



World Bank Administrative Tribunal

2016

Decision No. 529

**Saad Abdulrazak Alrayes,
Applicant**

v.

**International Finance Corporation,
Respondent**

(Merits)

**World Bank Administrative Tribunal
Office of the Executive Secretary**

**Saad Abdulrazak Alrayes,
Applicant**

v.

**International Finance Corporation,
Respondent**

1. This judgment is rendered by the Tribunal in plenary session, with the participation of Judges Stephen M. Schwebel (President), Mónica Pinto (Vice-President), Ahmed El-Kosheri, Andrew Burgess, Abdul G. Koroma, Mahnoush H. Arsanjani, and Marielle Cohen-Branche.
2. The Application was received on 26 January 2015. The Applicant was represented by Marie Chopra of James & Hoffman, P.C. The International Finance Corporation (IFC) was represented by David R. Rivero, Director (Institutional Administration), Legal Vice Presidency.
3. The Applicant challenges a number of decisions of the IFC relating to the January 2010 cancellation of his G4 visa and various legal fees he incurred as a result, including his subsequent placement on a Short-Term Assignment (STA). He also claims separation payments allegedly due to him when his employment with the IFC ended in January 2013.

FACTUAL BACKGROUND

4. The Applicant, a Saudi Arabian national, joined the IFC on 8 January 2007, as a Senior Business Development Officer on a Term contract, level GG. His most recent Term contract was due to expire on 9 January 2011. He worked in the Washington, D.C. office, retained a G4 visa for the United States (most recently renewed in 2009), and traveled abroad on numerous missions on behalf of the IFC.
5. The Applicant is divorced, and with his ex-wife has joint custody of their four children – two girls (born 1998 and 2000) and two boys (born 1990 and 1992). Until January 2010, the Applicant saw his children on a weekly basis, and had custody on alternate weekends and

holidays. The Applicant lived in Virginia. His ex-wife was required to live in the Washington, D.C. area so that these custody arrangements could be implemented.

6. In January 2010, the Applicant left for a two-week mission to the Gulf States to market the IFC's new corporate fund in emerging countries to regional national banks. At the end of this mission, he attempted to board a flight at the Dubai airport, to return to the United States. However he was informed by airline personnel that his G4 visa had been canceled and that he could not travel to the United States. He did not know why the visa had been canceled.

7. The Applicant consulted his supervisor at the IFC, and the IFC legal and visa services. He was advised to travel to London and apply for a new G4 visa from there. The Applicant did so, and remained in London for one month. The IFC paid his travel costs and living expenses. In February 2010 the IFC filed an application for a new G4 visa with the U.S. Embassy in London. While waiting for the decision on this application, the IFC instructed the Applicant to return to Dubai and work from its office there. He was placed on a series of operational travel assignments, and was compensated for travel and living expenses.

8. On 7 July 2010, the Applicant wrote to a Director in the Human Resources (HR) Vice Presidency of the World Bank, who had been leading the institution's attempts to resolve his visa situation, copying a number of IFC colleagues. The Applicant related some of the measures he had taken, including requesting that the Saudi Ministry of Foreign Affairs raise the issue with the U.S. Department of State, and his plans to raise the matter with various Heads of State. The Applicant expressed disappointment that the World Bank Group (WBG) appeared to lack the influence necessary to resolve his situation. He stressed the personal cost which his inability to return to the United States was having on him.

9. On 20 October 2010, the Applicant – speaking from Dubai – participated in an IFC Town Hall meeting and made a plea to the then Executive Vice President and CEO of the IFC to resolve his case. The Applicant complained that the Bank should have sufficient leverage with the United States to be able to challenge allegations made against employees, particularly where it seemed likely, in the Applicant's view, that the staff member had been a victim of racial

profiling. The Applicant requested that the IFC Executive Vice President contact the U.S. President for assistance, and again emphasized the difficulty he was encountering in being separated from his children. The Applicant sent a follow-up email to the IFC Executive Vice President on 21 October 2010, again requesting intervention by the Bank with the U.S. Government. On 25 October 2010, the Applicant sought the assistance of a U.S. Senator.

10. In November 2010, the IFC proposed that the Applicant be formally appointed to its Dubai office, on an STA contract for six months, to terminate on 17 June 2011. On 2 November 2010, the Applicant emailed his manager to express concern at this change, and stressed that this would aggravate the severe financial difficulties he was already facing as a result of his G4 visa issues. The Applicant stated that “you are offering me new terms and trying to negotiate while I am strained, both emotionally and financially. I am away from home and kids for no fault or choice of my own and cannot connect with loved ones or even plan a normal life.” He stated his appreciation that the Bank had stood by him thus far. On the contractual situation, he suggested that his Term contract be extended for a further two years, but that if his visa issues were not resolved by the end of the current term (January 2011), he be allowed to take leave without pay so as to fully resolve the situation. The Applicant also told his manager that the IFC Executive Vice President had offered for the Bank to pay the travel costs for the Applicant’s family to visit him outside the United States.

11. The Applicant had retained an immigration lawyer to assist with his G4 visa issues. On 30 October 2010, the immigration lawyer advised the Applicant of various actions which could be taken, including the possibility of filing a mandamus action in a U.S. District Court, with the objective that the court would order the U.S. State Department to adjudicate the Applicant’s visa application.

12. On 3 November 2010, the IFC issued a statement regarding G4 visas, in which it referred to the recent IFC Town Hall meeting at which the Applicant had spoken (see above), expressed concern for the “plight of the affected staff member,” and stated that it was “doing everything we possibly can to resolve the matter.” It stressed that it had reached out to the governments of the

United States and Saudi Arabia, and that it had “offered to pay travel costs for [the Applicant’s] family” to visit him outside the United States.

13. The IFC asserts that also on 3 November 2010, the IFC HR Director clarified that under the proposed STA the Applicant would receive benefits that were in addition to his existing benefits, and would also continue to receive his mobility premium on an exceptional basis, even though he would effectively be working from Dubai rather than his duty station, Washington, D.C.

14. In an email to the Applicant of 4 November 2010, the Vice President and General Counsel of the IFC stated that: “We all empathize deeply with your difficult personal situation and want to help you. I do not think a mandamus action is the right way forward but we will continue to press for attention at high levels in the US Government.” In response, the Applicant asked the IFC Vice President and General Counsel to at least engage legal counsel to work on his case.

