UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2009/046/ JAB/2008/089
Judgment No.: UNDT/2010/107
Date: 9 June 2010
Original: English

Before: Judge Adams

Registry: New York

Registrar: Hafida Lahiouel

RIQUELME

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for applicant:
Carmen Artigas

Counsel for respondent:
Steven Dietrich/Stephen Margetts, ALS/OHRM, UN Secretariat

Introduction

1. Following a competitive selection process, the applicant was employed by the UN on a six month 100-series contract of limited duration as a Procurement Supervisor at the G-7 level with the Procurement Unit of the Economic Commission for Latin America and the Caribbean (ECLAC). He had formerly undertaken similar functions in his employment in private enterprise but, it is fair to infer, had been using significantly different formal procedures. It is not, in substance, disputed that he was informed by the Chief of Section (CoS) during the selection process that he could expect that his contract would be renewed if his performance were adequate. He commenced work on 8 October 2007 but, on 8 March 2008, was informed that his contract would not be renewed. On 17 March, the CoS completed a short-term evaluation which noted the applicant's performance as inadequate. The applicant was informed of this evaluation on 26 March and challenged the appraisal. A rebuttal panel was convened to consider the performance evaluation and the applicant's contract was extended by one month to 10 May to enable the rebuttal process to be completed. On 6 May the rebuttal panel confirmed the overall evaluation (with some criticisms, however, about the management of the applicant's integration into the work of the Unit) and, on 10 May 2008, the applicant's contract was terminated.

2. The applicant does not seek to contest the performance evaluation per se but, in substance, submits that an appropriate evaluation process should have been, but was not, put in place and completed before the decision was made as to whether his contract should be renewed. The decision was therefore made in the absence of an appropriate evaluation and was in breach of the undertaking to renew his contract if his performance was adequate. He also maintains that his performance was adversely affected by the failure of the CoS to ensure proper training was available to him and otherwise acting in ways that prevented him from fully performing his responsibilities.

3. The respondent's case is that the applicant was given all the assistance required to enable him to suitably perform his functions, that the evaluation undertaken by the

CoS complied with the requirements of the relevant administrative instruments and fulfilled her managerial responsibilities towards the applicant, that the decision not to renew his contract was justified and lawful and that the CoS had acted properly towards the applicant.

The applicant's performance

4. It is submitted by counsel for the applicant that the question of the applicant's performance is outside the case to be considered by the Tribunal and that the only question is whether it was proper for the COS to utilise her own informal evaluation of the applicant's performance for the purpose of recommending that the applicant's contract should not be renewed, even though an ePAS process had been initiated and not yet completed. As the ensuing analysis makes clear, this is an oversimplification of the issue and depends upon an assumption about the facts which is, at least, problematical. At the end of the day, the applicant must establish, in order to obtain the relief sought, that the non-renewal of his contract was unlawful or that the failure of the respondent to comply with the terms of his contract of employment, in relation to training and evaluation, caused him loss. These fundamental questions must be considered in light of all the relevant evidence. The Tribunal's jurisdiction to determine these questions cannot be circumscribed by the way that a party – here, the applicant – seeks to put its case, though, of course, it must be answered by reference to the evidence that has been adduced and the inferences that fairly follow from that evidence.

5. As would be expected, procurement procedures within the UN are carefully circumscribed to ensure both propriety and efficiency. For this purpose a procurement manual has been promulgated that specifies the relevant procedures that must be complied with by those with procurement responsibilities. This document, of some 130 pages, was provided to the applicant about a month before he was due to take up his duties in the hope that he would have familiarised himself with its requirements by the time he started. At his initial meeting with the CoS, the applicant explained,

however, that he had not had time to do so. (Of course, he could not be and was not criticised for this.) The CoS emphasised that it was important that the applicant's understand and apply the manual. According to the CoS (and not disputed by the applicant) the applicant was also informed of the goals of the Unit in quite specific terms. These were stated in evidence but the details are immaterial; the applicant did not dispute that this information was provided to him. In substance, the goals required a change of focus from low value purchases to larger contracts and dealing with a number of non-compliant contracts. He was required to prepare a procurement plan with these goals in mind. This plan had already been basically drafted since the Unit had been working on the goals. Amongst other things, he was also required to supervise the six or so staff of the Unit and produce a weekly agenda in accordance with a draft which he was given. He was given a printed Powerpoint presentation which described the procedures and mandates of procurement and was taken quickly through it, referred to the procurement website (which also contained the procurement manual) and another website with examples of requests for proposals and bids. On the following day he was scheduled to be trained in the use of the integrated management system and other training was arranged for other databases, the details of which do not presently matter.

