent regulations and rules and all relevant administrative issuances pursuant to Staff Regulation 11.1 (A), shall, as a first step, submit a written request for a decision review:

   ** ** **

   (B) in the case of staff members of Field Offices, to the UNRWA Field Office Director in charge of the Field Office.

   ** ** **

3. A staff member shall submit a request for a decision review within 60 calendar days from the date on which the staff member received notification of the administrative decision to be contested.

24. The United Nations Appeals Tribunal ("UNAT") held in Ajdini et al. 2011-UNAT-108 that:

An application is only receivable when a staff member has previously submitted the impugned administrative decision for management evaluation and the application is filed within the specified deadlines.

25. In his application, the Applicant identified the contested decision as the email dated 7 October 2013 from the CHRSD in which she indicates that "Lebanon is not a place of evacuation for Syria based staff and as such, family members of staff whose duty station is not Lebanon cannot be installed in Lebanon under the Agency’s and the UNDSS’s care". However, the Respondent asserts that the email of 7 October 2013 merely reiterates the ACPSD decision transmitted to the Applicant on 20 January 2013, by which he was informed that the UN system does not allow the inclusion of his dependents in the UN security system in Lebanon.
26. The UNAT held in *Sethia* 2010-UNAT-079 that:

[...] a mere restatement of his original claim [...] did not stop the
deadline for contesting the decision from running or give rise to a
new administrative decision thereby restarting the time period in
which to contest [the decision].

27. In the same Judgment, the UNAT referred to Judgment No. 1211, *Muigai*
(2004) of the former United Nations Administrative Tribunal which states that:

In this regard, the Tribunal wishes to reiterate two points: a) once it
is clear that a decision is made, the time for initiating the appeals
process begins to run and, thus, further correspondence on the
issue would normally not stop it from running; and, b) bringing up
an issue on which a decision had previously been communicated to
the staff member and which was not the subject of the a request for
administrative review does not normally start the process anew,
*i.e.*, the Administration’s response to the renewed request would
not constitute a *new* administrative decision which would restart
the counting of time.

28. Having in mind the above, the Tribunal has to determine whether or not
the email dated 20 January 2013 from the ACPSD to the Applicant is, in fact, the
contested decision.

29. The Tribunal notes that by email dated 22 November 2012 to the DHR, the
Applicant expressed his concerns in relation to the status of his family in Lebanon
and requested that the Agency register his family in the UNDSS security system.

30. By email dated 20 January 2013, the ACPSD responded to the Applicant’s
request noting that “as for including your dependents under the UN security
structure… the system does not allow for this type of inclusion”. The Tribunal
considers that this refusal was clear and that if the Applicant intended to contest it,
he should have requested review of such decision.

31. The Tribunal finds that the email dated 7 October 2013 is a mere
confirmation of a decision that had previously been communicated to the
Applicant on 20 January 2013. Therefore, the Applicant’s request for decision
review dated 26 November 2013 was time-barred in accordance with International
Staff Rule 111.2.
32. Considering that it has no jurisdiction to waive the time limits for a request for decision review, the Tribunal finds that the application is not receivable.

Conclusion

33. In view of the foregoing, the Tribunal hereby DECIDES:

The application is dismissed.

Judge Jean-François Cousin

Dated this 11th day of December 2014

Entered in the Register on this 11th day of December 2014

Laurie McNabb, Registrar, UNRWA DT, Amman