15. On 10 December 2010, the Applicant was formally offered a six-month STA with the IFC, to begin on 18 December 2010. Under the terms of the STA, his home duty station of Washington, D.C. would remain unchanged, though his work location would be changed to record his physical presence in Dubai. The Applicant signed the STA agreement on 21 February 2011.

16. In an email of 14 December 2010, the Applicant repeated his request that the IFC take legal action on his behalf. He stated that “the Bank has been hesitant but not against using such a solution and asked for time before resorting to such action, it wanted to use other means, which so far proved ineffective,” and questioned “when will they admit that such other means have failed and it’s time to move to plan B?” He suggested that if the Bank did not wish to engage legal counsel itself, it (or the Staff Association) could provide him with financial support to do so himself. In her response of 16 December 2010, the IFC Vice President and General Counsel reiterated her refusal, stating that “as I have said before I do not believe that suing the US

Government is the right path” but that “we will do all we can within diplomatic channels to help resolve this situation.”

17. On 17 December 2010, the Applicant sought to take the IFC up on its offer to pay the travel costs for his children to visit him. At that time (during semesters), it was only possible for one of his boys to visit him. The Applicant intended the visit to take place between 29 December and 10 January, and requested an expense code against which he could charge the ticket. The IFC states that the Applicant was reimbursed for the cost of these air-tickets. The Applicant states that the “IFC may have paid for the travel of one of his sons to visit Dubai.”

18. The Applicant’s existing Term contract was due to expire on 9 January 2011. In view of the uncertainty of his visa status, the IFC agreed to extend his Term contract for a further year (effective 7 January 2011).

19. On 9 February 2011, the Applicant was formally notified by the U.S. Consulate in Riyadh that he had been found ineligible for a G4 visa. Subsequent communications from the U.S. Government referred to alleged “terrorist activities” as the reason for the ineligibility.

20. On 25 March 2011, the Applicant’s lawyer contacted the Advisory Opinion Division of the U.S. Department of State to request an opinion on “the legal determination underlying denial of [the Applicant’s] visa.” She further requested that this denial be reversed, and that his application to renew his G4 visa be granted.

21. In July 2011, with the visa situation still unresolved, the Applicant’s STA was extended for a further six months, until 6 January 2012.

22. On 18-21 July 2011, the Federal Bureau of Investigation (FBI) interviewed the Applicant in Vienna, Austria. As the IFC had recently agreed to pay up to \$25,000 in legal fees “for [his] lawyer to accompany [him] during this interview,” the Applicant was accompanied by his lawyer to these meetings, as well as a lawyer from the Staff Association.

23. In November 2011, the Applicant submitted a request for reimbursement of the legal fees he had incurred thus far (approximately \$24,000). He also sent a reminder to the IFC the following month.

24. In December 2011, with his existing STA set to terminate the following month, the Applicant had multiple communications with IFC HR regarding his employment status. On 7 December he received a one-month contract expiration notice. In an email of 14 December, the IFC HR Director advised the Applicant to “rest assured that your contract will NOT be ended in January 2012 so there is no need for you to do anything at this stage.”

25. On 27 and 29 December 2011, the Applicant participated in mediation sessions by video conference. According to the Applicant, he was essentially given the choice of termination when the existing STA expired (a few days later), or signing a Memorandum of Understanding (MOU). The Applicant states that, given his “appalling position and financial desperation,” he had no choice but to agree to whatever terms the IFC imposed to avoid termination.

26. The Applicant signed the MOU on 30 December 2011. The MOU was stated to document the parties’ agreement on the Applicant’s completion of employment with the IFC, and his status at the IFC until the conclusion of his employment in light of his visa issues. The terms of the MOU were as follows. First, the Applicant agreed to “fully and finally settle and release all claims against IFC” regarding the conclusion of his employment with the IFC and his status with the organization pending resolution of his visa issues, “in addition to all employment issues that arose prior to the execution of this MOU.” Second, the Applicant’s Term appointment was extended until 5 January 2013, though he was to resign from the IFC immediately with his resignation becoming effective on that date. Third, the MOU provided for two different arrangements depending on the resolution of his visa situation. In the event that he was unable to secure a visa to enter the United States he would continue to work out of the Dubai office “under the Short Term Assignment (STA) program” until 17 December 2012. From 18 December 2012 until 5 January 2013 he would be placed on Administrative Leave. Conversely, if the Applicant were to obtain permission to enter the United States prior to his termination date, he could return to the United States but would not work with the IFC there; instead, he would be placed on

Administrative Leave. Fourth, the Applicant “agrees that this is a final settlement and that he will not receive any additional monetary or non-monetary payments or benefits other than what he would normally receive upon his termination of employment.”

27. The Applicant had hoped that the July 2011 Vienna interviews with the FBI would finally resolve his visa difficulties, but no decision from the U.S. authorities was forthcoming. Eventually, he was informed that he would need to undergo a further interview. This took place in Abu Dhabi, UAE, in December 2012.

28. Following this interview, the Applicant was told that he had received clearance and that he should apply for a new U.S. visa. However, as this was just two weeks before the scheduled termination of his employment with the IFC, the Applicant could not apply for a G4 visa. He instead applied for a visitor’s visa. Though he was told that he would receive this within a week, in fact it took “months and months” for the U.S. Department of Homeland Security to clear him.

29. According to the IFC, around 16 December 2012 the Applicant met with the IFC’s Senior HR Business Partner, at the Dubai office regarding the “check-out procedures” relating to the end of the Applicant’s employment.

30. On 21 December 2012, the Applicant wrote to the IFC requesting payment of the \$25,000 for legal costs associated with the Vienna interviews, and a further \$15,000 for costs associated with the Abu Dhabi interview.

31. On 5 January 2013, the Applicant’s employment with the IFC terminated. According to the Applicant, neither at this point nor later did he receive any information about processes associated with termination, separation payments, etc.

32. On 8 January 2013 he received an answer to his email of 21 December 2012 from the IFC Director of HR. She stated, in relevant part, as follows:

I have now concluded that I am not in a position to approve another payment for your legal fees. As indicated in [the IFC Vice President and General Counsel’s]

message of July 16, 2011 to you, it was our intent to contribute ‘up to \$25,000’ to your legal fees, not cover these fees in their entirety.

