10. On 24 December 2003, the applicant wrote to the HRO asking confirmation of his entitlement to home leave in Shanghai and education grant for his daughter. The HRO replied on 30 December 2003 asserting, inter alia:

> Regarding your entitlements, as I mentioned in my previous message …,

18. On 18 August 2004, the applicant submitted a claim for the education grant for the period April-June 2004. The latter was granted in accordance with staff rule 103.20 (c), which provides:

> If a staff member eligible under paragraph (b) is reassigned to a duty station within his or her home country in the course of a school year, he or she may receive the education grant for the balance of that school year.

19. However, the applicant's further request for an advance on the education grant for the academic year 2004/2005 was denied on the grounds that because he was then serving in the country of his nationality, he was not entitled to the education grant.

20. On 31 January 2005, OHRM confirmed the decision that the applicant was not eligible for education grant and home leave under the UN Staff Regulations and Rules. The possibility for his daughter to receive a special education grant for children with a disability under staff rule 103.20 (k) was raised, but the Medical Service in Vienna informed the applicant that the medical condition of his daughter was not such as to allow him to benefit of this special grant.

21. A PA was issued on 18 August 2005 which retroactively recorded the change in place of home leave to Vienna, effective 28 February 2004.

22. On 23 January 2006, the applicant inquired whether he would be entitled to international benefits if he were to acquire German or Taiwanese nationality. After consultation with OHRM, HRMS advised the applicant that when a staff member has more than one nationality, the one taken into account for the purpose of the UN Staff Regulations and Rules is that with which the staff member is the most closely associated.

23. On 21 February 2006, the applicant asked the Chief, HRMS, to conduct a second review of the decision by OHRM not to grant the international benefits.

24. On 3 April 2006, OHRM responded to the Chief, HRMS, that there was no legal ground which would qualify the applicant for education grant while serving in his country of nationality. It further stated that although ESCAP had determined Shanghai as place of home leave, this determination was not made in accordance with the rules, since it was indicated in the applicant's PHP that his

nationality was Austrian. Finally, it added: "Thus, the decision to determine Austria as the country of home leave is a correction to an erroneous decision in accordance with the Rules."

25. In spite of this, OHRM recognized that the applicant had been "advised (erroneously) by an HRO in UNOV that his entitlement to the education grant, which he received in Bangkok, would continue in Vienna", and that the applicant "counted on the grant when he enrolled his daughter at the private school in Vienna". Because of this, OHRM was ready to grant t

applicant's] family roots and connections were in Shanghai and [he] didn't have a home or a single relative to return to Vienna, Austria"; second, that HRMS, ESCAP, took into account the delegation of the authority to make such decision, as per ST/AI/234/Rev.1, to the Chief of ESCAP, who, in turn, delegated to the Chief, HRMS; third, that the applicant's permanent address indicated in his PHP was Shanghai, China, and the address at the time of his recruitment was Stuttgart, Germany; fourth, that "it could be inferred then that [the applicant] had met the three conditions set out in staff rule 105.3 (d) (iii)", repeated in section 7 of ST/AI/367, i.e.,

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b. ESCAP designated Shanghai as the applicant's home leave destination in strict accordance with the UN Staff Regulations and Rules, taking into account all the relevant considerations such as his permanent residence in Shanghai and the tempora

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pronouncements of the General Assembly about the education grant;

f. The Secretary-General has already expressed his regret about the incorrect information that the applicant was given about his entitlements. The applicant has been afforded adequate, equitable and appropriate remedy for any administrative error committed by exceptionally agreeing to settle the applicant's education grant claim for academic years 2004/2005 and 2005/2006, "in a spirit of goodwill and for humanitarian reasons, albeit the applicant was not entitled to it";

g. In the light of these factors, the applicant's request for full payment of both said entitlements as and from the date of this service with UNOV is without merit;

h. Although the applicant was informed that he would not be entitled to education grant in July 2004, he did have the option to enroll his daughter in a different educational institution prior to the commencement of the school year 2004/2005. He chose that he would stay in the same school, incurring higher costs;

i. The respondent submits that the applicant's request for "general damages and costs" has no basis as there has been "no violation of the applicant's rights", and "no actuizhHíFW-SeRizhHíFW-SnReiol.rros,

Change of country of home leave

6. In accordance with staff rule 105.3 (d), the country of home leave shall be the country of the staff member's nationality. However, in exceptional and compelling circumstances, the Secretary-General may authorize a country other than the country of nationality as the home leave country, as detailed below.

7. For a permanent change in the country of home leave to be authorized, the conditions set out in staff rule 105.3 (d) (iii) a must be met, i.e., the staff member must satisfy the Secretary-General:

(a) That he or she maintained normal residence in such

nationality. This means that a staff member working away from the country of his or her nationality is entitled to home leave to the country of his or her nationality. The logical corollary to this is that if a staff member is residing in his or her country of nationality, then there is no entitlement to home leave.

39.

50. In the present case, staff rule 105.3 (d) requires the staff member to satisfy the Secretary-General that he or she has "maintained normal residence in [the] other country for a long period preceding his or her appointment". These words point to the ongoing nature of the assessment, as does staff rule 105.3 (b), which provides that a staff member, to be eligible for home leave, must "[continue] to reside in a country other than that of which he or she is a national" while performing his or her official duties.

51. 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. While he was serving in Bangkok the applicant was not residing in his country of nationality. When he was recruited to Austria, his official duty station was also the country of his nationality and the important condition of consistency with staff regulation 5.3 was no longer met.

52. The implications of this change of circumstances are that once he began service at the Austrian duty station, he was no longer entitled to home leave or to the education grant. Staff rule 103.20 (b) which governs the education grant also requires that: "(i) The staff member is regarded as an international recruit under rule 104.7 and resides and serves at a duty station which is outside his or her home country."

53. In its resolution 49/241, the General Assembly reiterated its decision that "the repatriation grant and other expatriate benefits are limited to staff who both work and reside in a country other than their home country". It explicitly included the education grant in its discussions of expatriate benefits. This point was discussed by the former UNAT in Judgement 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." The former UNAT further stated that "[t]he intention of the General Assembly has been made clear in such a manner as not to be in doubt; the Assembly has systematically and authoritatively pronounced the grant as related to the fact of expatriation."

54. I find that the Secretary-General through his Administration was 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.

55. The respondent has consistently acknowledged that it made an error in advising the applicant that he was entitled to the education grant, and that he relied on that incorrect information when choosing to enrol his child at the International School of Vienna. The outcome of that acceptance was that 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.

Conclusion

56. The Tribunal DECIDES:

1. An exception granted under staff rule 105.3 (d)