6. The CoS explained that there was not any formal training process available and she relied on former employees with supervision experience who had returned to the Unit following retirement and who were familiar with the procurement procedures and the supervisor's role, to explain what was required. The key person (who also gave evidence) undertaking this work, as well as performing her own duties, had been a procurement supervisor before her initial retirement and had experience in training other staff. This training was not part of her job description and there was no written work plan relating to it. She gave evidence of her efforts to assist, spending two to three hours a day with the applicant for some two months. She said, in effect, that despite her best efforts he did not, or was unable to, master the procedural requirements of the work. In effect, it was her view that, considering the material that she made available to the applicant, the information in the procurement manual, her personal

explanations and availability to discuss any problems he might be experiencing, any conscientious person experienced with procurement in commercial situations outside the UN should have been able to understand and undertake the duties of the procurement supervisor. She said that usually it took two to three weeks to train staff sufficiently for their work and that she worked with the applicant for two months. Since she had her own work to do and felt that she had given him all the information that he needed, she stopped after this time, but remained available to him for support.

7. The applicant contended that, by delegating training responsibilities to the former supervisor, the CoS had failed in her duty to ensure the applicant was properly trained. I do not accept this argument. The CoS was certainly obliged to arrange for such training as was necessary to enable the applicant to perform his duties but how this should be done was a matter for managerial responsibilities. I accept the testimony of the CoS to the effect that she kept herself informed – and at all events her own duties had this consequence – of the way in which the applicant was performing. I was impressed with the evidence of the former supervisor and have concluded that it was reasonable for the CoS and the former supervisor to have considered that the latter's efforts, together with the written material, should have resulted in the applicant's being able to undertake his duties adequately. This conclusion is phrased in this way since, as should be obvious, I am not in a position to assess the actual position independently; nor is it appropriate that I should attempt to do so. Matters such as this are very much questions for management to assess and the Tribunal will only interfere if the decision is plainly unreasonable or manifestly unjust. The evidence does not permit such a conclusion here.

8. The applicant conceded that he only completed his reading of the manual in late November and the new edition by 23 December 2007, but disputed that he could not perform his duties until he had done so. He said that, although reading the manual was important, he was able to perform several tasks without having read the manual, in light of his previous experience with procurement and was able to analyse the workload of his staff and prioritise their work in accordance with the deadlines. He agreed that

knowing the manual was necessary to enable him to perform a number of other tasks but pointed out that his staff were also informing him of the procedures.

9. The CoS testified that in mid-February 2008, at which time she returned from annual leave to find the applicant had taken annual leave without leaving the Unit properly instructed, she started to form an opinion that the applicant's contract would not be renewed in April 2008, based on his poor work performance. She stated that her decision not to renew him was, however, not taken until 8 March 2008, when she wrote to the Office of Human Resources Management (OHRM) on the subject, and that the decision was based on "his unwillingness to learn, a lack of mastery of the subject matter, his failure to follow rules and a lack of managerial capacity". On 17 March 2007 the CoS, at the behest of OHRM completed the "Report on Short Term Staff", which dealt with a number of specific performance parameters. In respect of technical and professional competence, quality of work, quantity of work, initiative and responsibility, she gave the applicant a score of one out of a possible five; and, in respect of punctuality in attendance and personal relations with others, scores of three out five. His overall rating was the lowest of the available terms, namely "inadequate". Additional assessments were that he was unsuitable for supervisory work and, also, was not suitable for other work. She added the comment that the applicant was unwilling to learn, had not mastered the subject matter and not followed the UN rules and regulations. The rebuttal panel suggested that the assessment that he was not suitable for other work and the comments should be reviewed in light of their discussion of the difficulties faced by the applicant in his being integrated into the work of the Unit. In short, although the panel did not agree with the CoS that the applicant was not fit for other employment in the Organization, it did not suggest any change to the performance appraisals, the overall rating or the final assessment that he should not be reemployed.