Overall, I feel it is fair to say that the support the WBG has provided you during your extraordinary ordeal over these past years has been very generous.

33. On 15 July 2014, the Applicant finally received his visitor’s visa for the United States. He then promptly returned to the United States.

34. On 29 July 2014, when back in the United States, the Applicant emailed twelve IFC and World Bank staff members with whom he had been communicating during his years outside the United States. He expressed a wish to “close any standing issues, review closing procedures settlements, reimbursements of legal fees or other entitlements at closing if any,” and requested a meeting with HR to this end. He stated that he had not yet received any information regarding “closing balances or pension amounts,” nor “notification of legal fees payments as agreed and requested.” According to the Applicant, the only response he received to this email was from the Office of Mediation Services.

35. The Applicant entered mediation in October 2014. The mediation proved to be unsuccessful and was closed on 8 January 2015.

36. On 16 January 2015, the Applicant filed a case with Peer Review Services (PRS). He requested review of a number of actions or inactions of the IFC. First, he requested payment of extraordinary expenses incurred while on mission, in particular his various visa-related legal fees. Second, he requested payment for costs incurred to enable his children to visit him while he was stranded outside the United States – both travel costs and associated legal fees. Third, he claimed that he had been illegally placed on a two-year STA, resulting in no salary increases while on mission, and that he had not received various payments due to him (vacation days, return travel from mission, relocation allowance, and end of service benefits).

37. The Application was filed with the Tribunal on 26 January 2015. In addition to reiterating the claims made before PRS, the Applicant challenged two further decisions of the IFC. The first was the decision not to seek a writ of mandamus in order to expedite resolution of the G4 visa

issue. The second was the termination of his employment in January 2013 under an MOU which, he claimed, had been imposed on him and signed under duress. In respect of those claims which had been already filed before PRS, the Applicant requested that the Tribunal either “take jurisdiction” in respect of these elements, or stay his case before the Tribunal pending the outcome of his PRS case. On 24 February 2015, the President of the Tribunal acceded to the latter request.

38. On 27 February 2015, PRS dismissed the Applicant’s Request for Review in its Case No. 224 for lack of jurisdiction, on the basis that all three claims raised by the Applicant were not filed in a timely manner. In light of this development, the Applicant requested that the Tribunal lift the stay on proceedings. The President of the Tribunal granted this request on 7 April 2015. The IFC filed a Preliminary Objection to the Application on 28 April 2015.

39. In *Alrayes*, Decision No. 520 [2015], the Tribunal ruled that both the Applicant’s claim regarding the validity of the MOU as well as his claim regarding the IFC’s decision not to seek a mandamus writ, were inadmissible. However the Tribunal found the following claims to be admissible: the Applicant’s claim for separation payments; his claim for the \$25,000 for the FBI interviews; his claim for visa-related legal fees beyond the \$25,000; his claim for reimbursement of fees associated with the travel of his children to visit him outside the United States; his challenge to his placement on a two-year STA; and his claim regarding the lack of salary increases while working in Dubai. The Tribunal also ordered the IFC to pay the Applicant attorney’s fees in the amount of \$20,042.94 as costs arising from the preliminary objections phase.

40. With respect to those claims deemed admissible, the Applicant requests that the Tribunal provide him “with appropriate compensation in lieu of reinstatement and award him his heavy legal costs in fighting for a visa, the travel costs associated with seeing his children, any termination benefits which he has not received,” as well as “compensation for his terrible pain and suffering, including the additional stress caused by the [IFC’s] appalling treatment of him,” and attorney’s fees.

SUMMARY OF THE MAIN CONTENTIONS OF THE PARTIES

The Applicant's Main Contentions

41. The Applicant argues that while the U.S. Government was responsible for incorrectly cancelling his visa, still the IFC bore some responsibility for his situation as “he was an IFC employee, he was sent abroad on an IFC mission, and he was owed fair treatment under the Staff Principles and Rules.” He contends that the IFC failed in its duty of care.

42. The Applicant argues that though the IFC agreed to pay \$25,000 towards the legal fees related to his G4 visa issues, it never did so. On a similar basis, he contends that the IFC should be ordered to reimburse the legal fees he incurred in excess of \$25,000.

43. The Applicant also invokes the commitment made by the IFC to cover the travel costs for his children to visit him outside the United States. In addition to the travel costs, the Applicant seeks reimbursement of legal fees incurred “fighting to have a court enforce the right of his daughters to travel to see him.”

44. The Applicant argues that his placement on a lengthy STA was unlawful. He contends that this arrangement was imposed upon him, and then extended contrary to the applicable Staff Rules.

45. The Applicant further contends that he was due salary increases on 1 July 2010, 1 July 2011, and on 1 July 2012, but received no increases at all during his exile from the United States. He also claims that he is owed “any and all separation payments due [...] at the time of his termination,” and criticizes the IFC’s failure to provide him with adequate information regarding his entitlements ahead of the end of his employment.

46. Finally, in response to recent communications from the IFC regarding some of his claims, the Applicant argues that for the IFC’s “completely unreasonable delays and its refusal to

answer” his previous requests for information, the Tribunal should award him additional compensation.

The IFC’s Main Contentions

47. The IFC notes that the decision to revoke a G4 visa is the “sovereign prerogative of the U.S. government,” and that the IFC was not in a position to alter that determination or challenge the length of time it took for the U.S. State Department to re-issue the Applicant’s entry visa thereafter. While acknowledging that the revocation of his visa led to personal hardships for the Applicant, the IFC contends that its actions were reasonable and consistent with its obligations under the Staff Rules and applicable policies.

48. The IFC has stated a willingness to compensate the Applicant in respect of some of his claims: his relocation benefits; his pension entitlements; and the \$25,000 for legal fees associated with the FBI interviews. However, the IFC states that the Applicant has already received compensation for his unused annual leave, was not entitled to a separation grant, and did, in fact, receive salary increases for each year of his employment with the IFC (including his years outside the United States).

49. The IFC maintains that the Applicant’s placement on a two-year STA was not illegal, and in fact benefited the Applicant.

50. The IFC argues that the Applicant’s other claims – for legal fees in excess of \$25,000 and for reimbursement for his children’s travel – are barred by the 2011 MOU.

