



## **Introduction**

1. On 6 August 2017, the Applicant, a staff member of the Office of the High Commissioner for Refugees (“UNHCR”), filed an application contesting the decision not to select him for position No. 10003235, Deputy Representative, Burundi (P-5).

## **Facts**

2. The position was advertised on 9 September 2016 under job opening no. 12748 (“JO 12748”) in the UNHCR September 2016 Compendium. JO 12748 included a generic description of the requirements for the post without providing information concerning the operational context. This omission became an issue in the case.

3. On 14 October 2016, the Division of Human Resources Management (“DHRM”) shortlisted 11 candidates, including the Applicant. This list was sent to the then Representative, Burundi (“manager”), for his views. After considering the list, the manager nominated the Applicant as his preferred candidate.

4. On 7 November 2016, DHRM informed the manager that upon reviewing JO 12748 at a Final Recommendation Meeting it was noted that his comments on one candidate, R., did not appear to match the latter’s experience. DHRM requested the manager to once again review the candidates and to provide his revised views by 9 November 2016.

5. On 9 November 2016, the manager provided his revised views but did not change his recommendation that the Applicant was his preferred candidate. In relation to candidate R., he noted that the candidate was not proficient in French which he considered was required for the post, and that he was a national from a member state of the European Union, which would pose

presented to the Joint Review Board (“JRB”) at its session on 16-18 November 2016 nor on 14-16 December 2016. The Applicant informed the Tribunal that when he



b. In particular, he was the preferred candidate when the position was first advertised but DHRM attempted to change the views of the



g. Insofar as the Applicant requests suspension of the selection decision, it has already been implemented as the selected candidate took up the position on 1 July 2017; and

h. The Respondent requests that the application be dismissed in its entirety.

## **Consideration**

### *Standard and scope of review*

22. It is well established that, like the Secretary-General, the High Commissioner has broad discretion in matters of

recommended twice by the manager but DHRM failed to submit the matter for consideration by the JRB as required by the rules. In the meantime, it was decided to re-advertise the position so as to include a reference to the operational context. The Applicant applied for the re-advertised post but, on this occasion, the manager did not recommend him. The Applicant claims that DHRM abused its power in not presenting the matter to the JRB in November and December 2016 and sought to influence the manager to select another candidate by exerting pressure on the manager during his mission to Geneva.

26. Accordingly, the Tribunal will examine:

- a. Whether the alleged delay in the presentation of JO 12748 by DHRM to the JRB constituted a breach of the applicable Policy and procedures;
- b. Whether the decision to re-advertise the position to include an operational context was for *bona fide* reasons and complied with the Policy; and
- c. Whether, in all the circumstances, the Applicant's candidacy was given full and fair consideration.

27. Since these issues are interrelated, they will be addressed together.

*Lawfulness of the contested decision*

28. It is common ground that the manager first submitted his views in respect of the candidates for JO 12748 at some point before 7 November 2016 and then again on 9 November 2016. There is no record of a matching session held by DHRM to discuss the recommendation to be made in respect of this position until a decision was later made to re-advertise it. The matter was not presented to the JRB in its



the evidence provided by the witnesses at the hearing. In the circumstances the Tribunal had to be alive to the possibility that unless there was an innocent explanation there may have been impermissible considerations at play.

30. In the reply, the Respondent stated that after the manager presented his views on





2008 promotions session, the Appeals Tribunal indicated that the correct approach where a procedural irregularity had been identified is to examine whether any such error of procedure was causally linked to the decision not to promote the applicants.

39. It is clear from the Policy that the authority to make selection recommendations to the JRB is vested in DHRM (sec. 68(i) of the Policy). Managers are consulted in the process and express their views on the candidates shortlisted by DHRM (sec. 68(e) of the Policy). These views, however, are not binding on DHRM. In this connection, sec. 68(i) provides that “DHRM will consider the manager’s views, make the final selection and minute its recommendation”. The manager who also sat as a member of the JRB confirmed that whilst DHRM is obliged to give proper weight and due consideration to the manager’s views and recommendations, they are not obliged to act as a rubber stamp but have the duty and responsibility of ensuring that proper procedures are followed and that the entire exercise is conducted fairly in accordance with the prescribed procedures.

40. Faced with a situation where it disagreed with the views expressed by the manager on the recommendation for the contested position, DHRM had discretion if see not to follow the manager’s recommendation and possibly a duty to do so if it was of the view that a candidate, in this case R., had not been fully and fairly considered.

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correctly in questioning his recommendation by asking for an explanation as to why candidate R. was not recommended. Further, it was his decision to re-advertise the post with a revised operational context following the discussions he had with the Director of the Africa Bureau and others in Geneva.

41. The Tribunal finds that the Applicant's allegations of abuse of power arose from an understandable and reasonable suspicion but are not substantiated by the evidence heard by the Tribunal.

42. The addition of an operational context was also in line with the Policy, which provides in its sec. 68(a) that "[p]rior to issuance of the Compendium or Addendum, managers shall provide DHRM with the written operational context and position profile requirements for the purposes of the matching exercise". The Chief, AMS, further confirmed that it is always preferable to include an operational context, so as to tailor the job description to the specific elements of the position. Otherwise the job opening remains generic.

43. The question arising is why it was not included in the first place. In this connection, the Chief, AMS, testified that managers are encouraged to provide an operational context but not all of them take the time to do it. Given that no operational context was provided in the first place, the addition of one was welcomed by DHRM as it would properly address the specific requirements for the post. Accordingly, the Tribunal finds that the re-advertisement of the contested position including a description of the operational context does not constitute a procedural flaw and the explanations provided are sufficient to conclude that it was not prompted by an ulterior motive.

44. The Applicant was not recommended by the manager for the position that was re-advertised as JO 13446. The Applicant did not identify any procedural flaw or irregularity in respect of the consideration of his candidacy for the new position. Moreover, R. was not recommended either and another candidate was selected, thereby dispelling any suspicion that DHRM tried to pressurise the manager to select R..

45. Contemporaneous documents show that the manager considered that the Applicant was more junior than most of the other candidates since he had been promoted to the P-4 level in 2014 and that he needed to have gained more experience in the