



## **Introduction**

1. On 16 August 2016, the Applicant, a former staff member in the United Nations High Commissioner for Refugees ( UNHCR ) at the P-4 level, filed an application in which he contests [t]he decision to appoint another candidate to the position of Senior Inter-Agency Coordination Officer, P-4 level, Office of Human Resources Management, Nairobi, job opening 57267 [ the Post ] . The case was registered with the Dispute Tribunal s Registry in Nairobi under Case No. UNDT/NBI/2016/060 and assigned to Judge Klonowiecka-Milart.

2. On 14 September 2016, the Respondent filed his reply, contending that the application is without merit.

3. After various case management steps, by email of 19 July 2019, the Nairobi Registry informed the parties that, to rebalance the Registries case load, the Nairobi Registry has been directed to transfer this case to the New York Registry with immediate effect .

4. On 17 October 2019, the case was assigned to the undersigned Judge.

## **Facts**

5. At an unknown date, the job opening for the Post was advertised. In this job opening, under the heading, Essential minimum qualifications and professional experience requirement were, *inter alia*, listed the following: (emphasis added):

- a. Work experience, including in large field operations, that enables credible representation of UNHCR in the *inter-agency* context and with government partners ; and.

b. Understanding of recent *inter-agency* developments, notably the IASC [presumably, the Inter-Agency Standing Committee] humanitarian reform .

6. Regarding the background for the role of the Senior Inter-Agency Coordination Officer, under the heading, Organization context , the political and refugee situation in Burundi as per 31 October 2015 was explained and the Regional Refugee model was presented. It was also indicated that [t]he specialist areas span the following: refugee status determination, registration, geographic information systems, resettlement, women and children, public health, HIV/AIDS, reproductive health, nutrition, physical planning, water-sanitation-and hygiene, public information and financial management .

7. In February 2016, the Applicant applied for the Post. In his motivation letter for the job application, he provided as follows of relevance to the present case:

I hereby apply for the position of Senior Inter-Agency Coordination Officer in the Regional Service Centre in Nairobi. I amIhe



## **Consideration**

### *Preliminary matters*

The Applicant's motion of 17 October 2017 for the manager to appear as a wit

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*Haroun* 2017-UNAT-720, para. 27). As demonstrated by the Applicant's final observations, he did also respond to the submissions in the Respondent's closing statement. The Applicant's request is therefore rejected.

*Issues of the present case*

16. The Appeals Tribunal has h





was subject to an appointment to a new P-4 level position only in March 2016 did DHRM agree that this promotion was to be implemented with retroactive effect as of 1 January 2015 in accordance with UNHCR motion policy.

21. The Applicant further submits that the manager was therefore not aware of the motion to the P-4 level and based his assessment on the assumption that the Applicant served at the P-3 level. As candidates at the level of the post are given priority consideration, the manager only cursorily and superficially assessed the P-3 level candidates as it was unlikely that DHRM would match a P-3 level candidate against the position. DHRM subsequently realized that he was at the P-4 level and therefore shortlisted him together with five other candidates.

22. The Applicant goes on to contend that it is undisputed that he has inter-agency coordination experience, and despite the fact that he had specifically asserted this in his motivation letter, the manager dismissed his candidature on the basis that he did not have such experience. In his motivation letter, the Applicant had specifically stated that, d assistance interventions of UNHCR, implementing partners and other UN agencies for more than 85.000 persons of concern in Eastern Sudan . The manager therefore did not properly consider the candidature of the Applicant, otherwise he would have seen that the Applicant did possess the required inter-agency experience. Also, inter-agency coordination was part of the Applicant -day duties in Sudan for two years and because it covered all areas of the Applicant s work, it was not specifically mentioned in the objectives of the performance management system. If the manager or DHRM had doubts about whether the Applic correct, they could have easily checked with the Applicant or his former supervisors. Instead, the manager probably did not even read the App tion letter and only summarily reviewed his factsheet. Contrary to what the manager stated, the Applicant also had the required experience in making recommendations on strategies and programme implementation, which also follows from his factsheet.

23. The Respondent, in essence, submits that whereas the Respondent has minimally showed that the decision to reject the Applicant's candidature was correct, the Applicant has failed to show by clear and convincing evidence that he was not given full and ~~fair~~ correct,

manifestly wrong, arbitrary or otherwise unreasonable. It is therefore clear that the Respondent has demonstrated that in the process he assessed,

- a. the Applicant's grade level;
- b. the information regarding the Applicant included in the Shortlisting Matrix and the fact sheet;
- c. the Applicant's competencies and job experience; and
- d. applied the Policy to the Applicant's job application for the Post.

26. Under the principle of regularity, it is therefore for the Applicant to demonstrate with clear and convincing evidence that he was denied a fair chance of being selected for the Post. In this regard, the Tribunal observes that according to *Ibrahim* 2017-UNAT-776, [c]lear and convincing proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt it means that the truth of the facts asserted is highly probable (para. 44).

27. In the present case, as follows from the above, the Tribunal finds that the evidence on record does not demonstrate that it is highly probable that the Applicant was improperly denied a fair chance for selection; rather, it shows that his candidature was fully and fairly considered.

28. Regarding the testimony of the manager, which the Applicant has proposed as part of these proceedings, such evidence would have made no difference in this context because, according to the Applicant, it would have concerned the manager's knowledge on whether other P-4 level candidates were given any preferential treatment due to their level and the related circumstances. By this, no further light would therefore have been shed over the pertinent question of whether it was inappropriate that UNHCR found that the Applicant did not have the adequate inter-agency experience.

29. In the Applicant's final observations, he submits that if the Tribunal considers evidence for his inter-agency experience to be necessary, he requests leave to provide an affidavit from one of his former supervisors in Sudan. The Tribunal notes that no such evidence is necessary at this stage, because what is important is the information that was in front of the decision-maker at the time of the decision and not what is before the Tribunal now



35. Consequently, the Tribunal finds that in accordance with *Ross*, the Applicant had no foreseeable and significant chance for selection had it not been for any of the alleged irregularities.

*Remedies*

36. As the contested decision is lawful, the issue of remedies is moot.

**Conclusion**

37. In light of the above, the application is rejected on the merits.

*(Signed)*

Judge Francis Belle

Dated this 10<sup>th</sup> day of December ype/Pagination/SubtypSu