Introduction

1. By application filed on 7 October 2016, the Applicants seeks the suspension of the implementation, pending management evaluation, of the decision to

6. Hiring Manager decided to assess both long-listed and short-listed candidates. Accordingly, the 15 candidates were interviewed at the end of August 2016.

7. The Respondent informed the Tribunal that the interview evaluations are currently being prepared by the assessment panel and that, hence, they have not yet been submitted to the relevant Central Review Body ("CRB") for review.

8. After the instant application was filed on 7 October 2016 and served to the Respondent on the same day, the latter filed his reply on 11 October 2016, with 17 ex parte **annexes. The Applicant filed comments on the Respondent's reply on 12 October 2016.**

9. By Order No. 204 (GVA/2016) of 12 October 2016, one of the annexes to the Respondent's reply was disclosed to the Applicant on under seal basis and redacted by the Tribunal. On 13 October 2016, the Respondent made an additional filing rectifying previous submissions.

Parties' contentions

10. The Applicant's primary contentions may be summarized as follows:

Receivability

a. The exclusion of a candidate from a recruitment process prior to the interview stage amounts to a completed adbyiôcmc60c077k06bbaiô2cm0kcybgiôcmc66p06kbeicmcx

b. Including fluency in Spanish as a desirable criterion in the JO supports the assertion that the recruitment exercise aims at recruiting specific candidates;

c. Both favoured candidates have worked in the Trade Analysis Branch

Irreparable damage

h. Harm is considered irreparable when it can be shown that suspension of action is the only way to ensure that the Applicant's rights are observed. The exclusion from a recruitment exercise may damage the Applicant's career prospects in a way that could not be compensated with financial means.

11. The Respondent's primary contentions may be summarized as follows:

Receivability

a. The Hiring Manager's determination that the Applicant was not suitable is not an administrative decision, but a preparatory step, not yet appealable under the Tribunal's Statute. The selection process has not been completed;

b. Since there is no final administrative decision, this application is premature. [illegible]

e. After review of the Applicant's PHP, the Hiring Manager concluded

13. It is well established law (Schook **2010-UNAT-013,** Tabari **2010-UNAT-030,** Planas **2010-UNAT-049, Al** Surkhi et al. **2013-UNAT-304,** Tintukasiri **et al. 2015-UNAT-526) that an "administrative decision" is:**

> **[A] unilateral decision taken by the Administration in a precise individual case (individual administrative act), which produces direct legal consequences to the legal order. Thus, the administrative decision is distinguished from other administrative acts, such as those having regulatory power (which are usually referred to as rules or regulations), as well as from those not having direct legal consequences.**

14.

As stated in Korotina **UNDT/2012/178, such a decision "signifie[s] the end of the process as far as [that applicant] is concerned".**

17. In the same vein, the Tribunal stated in Melpignano **UNDT/2015/075 that a decision to eliminate a candidate at one of the "intermediate" stages of a selection process "produces direct legal consequences affecting the Applicant's terms of appointment, in particular, that of excluding the Applicant from any possibility of being considered for selection for [a] particular vacancy". On these grounds, the Tribunal went on to find that:**

> **[T]he impugned decision has direct and very concrete repercussions on the Applicant's right to be fully and fairly considered for the post though a competitive process (see** Liarski **UNDT/2010/134). From this perspective, it cannot be said to be merely a preparatory act, since the main characteristic of preparatory steps or decisions is precisely that they do not by themselves alter the legal position of those concerned (see** Ishak **2011-UNAT-152,** Elasoud **2011-UNAT-173).**

18. The Tribunal sees no reason to depart from such position in this case.

19. The Respondent cites Ivanov **2013-UNAT-378 to back the opposite conclusion. However, this Judgment is not relevant because its facts are clearly distinguishable from those in the case at bar. Indeed, in** Ivanov **the Applicant did**

d. The Hiring Manager applied an arbitrary—and particularly demanding—interpretation of the experience requirements, which

experience requirement, the Applicant puts forward that the Hiring Manager must have applied a different definition of such minimum requirements. He suggests that what appears to have occurred is that the Hiring Manager regarded the work experience requirement as cumulative, namely that to be considered to have "five years of … experience in economic research and analysis, policy formulation, application of economic principles in the areas of international trade, trade policy and nontariff measures" a candidate ought to have had five years in each of the areas of expertise listed, and in particular of non-tariff measures.

33. While conceding that the above may not be a usual reading and interpretation of JO requirements in the United Nations, and quite obviously not

Urgency

36. Given that the 15 candidates chosen for further assessment sat for their interviews nearly two months ago, it is to be expected that the list of recommended candidates will be submitted to the CRB for review in the very near future. Considering that the process is, therefore, in a late stage, the Tribunal considers there to be urgency in the case at hand.

Irreparable damage

37. The harm potentially caused by a loss of career opportunity is not of a purely financial nature. This kind of harm is of such nature that it could be hardly completely made good through financial compensation.

Conclusion

38. In view of the foregoing, the application for suspension of action is granted.

Judge Teresa Bravo
Dated this 14th day of October 2016

Entered in the Register on this 14th day of October 2016

René M. Vargas M., Registrar, Geneva