

1. On 26 May 2015, the Applicant filed an application contesting the decision, *inter alia*, not to include him in the roster of qualified candidates for P-4 Resident Investigator positions in the Office of Internal Oversight Services (“OIOS”); his non-selection for various P-4 positions; and the filling of several P-4 positions without advertisement through a job opening and allegedly outside of the competitive process.
2. On the same day, the application was transmitted to the Respondent in accordance with arts. 8.4 and 10 of the Rules of Procedure, granting the Respondent 30 calendar days to submit his reply by 5 p.m. on Thursday, 25 June 2015.
3. On 23 June 2015, before the reply was filed, the Applicant filed a motion requesting leave of the Tribunal to file a 16-page motion for production of evidence by the Respondent, attaching the said 16-page motion.
4. On 26 July 2015, the Respondent duly filed a reply contending, *inter alia*, that the Applicant’s claims have no merit; that the selection processes were conducted in full compliance and the resulting decisions not to select the Applicant were lawful; that the Applicant was fully and fairly considered for the roster; and that the decisions to transfer staff members within OIOS to P-4 positions were lawful.
5. On 7 July 2015, the Tribunal issued Order No. 133 (NY/2015) directing that the Applicant file a response to the Respondent’s reply by 6 August 2015, and placing the Applicant’s motion for production of evidence in abeyance until further notice.
6. Following an extension of time, on 9 September 2015, the Applicant filed a 38-page response to the Respondent’s reply, together with 285 pages of annexes.
7. On 10 September 2015, the Tribunal issued order No. 221 (NY/2015), noting that there are currently more than 50 cases registered prior to the instant matter in the New York Registry awaiting consideration by the Tribunal; and also that in the ordinary course of proceedings, matters of production of evidence, and of discovery and disclosure, are matters that are dealt with by the Judge assigned the case, with a

11. The Applicant has not pleaded urgency of this matter in the motion, although the Tribunal notes that the motion for preservation of evidence is filed at the eleventh hour (Thursday, 10 September 2015), when the USG/OIOS is, according to the Applicant, due to separate on Sunday, 13 September 2015, and such that the Respondent will have no reasonable opportunity to respond to the motion in light of the short notice and the copious documentation filed by the Applicant. The substantive application having been filed in May 2015, the Respondent's reply on 23 June 2015, and the Applicant being apparently aware that the USG/OIOS was on a mandate ending 13 September 2015, the motion has not been filed in a timely manner.

12. Amongst the principle reasons the Applicant relies on in support of the motion, *inter alia*, is that the USG/OIOS "upon her separation, will not have access to OIOS official records and her e-mail account, which would disallow her to substantiate and support any of her statements and/or actions"; that unlike current staff members she will not have to cooperate with or participate in the administration of justice; further that the Respondent will have no means to compel this potential witness to tell the truth or ensure that she does.

13. The evidentiary burden of proving any fact that a party relies on falls upon that party. An applicant will not be prejudiced if he discharge his evidential burden in the absence of the Respondent's evidence. The Applicant relies on the evidence in support of its motion. If

production of any document, may order the production of evidence for either party at any time, and may require any person to disclose any document or provide any information it deems necessary.

15. Furthermore, ST/SGB/2004/15 (Use of information and communication

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respect. The Tribunal trusts the Respondent will make the appropriate notifications to ensure compliance with the Bulletin in regard to matters herein.

IT IS ORDERED THAT:

17. In all the circumstances, having considered the above, the motion is denied.

(Signed)

Judge Ebrahim-Carstens, Duty Judge

Dated this 11th day of September 2015