10. Before the Tribunal, the CoS mentioned a number of specific criticisms of the applicant. These included his tardiness in reading the manuals, not keeping his weekly agenda up to date, the very low number of low value purchases (which he had been

started with as a way of getting to understand the process and the electronic systems), his continuing inability to cope with the databases, failure to ensure that staff were informed of his work when he was absent and complaints by staff about his low output compared to theirs, implying that they were carrying an unfair burden of the work of the Unit. The procurement plan he provided at her request to deal with the overall goals of the Unit (which she had specified in detail) dealt with only a small part of the work of the Unit and omitted major service and high value contracts. She said there were a number of meetings at which she raised these issues but without seeing any improvement.

11. The applicant disputed these criticisms, asserting that he had completed more (but only a few more) low value purchases than the CoS asserted, that it was difficult for him to read the manual because of an eyesight problem, that he had started work on the procurement plan but had been told to focus on other work, and that the document he ultimately produced was adequate, that the training was very skimpy, amounting only to minutes at a time and was haphazard because the Unit was very busy and, in particular, that the former supervisor had too much work to do.

12. It will be seen that the evidence of the applicant and that called by the respondent is contradictory in a number of important respects, most markedly in relation to the extent of training and other assistance which was provided to the applicant. It is usually very difficult in such a situation to discern where the truth lies. In this case, though, there are several factors that persuade me that the evidence called on behalf of the respondent is the more likely to be correct. First, there is the conceded fact that that the applicant took almost two months to read the manual, on any case an important, indeed, vital, document. The only explanation (belatedly) proffered by the applicant is that he found it difficult to read because of his eyesight, which needed thick lenses to correct and that he felt obliged to read the revision of the manual in full when it was released, rather than just the circular highlighting the amendments made to it, in order to be sure that he had a complete understanding of it. I accept that his eyesight was a real problem for the applicant but the evidence does not permit the conclusion

that it was a significant factor in the delay. On his own account, he held a responsible position in a major private enterprise before his appointment to the UN and it is reasonable to infer that his eyesight had at that time not been a significant handicap for him, with no suggestion that it worsened. In the absence of any other explanation, the conclusion is virtually inevitable that the applicant simply did not organise his work or his affairs to enable him to complete this task in a timely way. The new edition had, I am persuaded, only relatively few changes but, even accepting that it had to be read in full, a familiarity with the previous edition should have made this task much easier. To take a month to read it reinforces my conclusion about the applicant's inability or disinclination to master the processes necessary to enable him to perform his functions. This gives some real support, as a matter of common sense, to the evidence of the former supervisor that she found him difficult to train and, at the end of several months, still needed support and is consistent with the opinion of the CoS that he was performing at a level significantly below that which was necessary for his responsibilities, an opinion based upon the extent to which the level of work achieved fell far short of what would usually be expected.

13. If the applicant's evidence were true, this would involve at least the reasonable likelihood that the CoS and the former supervisor were, for some unexplained reason, either sharing a similar and significant failure of recollection or had fabricated their evidence. Both of these possibilities seem to me to be very unlikely, especially given the existence of contemporary documents critical of the applicant's performance. It was submitted by counsel for the applicant that the CoS' evidence should be evaluated bearing in mind that she had had an interest in justifying her decisions and the former supervisor may have been under her influence. This, of course, is true but, on the other hand, the applicant also has an interest in the outcome of the case which may have influenced the accuracy of his evidence. Overall, such considerations are rarely useful. I prefer to rely on my own commonsense judgment of the witnesses, the objective facts, and the logic of events. The more likely explanation is that the applicant has reconstructed the events to explain what otherwise would seem to be an inexplicable failure to perform his job, a reconstruction that strikes me as inherently unconvincing.

I find it very hard to accept that he was indeed so inadequate as to need the extent of training which he claims was necessary, especially when it is apparent that several courses of self-help were so obviously available to him by way of the manual, the websites, the examples of other agenda documents and the files themselves to which, as supervisor, he had full access, in addition to the ongoing assistance offered by the former supervisor. The applicant did not explain why this material would not have been sufficient together with the enquiries that he could have made of the other persons in the Unit, to enable him to perform substantially better, at the very least, than even he claimed to be able to do. Indeed, his evidence, taken as a whole, was singularly uninformative about the difficulties of the work he was supposed to undertake and which might have explained his problems. (I should mention that I have not drawn any conclusions from the applicant's demeanour, as he gave evidence through an interpreter).