THE TRIBUNAL’S ANALYSIS AND CONCLUSIONS

51. In *Alrayes*, Decision No. 520 [2015], para. 132, the Tribunal upheld the IFC’s preliminary objection with respect to two of the Applicant’s claims: his challenge to the validity of the MOU entered into on 30 December 2011, and his challenge to the IFC’s decision not to seek a mandamus writ. Those claims are therefore inadmissible.

52. In the same judgment, the Tribunal found six of the Applicant's claims to be admissible, namely: (i) the Applicant's claim for separation payments; (ii) his claim for the \$25,000 for the FBI interviews; (iii) his claim for visa-related legal fees beyond the \$25,000; (iv) his claim for reimbursement of fees associated with the travel of his children to visit him outside the United States; (v) his challenge to his placement on a two-year STA; and (vi) his claim regarding the lack of salary increases while working in Dubai. The merits of these six claims will be considered in turn.

CLAIM 1: CLAIM FOR SEPARATION PAYMENTS

53. The Applicant claims that he is owed "any and all separation payments due [...] at the time of his termination." He observes that a staff member who separates from the IFC "is routinely sent a large packet of materials which provides information on all matters relating to the termination, such as information about pension benefits, continued health coverage, leave payouts, and all other termination benefits." The Applicant states that he did not receive this information and that "he was not – as far as he knows – paid any of the benefits to which he was entitled." In particular, the Applicant refers to unused annual leave, resettlement and travel benefits, a resettlement grant and a separation grant: the Applicant, on his account, "was given nothing." (*Alrayes*, para. 81).

54. The IFC asserts that the Applicant was informed of the separation process "because [the Senior HR Business Partner] explained to him Respondent's 'checkout procedures' during a face-to-face meeting at IFC's Dubai office around 16 December 2012." The Applicant disputes the IFC's account of this meeting (an issue which is considered in a later part of this judgment). With respect to each element of the Applicant's claim for separation payments, the Tribunal's findings are as follows.

Unused annual leave entitlement

55. In its Answer, the IFC has produced documentary evidence that on 15 January 2013 the Applicant was paid \$33,969.60 as compensation for his unused annual leave. In light of this evidence, the Applicant has withdrawn this claim. He maintains, however, that confusion around this issue stemmed from the failure of the IFC to provide him with the standard "ending

employment memo,” and that the issue should have been resolved in discussions with HR in July-August 2014, “not at this absurdly late date.”

Separation grant

56. The IFC contends that the Applicant was not entitled to a separation grant as he was appointed to a Term appointment in February 2006, well after the cut-off date of 14 April 1998 stated in Staff Rule 7.02, paragraph 5.01. The Applicant does not dispute this. The Tribunal finds that this element of the Applicant’s claim is rejected.

Dependency allowance

57. The IFC contends that no sums are outstanding as all applicable dependency allowances had been paid to the Applicant in his bi-monthly paycheck deposits. The Applicant does not dispute this. The Tribunal finds that this element of the Applicant’s claim has become moot.

Relocation benefits

58. The IFC states that, while Staff Rule 7.02, paragraph 3 provides that upon termination an internationally-recruited staff member is eligible for a resettlement grant and an optional removal grant, it did not pay relocation benefits to the Applicant at the time of the end of his employment “because it was unclear where Applicant would relocate after he left IFC’s employment” as he had not yet resolved his visa issues. In its Answer, the IFC stated that it was “now prepared to pay Applicant’s resettlement benefits” and would be “reaching out” to the Applicant to obtain his payment details.

59. On 2 February 2016, the Applicant received an email from the World Bank Finance and Accounting department, inquiring as to how he would like to receive his “termination benefits check.” The payment – which combined the removal and resettlement grants due to the Applicant – was made to the Applicant on 10 February 2016. The IFC has stated that a further payment of \$8,000 will be paid to the Applicant on 30 March 2016, in recognition of his “special circumstances.” This element of the Applicant’s claim has therefore become moot.

60. The Tribunal observes, however, that the IFC has not explained why these steps were not taken by the IFC once it became aware – through his email of 29 July 2014 – that the Applicant had in fact resolved his visa issues and had returned to the United States. Nor, indeed, has the IFC explained why it refused to even discuss this issue during the mediation entered into by the parties between October 2014 and January 2015. The first time that the IFC acknowledged the entitlement of the Applicant to receive these benefits was in its Answer, filed on 14 January 2016 – 18 months after the IFC was made aware of the Applicant’s arrival back in the United States. Even allowing for the unusual circumstances of this case, this delay was unjustified.

Expiration payment

61. The Applicant contends that under Staff Rule 7.02, paragraph 7.01, he is due an expiration payment. According to the Applicant, this entitlement is unaffected by the fact that his employment ended as a result of an MOU in which he agreed to resign. The Applicant asserts that when the MOU was being prepared no one explained the distinction between expiration and resignation, and that notwithstanding the text of the MOU the reality is that “his contract expired and IFC did not renew it because he had been unable to obtain a new G-4 visa.” He suggests that had he fully understood the significance of the MOU, “he might well have elected to take [the expiration payment] instead of signing the MOU.”

62. The IFC argues that, as under the MOU, the Applicant resigned (as opposed to his Term contract simply expiring), he is not due an expiration payment.

63. Staff Rule 7.02, paragraph 7 provides, in part, as follows:

7.01 To address concerns that Term appointments provide less job security than Open Ended appointments, staff who have five or more continuous years of service in Term appointments, whose employment with the Bank Group ends due to expiration of their appointment on or after July 1, 2009, will be paid, upon termination of employment, an Expiration Payment equal to one month’s net pay for each year of continuous service under Term appointments, up to a maximum of 9 years.

7.02 The Expiration Payment is a contingent benefit – it will not be paid if a Staff member converts to an Open Ended appointment, rejects an offered extension of

appointment or ends employment for any reason other than expiration of their Term appointment.

64. The second paragraph here is clear – the benefit will not be paid if the employment ends for any reason other than expiration of the Term appointment. In the present case, the MOU signed by the Applicant in December 2011 was equally clear in that the Applicant was to submit his resignation, effective 5 January 2013.

