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Case No.: UNDT/GVA/2013/005  
Order No.: 20 (GVA/2013)  
Date: 18 February 2013



## Introduction

1. The Applicant is a staff member at the United Nations High Commissioner for Refugees (“UNHCR”) serving as a Supply Officer at the P 3 level in Property Plant Equipment (“PPE”) and Asset Management, Supply Management Services

Facts

7. In March 2012, the contested post was advertised both internally and externally and the Applicant applied for it.

8.

IOM/FOM/033/2010, considering that there were two suitable internal candidates.

Urgency

b. Since the selected candidate has not yet taken up the position in

#### Urgency

d. There is no urgency because the contested decision has already been implemented.

#### Irreparable damage

e. The contested decision has no impact on the Applicant's rights, since she was accorded full and fair consideration;

f. The Applicant will not suffer irreparable damage when her SAL expires on 31 December 2013, because she is a holder of an indefinite contract and as such will become a staff member in between assignments and will receive all entitlements until reassigned; and

g. The Special Constraints Panel has recommended that the Applicant be given support in her job applications to family duty stations with appropriate educational and psychological facilities, including Budapest, subject to review by the Director, DHRM.

#### Consideration

15. Article 2.2 of the Tribunal's Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in cases of particular urgency, and where its implementation would cause irreparable damage.

16. For an application for suspension of action to be determined by the Tribunal, the contested decision must be pending management evaluation and it must not have been implemented (see *Tiwathia* UNDT/2012/109, *Nwuke* UNDT/2012/116 and *Murnane* UNDT/2012/128).

17. Despite different approaches with respect to the determination of the proper date of the implementation of a selection decision, (see *Wang* UNDT/2012/080 and *Nwuke* UNDT/2012/116) there is no dispute that a selection

decision has to be considered as implemented when the Administration receives the selected candidate's unconditional acceptance of the offer of appointment (see Tiwathia UNDT/2012/109).

18. In the present case, the selected candidate was informed on 17 January 2013 of his selection for the contested post. He unconditionally accepted the offer of appointment on the same date. Thus, the Tribunal can only conclude that the contested decision in this case had already been implemented prior to the filing of the application for suspension of action on 11 February 2013.

19. If the decision has been implemented, as in the present case, the question of suspension does not arise and it is not necessary for the Tribunal to examine the other requirements for granting a suspension of action.

#### Conclusion

20. In view of the foregoing, the application for suspension of action is rejected.

(Signed)

Judge Thomas Laker

Dated this 18<sup>th</sup> day of February 2013

Entered in the Register on this 18<sup>th</sup> day of February 2013

(Signed)

René M. Vargas M., Registrar, Geneva