Judgment No. 2016-

Before

Case N

Date:

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Counsel for Mr. C

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... She raised her concerns with the interview panel during the round of interviews and again during its deliberations after all the interviews had been completed.

... Following the interviews, [the new CCPO] carried out a second review of the eligibility of all candidates—both internal and external—who had applied for the Position. Taking into account the declared verifiable work experience relevant to the JO, she concluded that the Applicant, as well as two other internal candidates, did not have the minimum length of professional work experience required for the Position. She calculated that the Applicant had relevant work experience totalling nine months and two weeks obtained after the completion of his Bachelor's degree.

... It also became apparent to [the new CCPO] that the JO had misstated the years of relevant experience required for the Position. The Guidelines for Determination of Level and Step on Recruitment to the Professional Category and Above, issued by the Office of Human Resources Management ("OHRM"), required four years' experience for such kind of positions. [...]

... While the interview panel was considering its decision on the Position, [the new CCPO] advised it that at least one of the candidates had been wrongly deemed eligible for the N[P]O post and should not be considered. [...]

... On 8 November 2013, [the new CCPO] met with the Applicant and another local candidate to explain why she needed to remove them from the selection process. She told them that the JO contained a mistake by specifying at least three years' experience following the completion of a Bachelor's degree, where an NPO position at the B level usually required four years' experience. [The new CCPO] testified that she also explained to the Applicant that he did not meet even a three-year work experience requirement. The Applicant was informed that only 50% of his experience as a consultant should be counted, and that his experience at the GS-5 level could not be counted towards the Position's requirements.

... On the same day, 8 November 2013, the Applicant was informed [...] that his name would be removed from the list of eligible candidates for the Position's recruitment process, on the grounds that, as a result of a mistake made by the Administration, he had been inadvertently ruled eligible for the Position although he did not meet the minimum experience required. It was further noted that the required experience was four years after the completion of the Bachelor's degree, instead of the three years that were erroneously indicated in the JO.

... After their meeting, [the new CCPO] spoke to the Applicant by phone and asked him for the copies of his consultancy contracts so that she could review his terms of reference, and check whether his experience could be validated as relevant experience. She said in evidence that the Applicant answered that he did not have such copies, although he denies that and claims that, in fact, he keeps copies of all of his

> ... The Applicant confirmed having been informed that only 50% of his experience as a consultant should be counted, and that his experience at the GS-5 level could not be counted towards the Position's experience requirement.
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> ... [... T]he Applicant did not provide copies of his contracts at the time and [the new CCPO] concluded, based on the information [...] supplied in his application, that the Applicant's experience as a consultant was not in any field relevant for Civil Affairs. [The new CCPO] told the Tribunal that the Applicant's work as reported in his PHP as a Media Relations consultant and Freelance Interpreter/Translator is not, on the face of it, relevant to the requirements of the JO, which specified experience in public administration, governance, peace-building, and community relations. She further stated that the Applicant's experience could not be considered as "exceptional" professional experience to be accepted in lieu of an advanced university degree.
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> ... [The new CCPO] said that some two days later, the Applicant phoned her and asked for the rule requiring an NPO position at the B level to have four rather than three years' minimum experience. She emailed him the ORHM Guidelines for the Determination of Level and Step on Recruitment to the Professional Category and Above.
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> ... At the end of 2013, two external candidates were selected for the Position.
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> ... On 13 December 2013, the Applicant requested management evaluation of the impugned decision, which was upheld in the management evaluation reply, dated 27 February 2014.
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> ... In May 2014, a fact-finding panel was set up to investigate alleged irregularities in the recruitment process for the Position. The corresponding investigation report has been concluded, but a final decision based on the recommendations has not yet been made.

3. On 27 May 2014, Mr. Cicek filed an application with the Dispute Tribunal contesting the decision of 8 November 2013 advising him that he was ineligible for the NPO post, and was thus excluded from the recruitment process for the post, because he allegedly lacked relevant experience vis-à-vis the job opening requirements.

4. On 27 May 2015, the Dispute Tribunal rendered the Judgment now under appeal, and dismissed Mr. Cicek's application. As a preliminary matter, the UNDT noted that it would not take into account the report of the investigation conducted with regard to the alleged irregularities.[2] In relation to the merits, the UNDT found that:

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[2] Impugned Judgment, para. 5.

