

UN ED NA ONS D SPU E TR BUNAL

Introduction

1. On 8 August 2022, the Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), filed an application contesting the decision to impose on him the disciplinary measure of dismissal.
2. On 14 September 2022, the Respondent filed his reply.
3. On 19 April 2023, the Applicant filed a motion for interim measures that was rejected by Order No. 42 (A/2023) of 28 April 2023.
4. On 7 September 2023, the Applicant filed a rejoinder pursuant to Order No. 108 (A/2023).
5. On 13 September 2023, a case management discussion (“CMD”) took place with the participation of the Applicant, his Counsel and Counsel for the Respondent.
6. By Order No. 123 (A/2023) of 19 September 2023, the Tribunal instructed the parties to file further information on several issues discussed during the CMD.
7. On 28 September 2023, the Respondent, _____, submitted information concerning the current location of the alleged victim.
8. On 28 September 2023, Counsel for the Applicant filed a submission together with a large number of documents.
9. On 6 October 2023, the Respondent informed the Tribunal that the complainant would be available to testify, should the Tribunal decide to hold a hearing, and that her testimony would be given in Persian (Farsi).
10. By Order No. 137 (A/2023) of 9 October 2023, the Tribunal decided to strike from the record the Applicant’s 28 September 2023 submission. It also ordered the Applicant to refile his submission by 16 October 2023 in accordance with guidelines that the Tribunal provided to him in said Order. The Respondent was also ordered to file his comments on the Applicant’s submission by 23 October 2023.

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23. For the reasons stated above, the Tribunal finds that the following testimonies are not relevant to the allegations of misconduct under judicial review:

- a. Mr. E. U.;
- b. Dr. S. A. K.;
- c. Ms. R. .;
- d. Dr. B. J.;
- e. Mr. A. K.; and
- f. Ms. E. A.

24. Concerning Mr. N. M. M., the Tribunal notes that his testimony relates to whether the complainant had a boyfriend at the time that she claimed to be in a relationship with the Applicant. The Tribunal finds that this is not relevant to the assessment of the facts and the allegations of misconduct against the Applicant.

25. Turning to Dr. F. ., the Tribunal considers that her intended testimony that she was not in a sexual relationship with the Applicant is also irrelevant to the allegations of misconduct in the present case. The Applicant was not satisfied for being in a sexual relationship with Dr. F. .

26. The same applies to the testimony of Ms. A. (Z.) A. who intends to testify that she was in a relationship with the Applicant during the time of the alleged misconduct. The Applicant's relationship with this proposed witness is irrelevant to the allegations of misconduct against him.

27. Noting that Mr. J. M. has been identified as a potential witness by the Respondent, the Tribunal considers it appropriate to also allow the testimony of Mr. D. M.

33. In this respect, the Tribunal considered it appropriate to grant the Respondent's request for leave to file additional evidence on the Applicant's proficiency in English.

34. A review of said evidence, introduced by the Respondent and that the Tribunal admits into the record, such as the Applicant's application to the position of Assistant Protection Officer in Shiraz, the recommendation for the Applicant's appointment to said position, and the audio recordings of his interview with the OIG, indeed, shows that the Applicant is proficient in English. His request for

40. Furthermore, the Tribunal observes that several of the documents filed as additional evidence are a ready part of the case record, e.g., annexes 6, 9, 12, 13, and 17, it was, therefore, unnecessary to resubmit them. Additionally, some of the annexes were filed in Farsi without any English translation, namely annexes 1, 2, 5, and 11.

41. The Tribunal already indicated, in paragraph 16 of Order No. 137 (GVA/2023), that its “role is not to attempt to understand the relevance of filings” and that it is in the “best interest of a party to present his/her case in a clear and concise way”.

42. Considering the above and recalling paragraph 17 of Order No. 137 (GVA/2023),

Conclusion

45. In view of the foregoing, it is ORDERED THAT:
- a. The Tribunal will hold a hearing, in the present case;
 - b. The following seven witnesses are hereby summoned to give testimony:
 - i. The Applicant;
 - ii. The complainant;
 - iii. Ms. . K.;
 - iv. Mr. D. M.;
 - v. Mr. J. M., former UNHCR Resettlement Expert;
 - vi. Ms. E. C. R., Chief of the Refugee Status Determination Section in the Division of International Protection; and
 - vii. Ms. E. R., Senior Investigation Specialist, O, UNHCR.
 - c. The Applicant's request for interpretation is denied;
 - d. Interpretation from Farsi to English and vice versa will be only provided for the complainant's testimony;
 - e. The Applicant's additional evidence filed on 16 October 2023 is not admitted and is consequently struck from the record; and

f. The Respondent's motion for leave to file a translation of excerpts of article 17 of the investigation report is granted. Consequently, article R-26 to the Respondent's 23 October 2023 submission is admitted into the record.

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Judge Su Xiaoguang

Dated this 24th day of November 2023

Entered in the Register on this 24th day of November 2023

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Rebecca M. Vargas M., Registrar, *de jure*