

Case No.: UNDT/GVA/2010/088

Judgment No.: UNDT/2011/101

Date: 16 June 2011

English

Introduction

1. By application filed on 9 June 2010 before the United Nations Dispute Tribunal, the Applicant, a staff member of the United Nations Office in Geneva (UNOG), contests the decision of the United Nations High Commissioner for Refugees not to retain him in the pool of candidates for P-3 and P-4 field security adviser posts.

2. He is requesting compensation for the material and moral damage suffered.

Facts

3. The Applicant has been a G-3 security and safety officer at UNOG since June 2004.

4. In 2009, the United Nations High Commissioner for Refugees (UNHCR) published a call for application for P-3 and P-4 field security adviser posts in various countries on the ReliefWeb website.

5. On 21 October 2009, the Applicant submitted an application for the advertised posts.

6. On 19 November 2009, the UNHCR Field Security Section forwarded the Applicant's candidacy to the United Nations Secretariat Department of Safety and Security (DSS) for clearance. That same day, DSS informed UNHCR that the Applicant had not been granted clearance.

7. UNHCR asked DSS to give the reasons for its refusal to grant the Applicant clearance. On 24 November 2009, DSS informed UNHCR that the Applicant lacked the relevant experience for field security adviser posts, especially at the managerial level. DSS also noted that the Applicant could not write easily in English and informed UNHCR that his candidacy had already been reviewed and rejected two times.

8. On 1 December 2009, UNHCR informed the Applicant that DSS had rejected his candidacy and that, for that reason, h

14. By Order No. 92 (GVA/2011) of 6 June 2011, the Tribunal ordered UNHCR to produce the text establishing that clearance from DSS was a mandatory step in the selection process and that it was compelled to follow the opinion of DSS.

15. On 9 June 2011, UNHCR replied to the aforementioned Order.

Parties' contentions

16. The Applicant's contentions are:

a. There were irregularities in the assessment of his candidacy. The call for applications announcement stipulated that the candidate was required to speak English or French, not both languages. Thus, the Respondent took an irrelevant consideration into account in rejecting the Applicant's candidacy because he did not speak English;

b. The announcement did not specify that it was a call for applications to create a pool of potential candidates from which vacant field security adviser posts would be filled. Having been excluded from that pool,

administrative decision since it does not violate his contract with UNOG and has no direct impact on his contractual situation;

b. The Applicant's candidacy was considered according to the standard procedure and practice of the Organization. In screening the applications, UNHCR concluded that the Applicant's profile did not merit retention in the pool of candidates cleared for field security adviser posts owing to his insufficient English communication skills and his lack of experience in crisis management. However, since the Applicant was a United Nations staff member and had applied for positions with UNHCR on several occasions, his profile was sent to DSS for clearance. Clearance was not granted by DSS. As all candidates for field security adviser posts must be cleared by DSS, his candidacy was rejected;

c. The call for applications did not refer to a specific vacancy. If a vacant field security adviser post is advertised in the future, the Applicant will be able to submit his application for that vacancy as part of a specific selection process;

d. The Applicant's employment history was considered by UNHCR and DSS;

e. The wording of Annex IV to the Report of the Ad Hoc Inter-Agency Meeting on Security Matters suffices to compel UNHCR to obtain DSS clearance for the recruitment of security personnel.

Judgment

On the issue of receivability

18. The Applicant contests the decision of the /íçY,,ízBBeL-ç(K,zBhL-íç(NNN ,bp(zBiL-(ç(K

good security skills during his years of service as an officer in Togo. However, it is also clear from the file that in light of the Applicant's many years of theoretical training, DSS did not commit a factual error or an obvious error of judgment in considering that his experience in the security field was insufficient.

34. The Tribunal therefore considers that even if UNHCR had not committed the aforementioned illegality, it is highly unlikely that the Applicant would have been selected. Under the circumstances, the Tribunal considers that compensation must be provided for all the damage suffered by awarding him the sum of CHF1,500 and that his other claims should be dismissed.

Conclusion

35. In view of the foregoing, the Tribunal DECIDES:

- a. UNHCR is ordered to pay the Applicant the sum of CHF1,500;
- b. The abovementioned compensation shall bear interest at the United States prime rate with effect from the date this Judgment becomes executable until payment of the said compensation. An uplift of five per cent shall be applied to the United States prime rate 60 days from the date this Judgment becomes executable;
- c. All the Applicant's other claims are dismissed.

(Signed)

Judge Jean-François Cousin

Dated this 16th day of June A,çy(Y(çy(bH(B L-,çbfbzyBtL,