65. Whether or not the Applicant would have been entitled to an expiration payment absent the MOU is a moot point: the Applicant’s challenge to the validity of the MOU having been ruled inadmissible by the Tribunal (*Alrayes*, para. 124), the MOU must be given effect. As with any negotiated settlement, it contains some elements which could be perceived as more favorable to the IFC, and others which could be perceived as more favorable to the Applicant. As the Tribunal previously observed in *Mr. Y*, Decision No. 25 [1985], para. 33, there is a “balancing of priorities that inheres in every settlement.” Similarly, in *Kirk*, Decision No. 29 [1986], para. 35, the Tribunal observed that “the desire to avoid a less pleasant alternative is always the motivation for entering into a settlement agreement.” In the present case, had the MOU not been signed and the Applicant’s existing Term contract expired in January 2012 as it was scheduled to do, the Applicant might indeed have been entitled to receive an expiration payment for his service up to that point, but would not have received the additional salary and benefits from the one-year extension of his Term contract that was accorded under the MOU. The Applicant’s claim for an expiration payment is rejected.

Pension entitlements

66. According to the IFC, the relevant pension benefits were not paid to the Applicant “because he has failed, to-date, to submit the requisite payment form to Respondent’s pension department.” As evidence, the IFC cites an email of 1 August 2014 from the Senior HR Business Partner to her colleagues in HR, in which the Senior HR Business Partner related that she had been told by the pension office that “numerous emails were sent to [the Applicant] as a follow up for him to submit the necessary forms.” Specifically, the IFC asserts that two such emails were sent, on 27 March 2013 and 15 January 2014. However the IFC has not explained why this information was not conveyed to the Applicant in response to his email of 29 July 2014, or –

according to the record – at any point thereafter until the IFC acknowledged this entitlement in its Answer (filed on 14 January 2016), and wrote to the Applicant on 20 January 2016. In that letter, the IFC confirmed that the Applicant’s pension benefits would consist of “lump sum withdrawal benefits from all the components of SRP.” That recent communication was sent more than three years after the end of the Applicant’s employment with the IFC. Once more, the IFC’s failure to comply with its own established practice by not providing the Applicant with information regarding separation processes and his various entitlements, in writing and before the end of his contract, was compounded by its subsequent failure to follow-up with the Applicant in a satisfactory manner after the end of his contract, or indeed to respond to his email of 29 July 2014.

67. In his Reply, filed on 26 February 2016, the Applicant informed the Tribunal that he had submitted the forms requested in the IFC’s email of 20 January 2016, “and hopes to receive his lump sum payout in the near future.” In its Rejoinder, the IFC confirmed that the Pension Office released all outstanding pension benefits due to the Applicant on 10 March 2016. The Tribunal finds that this element of the Applicant’s claim has become moot.

CLAIM 2: CLAIM FOR \$25,000 FOR FBI INTERVIEWS

68. The IFC confirms that this claim is not in contention. It states that it remains willing to reimburse this amount, but can only do so once it has received the relevant documents verifying that the Applicant made payment to his immigration lawyer. According to the IFC, as of 14 January 2016, the Applicant had yet to provide such documentation. The IFC contacted the Applicant regarding this matter on 7 January 2016, reiterating its willingness to pay the \$25,000 once the requisite documentation is produced. When it filed its Rejoinder on 21 March 2016, the IFC stated that this payment has now been processed, and apologized for the delays. The Tribunal finds that this claim has become moot.

CLAIM 3: CLAIM FOR VISA-RELATED FEES BEYOND THE \$25,000

69. The Applicant claims reimbursement of legal fees incurred beyond the \$25,000 for the (first) FBI interviews. He claims that in total he spent \$48,979 on legal fees, comprised of \$39,689 for the two sets of FBI interviews (\$25,000 of which the IFC had agreed to cover, see above), and a further \$9,289 incurred between January 2013 and July 2014. According to the Applicant, his entitlement to the additional sums arose from the same commitment made by the IFC in July 2011 (*Alrayes*, para. 72). The Applicant contends that “[t]here can be no principled reason for any distinction between the Vienna and the Abu Dhabi interviews and no reason why IFC should agree to cover the legal costs for one but not for the other [...] Having sent [the Applicant] on mission in 2010, IFC had an obligation to protect him and to bring him safely back.”

70. The IFC contends that in the 2011 MOU the Applicant “expressly waived claims relating to existing employment issues, including claims relating to his legal fees for visa issues with the U.S. government,” and that this claim is therefore barred. The IFC further notes that it had consistently explained to the Applicant that it was “prepared to help subsidize *some but not all* of the legal costs he had to incur resulting from his visa issues,” and that in addition to the \$25,000 it has agreed to pay (see above), the IFC also paid for related costs such as the Applicant’s travel expenses to attend the FBI interviews in Vienna (in the amount of \$2,743.39).

71. The Tribunal has often considered the effect of waiver clauses in Memoranda of Understanding. In *Mr. Y*, paras. 25-26, it stated as follows:

A release or settlement of claims that might be presented to this Tribunal should [...] not lightly be inferred. Neither, however, should it be precluded altogether.

In an enterprise employing as many staff members as does the World Bank Group, it is inevitable that there will be claims of improper treatment, as witness the appeals to the Appeals Committee and applications to this Tribunal. It would unduly interfere with the constructive and efficient resolution of these claims if the Bank could not negotiate – in exchange for concessions on its part – for a return promise from the staff member not to press his or her claim further. If such an agreed settlement were not binding upon the affected staff member, there would be little incentive for the Bank to enter into compromise arrangements, and

there might instead be an inducement to be unyielding and to defend each claim through the process of administrative and judicial review. It is therefore in the interest not only of the Bank but also of the staff that effect should be given to such settlements.

72. In ascertaining the scope of such clauses, the Tribunal has looked to the “plain, ordinary and generally accepted meaning of the words used” (*BU*, Decision No. 465 [2012], para. 33), as well as the context to identify the issues which can be considered to have been “in the minds of the parties” when the settlement was being negotiated and drafted (*Kirk*, para. 32).

73. In the present case, the preamble of the MOU states that it documents the agreement between the parties on the following issues: the Applicant’s “completion of employment with the International Finance Corporation (IFC),” and his “status at IFC until the conclusion of his employment, in the context of re-entry in the United States, due to the challenges he is facing with the United States authorities for a proper visa to Washington, D.C., his IFC duty station.”

