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## **Introduction**

1. The Applicant contests the decision by which the Office of the United Nations High Commissioner for Refugees (“UNHCR”) considered that she was not eligible for consideration for conversion of her fixed-term appointment to an indefinite appointment.

2. She requests rescission of the contested decision.

## **Facts**

3. The Applicant was recruited by the United Nations Volunteers Programme in February 2001. From July 2002 to March 2003 and from June to August 2003, she served in India and then in Malaysia on a project operated jointly by UNHCR and another organization.

4. In November 2003, she was recruited by UNHCR in Geneva on a fixed-term contract at the Professional level.

5. In an internal memorandum of 21 January 2011 entitled “One-Time Review for the Granting of Indefinite Appointments” (IOM/04-FOM/05/2011), the High Commissioner for Refugees informed UNHCR staff that, in view of the entry into force of the new Staff Regulations and Rules on 1 July 2009, a one-time review would be initiated in order to consider candidates who met the eligibility requirements as of 30 June 2009 for consideration for conversion from a fixed-term appointment to an indefinite appointment. Paragraph 12(b) of the memorandum also stated that in order to be eligible, Professional staff must have served a minimum of two years in a D or E duty station.

6. Pursuant to this memorandum, by email dated 23 February 2011, the Director of the Division of Human Resources Management indicated that the staff members who met the eligibility requirements for consideration for conversion to an indefinite appointment had been informed through individual mail. Staff members who had not received such notification but considered that they met the

requirements were invited to contact the Recruitment and Appointments Service, which the Applicant did on 1 March 2011.

7. By email dated 7 March 2011, the Applicant was advised that, owing to

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requirements and the need for burden-sharing among its professional staff and gives staff working at headquarters an understanding of field realities;

d. The requirement of two years of service in a D or E duty station has been a crucial part of the legal framework governing the granting of indefinite appointments for an extended period of time. It was introduced under the former Staff Rules and was expressly stipulated in the Procedural Guidelines for Appointments, Postings and Promotions promulgated on 3 November 2003. Consequently, it does not constitute a new limitation to the applicable provisions and the Applicant had long been aware of it;

e. The contested criterion allows for reasonable consideration of requests for conversion of appointments. It was applied without distinction to all staff who were subject to rotation;

f. The General Assembly did not intend to confer on staff the right to conversion of their appointments to indefinite appointments and the Administration has discretionary authority in that area;

g. The Applicant has not applied for a single position in a D or E duty station since her recruitment by UNHCR in November 2003;

h. The circumstances of the staff who were granted indefinite appointments despite not having served in the deep field were substantially different from those of the Applicant. Even if she had been in the same situation as those staff members, that would have had no impact on her chances of being granted an indefinite appointment since the number of contract conversions was unlimited;

i. Concerning the issue raised by the Tribunal on its own motion, the

### **Consideration**

16. The Tribunal, through its Order No. 179 (GVA/2011) of 19 October 2011, raised on its own motion the issue of the lawfulness of conversion of fixed-term

1. *Underlines* the importance of the concept of career service for staff members performing continuing core functions;

...

3. *Decides* that five years of continuing service as stipulated in its resolution 37/126 of 17 December 1982 do not confer the automatic right to a permanent appointment, and also decides that other considerations, such as outstanding performance, the operational realities of the organizations and the core functions of the post, should be duly taken into account[.]

22. Thus, the intent of the United Nations General Assembly, as expressed in the aforementioned resolution, was not to establish an automatic right to a permanent appointment but to allow the Secretary-General, and therefore the High Commissioner for Refugees, to take other considerations into account, including the operational realities of the organizations that they head.

23. It is beyond dispute that, owing to the operational realities of UNHCR as assessed by the High Commissioner, he may wish to grant indefinite appointments only to staff members on fixed-term appointments who have two years of service in D or E duty stations, which are considered more difficult than other duty stations, and the Tribunal does not find this unreasonable within the meaning of General Assembly resolution 37/126, adopted on 17 December 1982.

24. While the Applicant goes on to maintain that it was the UNHCR Administration that prevented her from meeting the requirement of two years of service in a D or E duty station since her applications for such positions were rejected, that circumstance has no bearing on the lawfulness of the contested decision since it is clear that UNHCR deliberately chose to give a career advantage to staff who met the established criteria.

25. Lastly, while the Applicant maintains that at least one staff member who did not meet the criterion of service in D or E duty stations was nevertheless awarded an indefinite appointment, she provides no evidence in support of her allegations. Although the High Commissioner, in his defense, admits that exceptions were made for medical reasons, it appears that internal memorandum IOM/04-FOM/05/2011 of 21 January 2011 refers to the Procedural Guidelines for Appointments, Postings and Promotions, promulgated by internal memorandum



IOM/FOM/75/2003, which provide for medical exceptions to the rotation requirement for staff members.

26. Thus, the Applicant, who was not in the same situation as the staff members for whom medical exceptions were warranted, cannot claim that the Administration did not meet its obligation to treat staff members in similar situations alike.

27. It is clear from the foregoing that none of the Applicant's contentions establish the unlawfulness of the contested decision.

### **Conclusion**

28. In view of the foregoing, the Tribunal DECIDES:

The application is rejected.

*(Signed)*

Judge Jean-François Cousin

Dated this 30<sup>th</sup> day of January 2012

Entered in the Register on this 30<sup>th</sup> day of January 2012

*(Signed)*

Anne Coutin, Officer-in-Charge, Geneva Registry