

Introduction

1. The Applicant was a staff member with the United Nations High Commissioner for Refugees (UNHCR) in Ethiopia, holding a fixed-term appointment as a Registration Assistant at the G-4 level.
2. On 23 February 2022, the Applicant was separated from service for having engaged in fraud registration activities on 17 March and 16 April 2019.
3. On 28 May 2022, he filed an application contesting the disciplinary measure imposed on him and requested the rescission of the decision of dismissal and reinstatement.
- 4.

administration for Aw Barre Refugee Camp.⁶

8. From December 2016, the UNHCR and the Ethiopian Administration for Rghwi gg cpf Rgwtpgg Ahcktu (öARRAö) ci tggf vq uj ctg rgtuqpcn fvc cpf vq implement a Registration Plan of Action (öRPAö) to move towards joint registration and to include upscaling registration to the (öLevel 3ö) standard.⁷ Av vj g UNHCR öc level 3 (L3) emergency is activated in exceptionally serious situations where the scale, peace, complexity or consequence of the crisis exceed the existing response capacities of both, the relevant country operations (s) and relevant Regional Bureau(x), and requires a corporate, whole-of-UNHCR tgr qpug.ö⁸In Ethiopia, the L3 emergency begun on 25 March 2019 with the registration of concerned persons carried out jointly with the ARRA.⁹

9. An audit report of proGres carried out by an UNHCR Registration officer reviewed all data and entries made by the Applicant from 1 August 2018 to 1 May 2019.¹⁰According to the audit report, on 17 March 2019, the Applicant uploaded a new photograph and reactivated case no. 810-000144444¹¹, inactive since 16 April 2014. No litigation events were recorded on proGres related to the case, which had not been referred to the litigation desk.¹²The report further indicated that on 16 April 2019, the Applicant replaced the existing photos by uploading new photographs¹³ in case no. 810-00002966¹⁴ and in case no. 810-00002968¹⁵, inactive since 24 January 2014 and reactivated on 17 April 2019 without referring to the litigation desk and without litigation events recorded on proGres.¹⁶

10. As vj g vgcö rgc fgtöu Lgxgn 3 tgi kvtcvkqp gztetekug complained about the way

⁶ *Ibid.*, at page 3, para. 16.

⁷ *Ibid.*, at page 2, para. 11.

⁸ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 6, para. 14.

⁹ *Ibid.*, at pages 6-7.

¹⁰ *Ibid.*, at page 3, para. 18.

¹¹ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 8, para 18.

¹² *Ibid.*, at page 3, para. 18 (i). Reply, *annex R-16, Photographs of refugees*.

¹³ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 8, para. 18.

¹⁴ *Ibid.*, at annex R-16, *Photographs of refugees. Reply*, page 3, para. 18(ii).

¹⁵ *Ibid.*, at page 3, para 18 (iii) and at annex R-16, *Photographs of refugees*.

¹⁶ *Ibid.*, at page 3, para 18. (ii) and (iii).

were threatening to harm him due to his inability to get them registered as refugees.²⁴

17. By letter dated 16 August 2019, the Director of the Division of Human Resources, (ōDDHRö) confirmed to the Applicant his ALWP pending completion of the investigation. The conditions of the ALWP required the Applicant to remain available for cooperation with the IGO investigation, in accordance with staff regulations 1.2(r) and staff rule 1.2(c).²⁵

18. On 19 August 2019, the UNHCR Field Security Service(ōFSSö) guko cvgf that the threat against the Applicant was serious and recommended to relocate him to Addis Ababa.²⁶

19. On or around 20 August 2019, the UNHCR Deputy Representative (Administrative officer) wrote to the Applicant for his relocation to Addis Ababa.²⁷

20. On 21 August 2019, the Head of UNHCR Jijiga SO reported that the Applicant

29. On 17 February 2021, the Applicant returned the signed record of the interview.³⁸

30. By email dated 1 April 2021, the IGO convoked the Applicant for a second interview scheduled on 9 April 2021 for which he did not reply. The Applicant did not reply to the IGO emails dated 3, 5, 6 and 7 April 2021.³⁹

31. On 30 June 2021, the IGO shared its findings with the Applicant and invited him to address comments, which he did on 5 July 2021.⁴⁰