74. Under paragraph 1 of the MOU, the Applicant agreed “to fully and finally settle and release all claims against IFC which relate to the issues outlined above in addition to all employment issues that arose prior to the execution of this MOU.” The Tribunal notes that this paragraph contains two sub-clauses, pertaining to two distinct categories of issues. The first relates to a narrower category of subject-matter (“claims [...] which relate to the issues outlined above”) but is temporally neutral. The second is broader in terms of subject-matter (“all employment issues”) but pertains to pre-existing issues only. In paragraph 6 of the MOU the Applicant agreed “that this is a final settlement and that he will not receive any additional monetary or non-monetary payments or benefits other than what he would normally receive upon his termination of employment.”

75. The Applicant argues that the claim for visa-related legal fees beyond \$25,000 arose after the MOU was signed, and therefore was not covered by the waiver clauses incorporated in the latter. The Tribunal disagrees.

76. In mid-July 2011, the IFC had stated that it would pay up to \$25,000 in legal fees “for your lawyer to accompany you during this interview.” On 9 November 2011, the Applicant submitted a request for reimbursement of the legal fees he had incurred to date (approximately \$24,000). He sent a reminder to the IFC on 1 December 2011 (*Alrayes*, paras. 24-25). By the time the MOU was signed on 30 December 2011, the Applicant had not yet claimed from the IFC visa-related legal fees beyond the agreed \$25,000.

77. Nevertheless, at the time when the parties negotiated and signed the MOU, the Applicant’s visa issues were plainly ongoing and within the contemplation of the parties. On the first point, more than five months had passed since the Applicant had been interviewed by the FBI in Vienna, with no resolution in sight. On the second point, the effect of those visa issues on the Applicant’s employment status within the IFC and on the end of his employment with the IFC constituted the very subject-matter of the MOU. This is illustrated in the preamble of the MOU, and in paragraph 4 (which outlines the possible working arrangements that would take effect depending on how those visa issues were resolved).

78. That the parties were aware of the Applicant’s pending claims against the IFC relating to those visa issues is clearly reflected in paragraph 1 of the MOU, in which the Applicant agreed to “fully and finally settle and release all claims against IFC which relate to” the subject-matter of the MOU. Again, that those issues were ongoing is reflected in the fact that this sub-clause is framed in temporally neutral terms. The Tribunal further observes that documents produced by the Applicant as evidence of his legal expenses indicate that he continued to incur legal fees in excess of the agreed \$25,000 in the period between his FBI interview in July 2011 and his signing of the MOU on 30 December 2011. Moreover, in his submissions before the Tribunal the Applicant seeks to ground this claim in the commitment made by the IFC in July 2011, that is, more than five months prior to signing the MOU.

79. These considerations support the conclusion that resolution of the Applicant’s ongoing visa issues, and the associated costs, were within the contemplation of the parties when the MOU was signed. That the precise quantum of the Applicant’s claim increased subsequent to the signing of the MOU (as he incurred additional legal fees) does not alter the fact that the essence

of the claim (reimbursement for legal fees associated with resolution of his G4 visa issue) was within the contemplation of the parties when that MOU was finalized. The Applicant's claim for reimbursement of fees beyond \$25,000 is therefore barred by the MOU. This conclusion is reinforced by paragraph 6 of the MOU, which is broadly framed.

CLAIM 4: CLAIM FOR REIMBURSEMENT OF FEES ASSOCIATED WITH CHILDREN'S TRAVEL

80. The Applicant seeks reimbursement of the costs he incurred when his daughters traveled to see him in April 2014. In addition to travel costs, the Applicant has requested reimbursement of legal fees incurred "fighting to have a court enforce the right of his daughters to travel to see him." (*Alrayes*, para. 92).

81. The Tribunal notes that the IFC has characterized these as "out of pocket expenses" incurred by the Applicant. However, a review of Administrative Manual Statement (AMS) 3.10, on Operational Travel Expense Reimbursement, illustrates that the expenses claimed by the Applicant here cannot readily be included in the categories of expenses (both reimbursable and not) usually incurred by staff members travelling on mission for the WBG (paras. 25, 27). This reflects, once more, the exceptional circumstances that existed in the present case (*Alrayes*, paras. 109-110).

82. The IFC argues that, in any event, this was an existing employment issue which had been contemplated and agreed to by the parties as part of the 2011 MOU. In response, the Applicant maintains that this claim arose after the MOU was signed.

83. As with the previous claim, the question for the Tribunal is whether the Applicant's claim for reimbursement of fees associated with the travel of his children is barred by the MOU. The text of the MOU, together with the context in which it was agreed, indicates that this question must be answered in the affirmative.

84. There is ample evidence that the issue of reimbursement for the travel of the Applicant's children had already arisen prior to conclusion of the MOU, and must be considered an existing

“employment issue” between the parties when that MOU was entered into. First, in his submissions on reimbursement for the travel of his children, the Applicant locates the source of the IFC’s obligation to cover these expenses in the statement made by the IFC Executive Vice President, in November 2010, that is, more than one year prior to the conclusion of the MOU. Second, shortly after that statement was made, the Applicant requested – and received – reimbursement for the travel of one of his sons to visit him. Third, in support of his claim here, the Applicant has provided copies of invoices for legal fees incurred in arranging for his children to visit him outside the United States, and these date from March 2010 – that is, more than 18 months before the MOU was concluded (*Alrayes*, para. 95). Plainly, arranging for his children to visit him outside the United States must be considered as a claim “which relate[s] to” the subject-matter of the MOU and which the Applicant agreed to “fully and finally settle and release” in paragraph 1 of that document. Again, any doubt on this point is resolved by paragraph 6 of the MOU (above).

CLAIM 5: CHALLENGE TO PLACEMENT ON A TWO-YEAR STA

85. The Applicant contends that his placement on a lengthy STA was unlawful. He states that he had made it clear from the beginning that – given the financial consequences – he did not want to be placed on STA status, but that the STA was nevertheless “imposed” on him and then, “under the most extraordinarily difficult circumstances,” it was extended for an additional year. The Applicant argues that the extension of the STA was contrary to the Staff Rules, and to the fair treatment to which he was entitled.