14. I feel bound to conclude – at least on the balance of probabilities – that the applicant was indeed unable to perform his duties at an adequate level and the most significant cause of this situation was not lack of training or assistance, although I accept, in fairness to the applicant, that more should have been done to help his transition from his outside employment to the requirements of his new employment. I am persuaded that his own attitude was the primary cause of his inability to make the move with a reasonable degree of success, even if more help would have been required, or at least desirable, to enable full effectiveness. Part of the problem was the ongoing heavy workload of the Unit and limited staff resources which limited the support he might have otherwise obtained from the staff of the Unit and certainly that which the CoS could have provided. In addition, there was an unfortunate overlapping of leave periods which increased the degree of disconnection. However, the training and support offered to the applicant were at least reasonably sufficient to have enabled him to fulfil his work responsibilities far more substantially (and, I think, to a level that would have made renewal of his contract very likely, if not inevitable) than in the result occurred. It is important to recognise that the crucial question is whether there was a sufficient basis for the CoS to have concluded that, because of performance

shortcomings, it was appropriate not to renew the applicant's contract. If this decision was reasonably open on the material available to her and was not affected by any significant extraneous or irrelevant matter, including bias, or the omission of a significantly relevant consideration, the making of any significant error of fact or law and, in the absence of patent error, was not such that no reasonable decision-maker would have made it, then it cannot be held to be made in breach of the contractual obligations of the Organization, even if the Tribunal would have made a different decision. It is not for the Tribunal to substitute its judgment for the reasonably open judgment of the responsible official or officials that has complied with the proprieties of decision-making. Aside from strictly legal considerations, it will almost inevitably be the case that the Tribunal will lack the expertise to enable it to be confident that its judgment is the superior. I accept that the CoS conscientiously believed, at least, that the training and support offered to the applicant were adequate to enable him to perform to a sufficient – if not necessarily ideal level – and that her opinion that that his performance failings were such as not to justify the renewal of his contract was not so plainly unreasonable or manifestly unjust as to render that decision a breach of the applicant's entitlements.

15. Given that the CoS' judgment was that the applicant's performance was significantly short of that which was required, the question arises whether she should have done more to bring the extent of his shortcomings to his attention and instituted some training that may have improved the situation. The CoS had informed the applicant about particular issues, such as those concerning his not reading the manual, the insufficient number of contracts finalised, the inadequacy of the draft procurement plan and ignorance of current status of the contracts in the Unit. He was being assisted by the former supervisor, who was plainly competent to do so. The applicant's general complaints about the lack of direction or help are unpersuasive. I believe that he was well aware that his performance was a great deal less than optimal but was unable to take any effective action, for whatever reason, to remedy the situation. In the context of a busy Unit and the overall responsibilities of the CoS, I am satisfied that sufficient

was done both to bring the situation to the applicant's attention and to attempt to help him to correct it.

16. Since it must follow that it was reasonable for the CoS to have concluded that the applicant's contract should not be renewed, it is strictly unnecessary to deal with the issue of formal evaluation. However, having regard to the evidence led by both parties on this issue, it seems to me that I should deal with it in fairness to them.

The evaluation of the applicant's performance

17. A formal, comprehensive performance evaluation scheme is promulgated in ST/AI/2002/3. Sec 1 applies its requirements compulsorily to staff employed for terms of one year or more (with irrelevant exceptions) and as a matter of discretion to staff on contracts for lesser terms, such as the applicant, "where appropriate, taking into consideration the nature and duration of the functions and the supervisory structure in place in the work unit". The CoS testified to the effect that, at or around his commencement, when (as I have mentioned) the applicant was informed of the nature of the work he would be required to do, and his goals, he was also told that renewal of his contract would depend on a satisfactory performance appraisal. I infer, from the initial assurances about extension, that the CoS anticipated effective performance and consequential renewal of the applicant's contract, with the result that, in due course, the scheme provided in ST/AI/2002/3 would be initiated to appraise his work. The actual trigger for doing so appears to be the opinion of the CoS, by November 2007, that the applicant needed help to put together the instructions and information about criteria and goals about which he had been told; she testified that she thought the ePAS process would facilitate this process, although strictly speaking it was only *required* to be undertaken by staff with contracts for one year or more. Accordingly, she requested him to initiate the procedure and explained that he needed to approach the human resources section for the necessary information and that the former supervisor would help him to prepare the necessary documents. When she asked him about it in December, he said he had not taken the matter up because human resources had not