32. The IGO transmitted the investigation report to the DDHR on 12 July 2021.⁴¹

33. By letter dated 06 September 2021, the DDHR transmitted to the Applicant a copy of the investigation Report by which he was accused of fraud in the refugee registration exercise and failing to cooperate with the IGO's investigation.⁴²

34. On 29 September 2021, the IGO interviewed a witness who knew the refugee in case no. 810-0014444 and who testified that this refugee already passed away when the Applicant uploaded a photograph and reactivated her case on proGres.⁴³

35. By memorandum dated 01 October 2021, the Applicant wrote to the DDHR and replied to the allegations of misconduct.⁴⁴

36. By email dated 25 October 2021, the DDHR informed the Applicant on the Applicant's statements to the IGO dated 29 September 2021 in case no. 810-0014444 with the possibility to comment on the investigation.⁴⁵

37. By email dated 10 November 2021, the Applicant explained to the DDRH that without information on a death case at the time of inactivation, he could not refer to proGres

database. He y cu p q w k f q h v j g I G O u h p f k p i u q p 6 S g r v g o d g t 2021. H g t g u r q p f g f
rejecting all the allegations made against him.

43. The Applicant explained that the three individuals concerned in the alleged cases of fraud were not scheduled for the Level 3 Registration Exercise. The re-activation of their cases was part of routine activities done as per the old established re-activation procedures. He did not know that in case 810-000144444, the individual was an impostor. Therefore, the established facts do not constitute misconduct.

44. When a refugee seeks for re-activation of his file, the UNHCR protection staff interviews him and make recommendations before referring his case to a UNHCR registration staff member.⁵²

45. The IGO endorsed ARRA's misinformation. The Applicant requests the testimony of those three individuals who misrepresented themselves at the time of the cases' re-activation.

46. The Applicant claims that the investigation was conducted with procedural flaws that compromised his due process rights and are indicative of bias against him, namely that:

a. He was not given the opportunity to cross-examine the witness heard by IGO in case no. 810-0014444. Without a written copy of this witness' examination, the Applicant claims that he was deprived of the right to contest the (veracity) credibility of this witness and to see in totality what was exactly u r c v g f d { v j g o p g y w p - p c o g f y k p g u u . o

b. The other witnesses interviewed by the IGO investigators were not credible. The investigators disregarded pertinent facts and failed to conduct an investigation based on relevant facts in violation of the UNHCR Strategic

Case No.:

69. On 30 August 2018, UNHCR and ARRA jointly published SOPs for level 3 registration in Ethiopia. The SOPs regulated the process and assigned roles and accountabilities. They were circulated to all UNHCR Sub-Offices and stakeholders on 30 August 2018. In Aw Barre Refugee Camp, information and dissemination actions about the SOPs were conducted in early March 2019, before the level 3 registration

exercise on 25 March 2019.

70. The SOPs

and, the following day, reactivated the case; and (iii) on 16 April 2019, the Applicant uploaded a new photograph for Mr. Muktar Abdi Mohammed, whose case had been inactive since 24 January 2014 and, the following day, reactivated the case.

74. The proGr

99. It also results from the file that on 19 August 2019 the UNHCR Field Security Service assessed that the threat to the Applicant was real and recommended his relocation to Addis Ababa.

100. The applicable standard of proof in the disciplinary matter is clear and convincing evidence. The Appeals Tribunal has held that, *“Duke r p t c { ecugu ctg pot etlo kpcn Lkdgtv\ ku pqv cv ucng Jí _ Crgct cpf eqpxkpeki tgs vktgu o qtg vj cp c preponderance of the evidence but less than proof beyond a reasonable doubt it o gcpu vj cv vj g vtwj qh vj g hcevu cuugtvgf ku j ki j n\ r tqdcdng.ö (Molari, 2011-UNAT-164, para. 30).*

101. Tj g Ar r gcu Ttkdwpcnj cu cnuq ur gekhgf vj cv ðengctö o gcpu vj cv ðgxf gpeg qh o kueqpf wev o wuv dg o cplkguv cu qrr qugf vj uwr r qukkpctiö cpf vj cv ðeqpxkpeki ö tgs vktgu, ðvj cvvj ku engct gxf gpeg dg r gtuwckxg vj c j ki j uwpf ctf.ö B{ the same token, ðExkf gpeg, y j lej ku tgs vktgf vj dg engct cpf eqpxkpeki , ecp dg fktgev gxf gpeg qh events, or may be of evidential inferences that can be properly drawn proof from other fktgev gxf gpeg.ö (*Negussie, 2020-UNAT-1033, para. 45*) .