11. The UNDT erred and reached a contradictory conclusion in holding that the Administration enjoys a wide discretion in selection matters, yet upholding the new CCPO's determination that Mr. Cicek was ineligible, rather than the determination of the former CCPO or Hiring Manager that he was eligible. There were significant inconsistencies between the manner in which the Management Evaluation Unit and the new CCPO interpreted his work experience, demonstrating that the new CCPO took liberties in her position. The Administration's broad discretion is open to abuse.

12. The UNDT erred at paragraph 58 of the Judgment in claiming that Mr. Cicek had not substantiated his claim that he had performed duties at the G-6 level, given that Mr. Cicek's performance document detailed the responsibilities he had held.

13. The UNDT erred in dismissing Mr. Cicek's educational qualifications, since the essence of his studies is directly linked to the mandate of UNFICYP's Civil Affairs Section.

14. The UNDT erred in finding that Mr. Cicek did not hold a legitimate expectation though he had gone through the entire recruitment process, given that the Dispute Tribunal in *Korotina* held that it was improper for the Administration to reopen the question of a candidate's eligibility at a later stage of the recruitment process.[13] The Administration cannot claim an administrative error as pretence for restricting a field of candidates in a recruitment process in order to choose the candidate it prefers.

15. Mr. Cicek requests that the Appeals Tribunal correct the UNDT Judgment, rescind UNFICYP's decision to exclude him from the recruitment process, find him eligible for an equivalent post, and award him compensation in the amount of 12 months' salary for being subject to an unfair and unreasonable recruitment process.

The Secretary-General's Answer

16. The Secretary-General contends that Mr. Cicek failed to identify any errors of fact, law, jurisdiction, procedure or competence on the part of the UNDT justifying overturning or modifying the Judgment pursuant to Article 2(1) of the Appeals Tribunal Statute. The claims raised in the appeal are nearly verbatim reiterations of his claims before the UNDT. He essentially requests the Appeals Tribunal to reconsider his original arguments *de novo*

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[13] *Korotina v. Secretary-General of the United Nations*, Judgment No. UNDT/2012/178.

and come to a different conclusion, which the Appeals Tribunal has repeatedly held is impermissible and is not the purpose of an appeal.

17. The UNDT correctly found that the required procedures were followed in respect of the decision to exclude Mr. Cicek from further consideration for the Position. Having regard to the Organization's staff selection system, the UNDT properly found that the new CCPO was competent to review and assess Mr. Cicek's eligibility and, further, to find him ineligible during the selection process.

18. The UNDT also correctly determined that Mr. Cicek had failed to substantiate

21. Mr. Cicek has also failed to establish that the UNDT committed any error in procedure, such as to affect the decision of the case warranting reversal of the Judgment, insofar as it chose not to call the Hiring Manager or former CCPO to testify before it. Mr. Cicek has not demonstrated how such testimony would have affected the decision of the case, but only makes general and vague assertions in his appeal about matters that were not even before the UNDT for its consideration.

22. In view of the foregoing, Mr. Cicek has also failed to demonstrate that the UNDT erred in declining to order compensation, or in establishing any legal basis for an award of compensation on appeal. The Secretary-General requests that the Appeals Tribunal affirm the Judgment and dismiss the appeal in its entirety.

Considerations

Preliminary matter – request for an oral hearing

23. Mr. Cicek requests an oral hearing, wherein he seeks that the Appeals Tribunal hear evidence from the Hiring Manager and the former CCPO. Oral hearings are governed by Article 8(3) of the Appeals Tribunal Statute (Statute) and Article 18(1) of the Appeals Tribunal Rules of Procedure (Rules). The factual and legal issues arising from this appeal have already been clearly defined by the parties and there is no need for further clarification. We do not find that an oral hearing would "assist in the expeditious and fair disposal of the case", as required by Article 18(1) of the Rules. The request for an oral hearing is denied.

Preliminary matter – motions to file additional pleadings and evidence

24. Article 31(1) of our Rules, Section II.A.3 of Practice Direction No. 1, and our jurisprudence provide that the Appeals Tribunal may allow an appellant to file a pleading after the answer to the appeal when there are exceptional circumstances justifying the motion.[14]

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[14] Harrich v. Secretary-General of the United Nations, Judgment No. 2015-UNAT-576, para. 19, citing Nielsen v. Secretary-General of the United Nations, Judgment No. 2015-UNAT-542, para. 51; Utkina v. Secretary-General of the United Nations, Judgment No. 2015-UNAT-524, para. 16; Wu v. Secretary-General of the United Nations, Order No. 225 (2015) of 1 July 2015; Lee v. Secretary-General of the United Nations, Judgment No. 2014-UNAT-481, para. 36.