provided him with any training. She explained that training was unnecessary and that the former supervisor would help him. She requested the former supervisor to provide the applicant with sample documents in order that he could develop an individual work plan. On 28 December 2007 the former supervisor sent the applicant an email attaching a note which included a description of the required goals and competencies that he would need to issue his ePAS. The email stated that the note reflected the work required of a senior procurement officer, which was in large part the same as that of a procurement supervisor. The three-page note contained a comprehensive description of the work, competencies and goals of a senior procurement officer together with a summary of the relevant supervision work requirements. The applicant does not appear to have raised any queries in respect of this email or the note. He testified, however, that he thought it was merely background information and that a subsequent meeting would be called by the CoS to discuss the content of the email, in order for a detailed work plan to be developed. He said that the job description provided to him was very different to what he expected to receive directly from his CoS to allow him to complete his work plan, which was a complete work plan with a set of goals and results that had to be achieved by him and which he would be appraised on. He said that what he had been given was inadequate but took no action himself to seek a meeting for this purpose. The CoS and former supervisor testified that the work plan for the Unit, also necessary for completing the ePAS work plan, was on a chalkboard in the CoS' office. This was not challenged by the applicant.

18. Of course, I do not have the expertise to form an independent judgment about the adequacy of the note and the information on the chalkboard but it is clear that the former supervisor thought it should have sufficed and my own consideration of its contents supports this view. The note seems to me to be a carefully ordered, detailed and comprehensive account of the fundamental responsibilities of procurement and the duties of supervision which should have permitted the applicant at the very least to make a very substantial start in a draft work plan which might, of course, have required further refinement in due course. I think that the applicant's attitude to the note and the preparation of his work plan is all of a piece with his apparent inability to take the

initiative in respect of familiarising himself with the relevant procurement processes of which, of course, his apparent reluctance to read the procurement manual is the most striking example.

19. On 10 January 2008 the applicant accessed his UN web services account, which allowed him to complete the registration process necessary to access the ePAS system. On 18 February 2008 the CoS sent the applicant a follow-up email reminding him that he had been asked to develop a draft ePAS in December 2007 for her to review. The applicant stated that he submitted a draft work plan in February 2008, and I accept this was the fact. The short-term performance evaluation, which was completed on 17 March (summarised above), did not reflect the staff member's feedback, which is an important part of the conventional ePAS process. That process also requires the participation of a second reporting officer, which operates, amongst other things, as a check on the assessment made by the first reporting officer and the fairness of the process.

20. Although it was not expressly stated, the fact that the applicant's contract was extended by a month to permit the rebuttal process to be completed, leads me to infer that, if he had been successful and the appraisal of his performance had been then assessed as satisfactory, his contract would have been renewed. It is for obvious reasons unnecessary to discuss this possibility.

21. In my view, if a performance evaluation of any kind is necessary, as for example for the purpose of considering whether a contract should be renewed, the appropriate mode of doing so is that prescribed by ST/AI/2002/3, providing of course that the case is within sec 1, which was undoubtedly the situation in this case. Considering the assurances about extension to which I have referred, a performance evaluation of some kind was indeed necessary and, despite the generality of language describing the discretionary use of the administrative instruction's appraisal scheme, it would have been manifestly unreasonable not to have applied it to the applicant. Although I have described the undertaking of an appraisal in accordance with the administrative instruction where the staff member's term of employment is less than one year as

"discretionary", this discretion is not to be exercised arbitrarily but in accordance with proper principles of managerial decision-making. If it is "appropriate" to undertake such an appraisal, then it must be undertaken, as sec 1 itself states. It would no doubt be useful to provide some guidelines to management as to when it will or might well be appropriate but, in the meantime, common sense and good judgment must be the guide. Here, it cannot be seriously argued that it was not entirely appropriate to institute the ePAS process, if for no other reason than it was anticipated that the applicant's contract would be extended if his performance came up to expectations.

22. Section 10 of ST/AI/2002/3 stipulates the ratings that are available following assessment. In respect of staff who have not met performance expectations, the two ratings are that he or she either partially or does not meet performance expectations. Staff who receive the former rating may have their within-grade increment withheld whilst the latter rating may justify non-renewal of a fixed-term contract. It appears that inadequate performance which is relied on as the ground for non-renewal must fall into the latter class and the partial meeting of performance expectations would not suffice. These differing consequences highlight the need to use the specified ratings in order to ensure transparency. In the applicant's case, the term used for his overall rating was "inadequate" and it is only when the detailed analysis is considered that one sees this rating amounted to "does not meet performance expectations".