102. In this case, the facts have been established and there is a clear and convincing evidence that the Applicant committed fraud on purpose.

103. Finally, it has to be noted that it results from the file that there was also a lack of cooperation by the Applicant in the investigation, who (apart from any alleged obstacles in relation to the familial problems which prevented him from getting in contact with the investigators)- demonstrated he was not interested in being heard whenever requested and in justifying his acts. This is relevant not only because it could entail a violation of the specific obligation of staff members to cooperate with the investigations, but because the Applicant missed an occasion to give a full explanation of his acts.

(b) Whether the established facts constitute misconduct.

104. Tj g Arr rkecpwu eqpf wev co qwpwu vj c dtgcej qh j ku dcule qdrki cvkpu wpf gt staff regulations 1.2(b) and (g), staff rule 1.2(i), and the Strategic Framework for the Prevention of Fraud and Corruption.

105. In particular, UNHCR IOM No. 044/2013 ó FOM 044/2013 Strategic Ftco gy qtmhqt vj g Ptgxgpvkqp qh Ftcwf cpf Cqttwr vkqp (vj g õSvtevgi le Ftco gy qtnö) prohibits in paragraph 8.3:

Any act or omission, including misrepresentation or concealment of a material fact, that knowingly or intentionally misleads, or attempts to mislead, a party to obtain a benefit, whether directly or indirectly, whether for oneself or for a third party. Fraud could involve misappropriation of cash (such as fraudulent claims/disbursements) or other assets (such as fraudulent shipments, falsifying inventory records), or fraudulent statements (purposefully misreporting or qo kvkpi kphqto cvkqp) jí _ FtÔ vek

108. Sgeqpf, vj g r wtr qug qh vj g Ar r rlecpvau o kutgr t gugpvcvkpp qh vj gk kf gpvkf cpf status could only be to obtain a benefit for the impostors, because, by posing as the refugees with active status, the three individuals were eligible for protection and assistance.

109. Third, for the reasons above mentioned, the evidence is clear and convincing that the Applicant acted with knowledge and intent to mislead (and even with a possible personal economic interest).

c. Whether the disciplinary measure is proportionate to the offence.

110. Gkxgp vj g pcwtg cpf i tcxkvf qh vj g Ar r rlecpvau o kueqpf wev, vj g ucpevkpp ku pqv absurd, unreasonable, or disproportionate.

111. In this case, the High Commissioner considered both aggravating and mitigating circumstances as well as the parity principle to determine the appropriate measure. As aggravating circumstances, the High Commissioner considered that the o kueqpf wev y gpv vj g j gctvqh UNHCR au o kulkpp vj hwpf solutions for refugees and presented grave risks to confidence in the integrity of registration processes, which are qh hwpf co gpcneqpegtp vj f qpqt cpf t gugwgo gpveqwpvkgu, cpf vj cvvj g Ar r rlecpvau conduct was repeated

114. Accordingly, the Appeals Tribunal has consistently upheld the imposition of disciplinary measures involving the termination of employment in cases of fraud and other forms of dishonest conduct.

115. Moreso

witness during the interview. In any case, the Applicant did not reiterate the contention in his closing submissions.

121. In the application, the Applicant called for the testimony of the three individuals who tried to misrepresent themselves by the time of reactivation.

122. The Tribunal notes that the evidence would have not added relevant elements to the investigation, which was based to univoque clear results of a technical assessment of the activities performed on the proGres information system and was complete as such; the testimonies of these people (probably interested, given the contest, in benefiting of a registration as refugee at whatever cost) would have added nothing to the outcome of the investigation nor to this judgment, lack of decisiveness of their statements.

123. The Applicant, in sum, has failed to establish any violations of due process that could impact the disciplinary measure.

Conclusion

124. In light of the foregoing, the application is dismissed.

(Signed)

Judge Francesco Buffa

Dated this 12th day of June 2023

Entered in the Register on this 12th day of June 2023

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-