86. The IFC contends, first, that based on a plain reading of the relevant Staff Rule the total duration of an STA may be up to 24 months, and that the Applicant’s STA lasted 24 months (from around 18 December 2010 to 17 December 2012). Second, the IFC argues that placing the Applicant on back-to-back mission travel indefinitely would not have been a sustainable work arrangement, and would not have complied with its policies as work missions are generally limited to three months out of any 12-month period. Third, the IFC submits that the STA arrangement in no way diminished the Applicant’s existing Term contract, or affected the compensation and benefits he had been entitled to, as a Term staff member, working out of the

IFC's Washington, D.C. office. Fourth, the IFC contends that though the Applicant was initially resistant to the STA arrangement, he did accept the arrangement after being informed by the IFC HR Director, that the benefits which the Applicant would receive under the STA were in addition to his existing benefits.

87. Staff Rule 6.23 (Short-Term and Developmental Assignment Benefits), paragraph 1.04, as it was in effect at the time of the Applicant's placement on an STA, provides as follows:

Short-Term Assignment refers to the assignment of eligible staff holding Regular, Local Regular, Open-Ended, Term, Extended Term Consultant, or Extended Term Temporary appointments to another organizational unit or work location to satisfy Bank Group business needs for a period of more than 90 calendar days but no more than 12 months. An extension of 12 additional months may be granted by the responsible manager or his/her designee.

88. The Applicant contends that he was placed on an STA "for a total of 3 years." This is incorrect. While the total period between the cancellation of his G4 visa and resulting exile from the United States (January 2010) and the end of his employment with the IFC (January 2013) amounted to three years, the Applicant was in fact on operational travel status from 21 February 2010 until 18 December 2010. The IFC is correct that the total length of time for which the Applicant was on an STA was, at most, two years. The first STA was stated to take effect on 18 December 2010 (though the Applicant in fact did not sign this document until 21 February 2011), and ran until 17 June 2011. The second STA ran from 1 July 2011 to 6 January 2012. The MOU signed on 30 December 2011 extended the STA until 17 December 2012. From 18 December 2012 until the end of his Term contract on 5 January 2013, the Applicant was on Administrative Leave.

89. A two-year STA is permissible under the relevant Staff Rule. On this basis, the Applicant's claim must be rejected. This conclusion is reinforced by the considerations, noted by the IFC, that indefinite placement on mission travel status was precluded by the IFC's administrative practice guidelines, with the result that placement on a two-year STA constituted a reasonable solution in the unusual circumstances of this case. The Tribunal further notes that this was an arrangement to which the Applicant acceded (in signing the initial STA agreement,

the extension, as well as the MOU), and which resulted in him receiving benefits additional to those due under his Term contract.

CLAIM 6: LACK OF SALARY INCREASES WHILE OUTSIDE THE U.S.

90. The Applicant initially claimed that under Staff Rule 6.01, paragraph 3.01, he was due salary increases on 1 July 2010, 1 July 2011, and on 1 July 2012, but received no increases at all during his exile from the United States (*Alrayes*, para. 78).

91. In its Answer, the IFC produced documentary evidence that the Applicant had, in fact, received annual salary increases for each year of his employment with the IFC, including his years outside the U.S. Specifically, during the relevant period the Applicant received salary increases effective 1 July 2010, 1 July 2011, and 1 July 2012.

92. In light of this evidence, the Applicant withdrew this claim. He apologized for his mistake in this matter, though maintained that his confusion was understandable “given all the difficulties he was facing and the lack of clear communication with IFC.”

INFORMATION PROVIDED TO THE APPLICANT

93. In his Application, the Applicant observed that a staff member who separates from the IFC “is routinely sent a large packet of materials which provides information on all matters relating to the termination, such as information about pension benefits, continued health coverage, leave payouts, and all other termination benefits.” The Applicant did not receive this information, however (*Alrayes*, paras. 81-82). The Applicant argues that for the IFC’s “completely unreasonable delays and its refusal to answer” his previous requests for information, the Tribunal should award him additional compensation.

94. According to the IFC, around 16 December 2012 the Applicant met with the Senior HR Business Partner at the Dubai office. At this meeting, the IFC contends, the Senior HR Business

Partner personally explained the “check-out procedures” relating to the end of the Applicant’s employment. The IFC states as follows:

Specifically, [the Senior HR Business Partner] told Applicant that he should update his LARs records prior to his last day of employment to ensure his unused annual leave can be accurately calculated and paid out to him. [The Senior HR Business Partner] also explained to Applicant the various options for continuing medical and life insurance after his employment with IFC is terminated, and she informed him of the relevant contact points within HR in the event he had any additional questions. She explained to him that he would need to follow up directly with the pension office to submit the requisite pension related forms so that any outstanding pension payments can be processed and paid out to him. She also provided him with the relevant contact points in the pension office. Finally, [the Senior HR Business Partner] walked Applicant through the process of returning his Bank ID card, UNLP and all other IFC equipment.

95. Two issues arise here. First, on the record before the Tribunal it is far from clear that the Senior HR Business Partner did, in fact, provide the Applicant with all of this information. According to the Applicant, “it was not quite the informative session that the [IFC] represents.” On the Applicant’s account, the Senior HR Business Partner explained certain administrative matters such as the handing-over of his ID card, his laissez-passer, IFC telephone, and work computer. The Applicant was told that his health coverage could continue, but would need to be handled through Washington, D.C. The Applicant states that “[a]lthough asked, [the Senior HR Business Partner] was unable to explain his termination benefits or any compensation he might receive because she was based in the East Europe and MENA Region and did not know the process for Washington based staff,” and that she “advised him to meet with Human Resources in Washington when he returned to the United States.” The Applicant notes that he did “exactly that,” but received no response.

96. In support of its account of the December 2012 meeting, the IFC has adduced an email chain from July/August 2014 between the Senior HR Business Partner and HR colleagues. On 29 July 2014, the Applicant had sent an email to multiple IFC/WB recipients in which he expressed a wish to “close any standing issues, review closing procedures settlements, reimbursements of legal fees or other entitlements at closing if any,” and requested a meeting with HR to this end (see paragraph 34 above). The same day, a colleague in IFC HR sent an email to the Senior HR Business Partner, seeking “the details of what was paid and whether exit procedures were

followed and amounts paid” to the Applicant. On 1 August, the Senior HR Business Partner responded as follows:

The pension has reverted to me, and [the Applicant] has never received his pension benefits, as he has never submitted the forms to pension. [A colleague] from the pension office confirmed that numerous emails were sent to [the Applicant] as a follow up for him to submit the necessary forms. They never got replied, nor could they ever reach him by phone. [The Applicant] needs to get in touch with pension directly to claim the benefits as this is considered strictly confidential matter, and something that I can not follow up.