23. It seems clear that, although the CoS thought the initiation of the process was desirable, she did not think that, strictly speaking, it was necessary to complete it before making the decision as to whether or not to renew the applicant's contract. Although this is not the subject of direct evidence, it seems likely that the basic reason for this view was that, relatively early in 2008, the CoS had serious doubts about whether the applicant's contract should be renewed and thus the expectation of employment for at least a year as a justification for initiating the ePAS process had faded. Accordingly, it seems to me fair to infer that the ePAS process was not followed through because its completion was not seen as a prerequisite for the decision on renewal and the CoS made the short term appraisal for this purpose. It appears that the

responsible officers in the human resources section also had the (simplistic) understanding that, as a staff member on a six month fixed-term contract, there was no need for the applicant to complete an ePAS and the applicant was apparently so informed when, following the direction of the CoS, he sought information from them.

24. A combination of these factors and the applicant's own delays in preparing his work plan meant that the appraisal that would in the normal course have followed from the initiation of the ePAS process was not completed before the decision was made not to renew his contract. There will be times when there is no alternative but to proceed in this way, where the staff member for example, simply refuses to participate, but that was not the case here. It follows that the contention of counsel for the applicant that the decision as to non-renewal was premature is well taken. Nor was there a midpoint review in accordance with sec 8 of the administrative instruction. Although this provision is clearly drafted upon the assumption that the employment period is one year or more and thus is not, in terms, applicable to a six-month term, an explicit, if not necessarily formal, process of review is obviously an important part of the evaluation of a staff member's performance and should be undertaken where (as here) it is appropriate within the meaning of sec 1 to undertake the ePAS process for a short-term staff member. Here, as I have explained, there was an informal and continuing process of review by way of setting specific tasks and critiquing outcomes, with the CoS hoping that the ePAS procedure would assist the applicant to clarify his responsibilities and assess his performance against them.

25. The principles of both law and justice require a focus on substance rather than form, unless the form, fairly interpreted, is in terms that forbid it. Here, there was a departure from form but, I am satisfied, not from substance. I should state, however, that had the CoS acted pursuant to a deliberate scheme to avoid the form of ST/AI/2002/3, the outcome of this case would have been different. However, as is clear from the above discussion, I believe that she acted in accordance with a genuine (though mistaken) understanding of the requirements of the administrative instruction and, in all the circumstances, particularly the provision of a rebuttal process and delay

in finalizing the non-renewal of his contract until it was completed, the applicant suffered no actual detriment.

Other matters

26. The applicant gave evidence about what he claimed to be unnecessarily humiliating language used by the CoS concerning his performance in the presence of other staff members and to him alone. I accept that his feelings may well have been hurt but not that the language as described by him amounted to harassment or other wrongful conduct. Certainly, the criticisms may have been tactlessly expressed but this falls far short of any impropriety. Indeed, there are times when direct language is necessary. It is, in the nature of things, impossible to recapture the circumstances and, in these matters, context is everything. Even accepting the applicant's evidence at its highest, I do not consider that the CoS acted improperly.

27. The applicant also resented steps taken by the CoS to deal with the management of the Unit whilst she went on leave in January 2008. The CoS has explained the position in evidence. It is enough to say that I am persuaded that her decision as to this matter was well within her managerial responsibilities and, although I am not unsympathetic to the applicant's difficulties with it, there is nothing to suggest that the decision was unreasonable.

28. The applicant's complaints about the CoS concerning his allegations of harassment were considered by a panel whose report was tendered by the respondent. Counsel for the applicant objected to its admission. In the result I have decided the application without reference to the report.

Conclusion

29. The application is dismissed in its entirety.

Note about applicant's counsel

30. Counsel for the applicant, a qualified legal practitioner, appeared for him pro bono. The case required consideration of a large number of documents and hearings took a number of days.

31. The Tribunal wishes to express its thanks for the great assistance counsel for the applicant provided in dealing with a difficult and somewhat complex matter, without at any point failing in her duty to press her client's case in respect of every consideration which could be argued in his favour. In so acting, counsel adhered to the highest and best traditions of the independent bar, without the assistance of which no tribunal, whether this or any other, charged with the administration of justice would be able undertake its responsibilities.

(*Signed*)

Judge Michael Adams

Dated this 9th day of June 2010

Entered in the Register on this 9th day of June 2010

(*Signed*)

Hafida Lahiouel, Registrar, New York