His termination [Personnel Action Form] has been done on time, and as per the MOU it was resignation, he would not be eligible for expiration payment. He received the payment of his unused annual leave.

I know I went with [the Applicant] through the check out procedure personally, as prior his departure I was visiting the Dubai Office.

97. No further detail is provided in this email on what was discussed between the Senior HR Business Partner and the Applicant at the meeting in Dubai. Nor has the IFC produced a statement by the Senior HR Business Partner to support its position. The IFC’s contentions regarding the detailed nature of that discussion are, therefore, not adequately supported by evidence.

98. Second, even if the IFC’s account of the December 2012 meeting between the Senior HR Business Partner and the Applicant were accurate, it is not clear why the Applicant was informed of these issues orally rather than in writing. The IFC has not produced any evidence of written communications with the Applicant regarding these various issues, either before his meeting with the Senior HR Business Partner or after, until it contacted him subsequent to the Tribunal’s November 2015 judgment on preliminary objections. The Senior HR Business Partner’s email of 1 August 2014 noted the need for certain actions on the part of the Applicant, yet he was not copied on any of these communications and there is nothing in the record to indicate that the Applicant received any response (from any of the 12 addressees, which included the then HR Director as well as the Senior HR Business Partner and the colleague in IFC HR who contacted her on 29 July) to his 29 July email. As noted by the Tribunal at the preliminary objections phase, this constituted a departure from standard WBG practice, which the IFC has failed to

explain and which was of particular importance in the present case given the difficult circumstances faced by the Applicant (*Alrayes*, paras. 87-88).

99. The Tribunal observes that the failure to provide this information to the Applicant was subsequently compounded by the IFC's position that, of all the Applicant's grievances, it was only willing to enter mediation with respect to his claim for the \$25,000 for the FBI interviews (*Alrayes*, para. 90). While management and staff members are of course free to determine the scope of any mediation entered into, and to do so without prejudice to any subsequent proceedings before the Tribunal, the Tribunal cannot fail to observe a problematic series of events in this case. With respect to a number of elements of the Applicant's claims, the IFC failed to provide the Applicant with adequate and timely information regarding his entitlements when his employment ended in early 2013. The IFC then failed to respond to the Applicant's request for information in his email of 29 July 2014. In late 2014 the IFC refused to mediate in respect of those issues. Finally, in early 2016 (*after* the Tribunal had issued a judgment on preliminary objections), the IFC approached the Applicant offering to settle these claims. Had the Applicant been informed of his entitlements in a timely manner, in writing and ahead of the end of his employment, both parties could have been saved some of the time and cost which proceedings before PRS and the Tribunal inevitably entail.

100. As noted above, the Applicant encountered unjustifiable delays on the part of the IFC with respect to payment of his relocation and pension entitlements (paragraphs 60, 66 above). The Tribunal further observes that the IFC's failure to provide the Applicant with information in writing, in a timely manner, complicated his efforts to obtain continuing health coverage for his children. This is inconsistent with the fair treatment that the WBG owes its staff under Staff Principles 2.1 and 9.1. The Tribunal also recalls that in *BV*, Decision No. 466 [2012], para. 72, it found that the applicant's right to fair treatment had been violated by the Bank's failure to implement an MOU in a timely fashion, causing prejudice to the applicant. Notwithstanding that the applicant had remained on full pay at all times, the Tribunal there awarded compensation for this unfair treatment in the amount of three months' salary net of taxes. The Tribunal determines that similar compensation is warranted in the present case.

101. In addition, the Tribunal has previously confirmed that it has “an inherent power to award interest on payments due which have not been made in circumstances in which the fault for failing to pay is attributable to the Respondent.” (*Lamson-Scribner, Jr.*, Decision No. 32 [1987], para. 60). Awards of interest are “compensatory and not punitive”, and the rate of interest levied “should approximate the return of money invested in the open market.” *Id.* The Tribunal also takes note of the practice of the ILOAT, which at its most recent session set aside a termination decision and awarded the applicant, *inter alia*, back-pay together with 5% interest from the date of termination to the date of payment (*P (Nos. 1, 2 and 3) v Global Fund*, Judgment No. 3613, 3 February 2016). In the circumstances of the present case, the Tribunal deems it appropriate for the IFC to pay the Applicant interest on sums due to the Applicant as (i) his pension lump-sum withdrawal benefits and (ii) his relocation benefits. Interest shall be paid at the rate of 5% per annum levied from 30 July 2014 to the date on which those sums were paid.

102. Moreover, and notwithstanding that the Applicant was unsuccessful in respect of a number of his claims (*CE*, Decision No. 479 [2013], para. 52), the Tribunal determines that the IFC shall pay the Applicant’s attorney’s fees for this phase of the proceedings.

CONCLUSION

103. In light of the foregoing, the Tribunal finds that the Applicant’s claims with respect to his dependency allowance, relocation benefits, pension entitlements, and the \$25,000 for visa-related legal fees have become moot. The Tribunal finds, however, that the IFC’s delay in paying the Applicant’s relocation benefits and pension entitlements was unjustified, and that in this respect the IFC failed to accord the Applicant fair treatment. All other claims are dismissed.

DECISION

- (1) The IFC shall pay the Applicant compensation in the amount of three months' salary net of taxes;
- (2) The IFC shall pay the Applicant interest on (a) his pension lump-sum withdrawal benefits and (b) his relocation benefits, at the rate of 5% per annum from the date of 30 July 2014 to the date of payment;
- (3) The IFC shall pay the Applicant's attorney's fees for this phase of the case, in the amount of \$3,373.06; and
- (4) All other claims are dismissed.

/S/ Stephen M. Schwebel
Stephen M. Schwebel
President

/S/ Zakir Hafez
Zakir Hafez
Acting Executive Secretary

At Washington, D.C., 8 April 2016