



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2010/096

Judgment No.: UNDT/2013/056

Date: 20 March 2013

Original: English

Before: Judge Ebrahim-Carstens

Registry: New York

Registrar: Hafida Lahiouel

LEX

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

George Irving

Counsel for Respondent:

Alan Gutman, ALS/OHRM, UN Secretariat

Chenayi Mutuma, ALS/OHRM, UN Secretariat

Notice: This Judgment has been corrected in accordance with art. 31 of the Rules of Procedure of the United Nations Dispute Tribunal.

Introduction

1. On 22 October 2010, the Applicant filed an application with the Dispute Tribunal contesting the decision not to select her for a P-5 level post of Chief of Section in the Inspection and Evaluation Division (“IED”), Office of Internal Oversight Services (“OIOS”), United Nations Secretariat in New York.

2. The Applicant submits, *inter alia*, that the contested selection process was carried out with procedural violations and tainted by bias against her. She seeks rescission of the contested decision and retroactive promotion to the post of Chief of Section or to a suitable P-5 level post. In the alternative, the Applicant seeks compensation for pecuniary loss (i.e., difference in pay she would have received had she been promoted to the P-5 level) as well as two years’ net base salary for loss of opportunity, moral damages, damages to professional reputation, emotional distress, and loss of career opportunities.

3. The Respondent submits that the application is without merit and that the Applicant was fully and fairly considered for the post pursuant to the existing rules. The Respondent also submits that the Applicant has incurred no demonstrable loss or damages and the Tribunal should dismiss the application.

4. By Judgment No. UNDT/2011/177, the Tribunal found the application receivable. The parties requested that this case be disposed of on the papers before the Tribunal. Pursuant to Order No. 271 (NY/2012), the Applicant filed her closing submission on 4 February 2013, and the Respondent filed his closing submission on 11 February 2013.

Facts

5. The factual findings below are based on the parties’ joint statement filed on 5 April 2012 as well as their submissions and the case record.

6. Having started her career with the Organization in 1982, the Applicant joined OIOS in 1998 at the P-4 level.

7. Her performance for the periods of April 2006 to March 2007 and April 2007 to March 2008 was rated as “fully successful”. Although the Applicant and her supervisor initiated the electronic performance appraisal system (“e-PAS”) report for the period of April 2008 to March 2009 in July 2008, substantive comments and ratings were not added to it until March and April 2010. The Applicant’s overall performance was rated as “fully successful”. The Applicant’s assessment with respect to various core values and competencies ranged from “developing” to “outstanding”. The Applicant’s supervisors included positive as well as critical comments. The critical comments concerned the Applicant’s leadership, planning, and drafting skills.

8. It is unclear why the finalization of the e-PAS report for the period of 2008 to 2009 was delayed until 2010. The Applicant did not sign the final e-PAS report and instead filed a formal rebuttal on 25 October 2010, after the filing of the present application with the Tribunal (see also paras. 21–22 and 48, below).

Selection exercise

9. On 1 July 2009, a vacancy announcement was advertised for the post of Chief of Section in IED. The Applicant applied in July 2009. On 5 August 2009, the names of 14 candidates who applied by the 30-day mark after posting of the announcement and were eligible for consideration at that mark (“30-day candidates”) were released to the Acting Director of IED. The Applicant was among the 30-day candidates.

10. On 17 November 2009, seven candidates, including the Applicant, were invited to participate in a written test. The test was graded by a panel that included IED Acting Deputy Director (the Applicant’s first reporting officer); IED Acting Director (the Applicant’s second reporting officer); and an IED Chief of Section (the

Applicant's additional supervisor). The Respondent submits that the identities of the candidates taking the written test were not known to the graders (i.e., the test was "blind-graded"). The panel kept a written record of the grading process. The Applicant nevertheless contends that her identity must have been known to them because, having worked with her since 2005, they were familiar with her writing style.

11. The Applicant received a score of 185 out of a maximum of 300 for the written exercise. The highest score was 235. Among the seven 30-day candidates, the Applicant tied for third place.

12. Six 30-day candidates, including the Applicant, were interviewed for the post. The Applicant was interviewed on 11 February 2010. The interview panel included IED Acting Deputy Director; IED Acting Director; and the Head of Evaluation, United Nations Development Fund for Women ("UNIFEM"). The panel maintained a written record of its evaluations. The Applicant received total scores of 45, 43, and 67 by the three scorers for an average overall score of 52 out of 100, which was the sixth lowest score out of the six interviewed 30-day candidates.

13. Notably, the Applicant received her highest interview score (67 points) from the IED Acting Deputy Director. The IED Acting Director gave the Applicant the second highest score (45 points), and the panel member from UNIFEM gave the Applicant the lowest score of 43 points.

14. The "overall evaluation" section of the panel's comments based on the interview with the Applicant stated (emphasis in italics is added for reasons explained in para. 44 below):

Overall evaluation:

Competencies

Professionalism The candidate has a strong background working in the UN in different agencies and roles. Until recently (2008) she had not served in an Evaluation role, though she has had some similar

experience in the conduct of inspections, management reviews and self-evaluations. Her main and only direct experience in the conduct of evaluation was her involvement in the OIOS thematic evaluation on Coordinating Bodies in 2008. **Communication** The candidate communicates well, but tended to be too detail-oriented. She has a very frank manner in addressing questions, and readily volunteers information and in a lot of detail. However, while she had adequate technical knowledge, her ability to communicate them, while keeping composure and the attention of the panel, was weak, and thus, she may not be as effective in being persuasive. **Teamwork** *The candidate demonstrated an understanding of teamwork principles.* **Planning and Organizing** *The candidate discussed managing multiple assignments, but did not fully demonstrate that she knew how to effectively prioritize among competing demands or to use her time efficiently.* **Accountability** *The candidate's responses to questions related to accountability did not show that she was willing to accept personal responsibility for shortcomings.* **Commitment to continuous learning** *The candidate has shown an interest in her own professional development.* **Leadership** *The candidate did not fully demonstrate a good understanding of leadership principles, nor was she able to discuss in any detail any significant leadership experience.* **Managing performance** *The candidate's responses to questions on managing performance did not show that she had a good understanding of appropriately delegating work and establishing clear roles and responsibilities for team members.* **Judgement/decision-making** *The candidates' responses did not demonstrate the ability to quickly analyze complex situations and reach sound decisions. Overall, the panel does not think this candidate has the necessary competencies for this position.*

Education

The candidate has a Master[’s] in social science and in business administration, and has acquired some technical skills in evaluation through her work in the conduct of the thematic evaluation of Coordinating Bodies, some Inspections, as well as in her research-related jobs. She also has broad knowledge of evaluation in the UN through her conduct of an OIOS report on evaluation capacity needs assessment of the Secretariat, and inspection report on the M&E system of DPKO.

Max [points]: 20 ... Actual: 10

Experience

Of the candidate’s almost 30 years in various roles, 10 years involved monitoring and evaluation. Her direct evaluation experience has been in the context of one thematic evaluation of coordinating bodies, an

assessment of evaluation capacity and needs, and various inspections and management reviews conducted with OIOS/MIS. She has strong knowledge and experience of the UN system from the years of working in different UN agencies (including ESCAP, DESA and OIOS), as well as other international agencies, with particular forte in the monitoring side of RBM. However, the panel observed that in her discussion of the technical details of evaluation, she tended to get 'lost in the details' sometimes and she did not impress the majority of the panel members as far as her possessing the full technical and analytical knowledge of evaluation methods and approaches at the level required for the Chief of Evaluation post. Given the importance attached to the requirement of strong technical expertise in program evaluation, and, as importantly, the need for a strong capability to clearly explain methods and processes, the panel did not consider her suitable for this evaluation management position.

Max [points]: 40 ... Actual: 20

Languages

The candidate has both French and English and thus fulfils the language requirement.

Max [points]: 10 ... Actual: 10

Other skills

The candidate responded aggressively to a query posed to her about the timeliness of the completion of her recent work assignments, yet was not able to demonstrate clearly her ability to manage the timely completion of a single primary work assignment, let alone multiple work proposals.

Max [points]: 30 ... Actual: 12

Overall Evaluation—Total Score: 52

15. Having reviewed the scores of the 30-day candidates, the panel concluded that none of them were suitable and, on 23 February 2010, requested the release of the list of 60-day candidates. The list was released by the Office of Human Resources Management ("OHRM") on 22 March 2010. The Acting Director compiled a shortlist of five 60-day candidates who were invited for a written test. One of the 60-day candidates did not reply to the invitation, so only four 60-day candidates took the test.

16. By email dated 14 April 2010, the Acting Director of IED informed the Applicant that she was not selected for the post. The Applicant submits that shortly thereafter, in April 2010, she met with the Acting Director to discuss his email.

17. The grading of the test answers of the 60-day candidates was completed on 4 May 2010 by the same panel that graded the answers of the 30-day candidates. Three of the 60-day candidates were subsequently interviewed by the same panel that interviewed the 30-day candidates. The panel members agreed that one of the 60-day candidates was suitable and should be recommended. She was subsequently selected for the post.

18. On 14 June 2010, the Applicant requested management evaluation of “[her] non-selection for the P-5 [post], Chief of Section, IED/OIOS”.

19. On 21 July 2010, the Applicant was informed by the Management Evaluation Unit, in response to her request for management evaluation, that “the decision not to select [her] for the Post was appropriate in the circumstances”.

Scope of the case

20. The Tribunal finds that the scope of the case is limited to the issue raised in the Applicant’s request for management evaluation and in her application before the Tribunal, namely, her non-selection for the P-5 level post of the Chief of Section, advertised on 1 July 2009. In her subsequent submissions before the Tribunal, the Applicant raised a number of additional claims, such as her performance evaluation for the period of April 2008 to March 2009; her subsequent rebuttal thereof; her unsuccessful participation in other selection exercises; and various alleged notes to file regarding her performance. In the view of the scope of her case as articulated in her request for management evaluation and in the application before the Tribunal, both of which specifically identify the contested decision as her non-selection to the contested P-5 level post, the Applicant’s ancillary claims fall outside

the scope of this case. However, the Tribunal, in reviewing the present case, considered the relevant factual background as articulated by the parties in their submissions and supporting documents, as well as the arguments raised.

21. The Tribunal notes that in her submissions the Applicant made a number of references to her e-PAS report for the period of April 2008 to March 2009, alleging that it reflected bias against her on the part of her supervisors, who also participated in the contested selection process. In her closing submission, the Applicant referred to the Respondent's alleged failure to finalize the rebuttal process for the e-PAS covering the period of April 2008 to March 2009. The Respondent submits that no action can be taken on the Applicant's rebuttal request as she received the overall rating of "fully successful performance", and, as stated in sec. 15.1 of ST/AI/2010/5 (Performance management and development system), "[s]taff members having received the rating of ... 'successfully meets performance expectations' cannot initiate a rebuttal". The Applicant submits, in response, that since performance evaluation period of April 2008 to March 2009 pre-dated ST/AI/2010/5, it is to be governed by ST/AI/2002/3 (Performance appraisal system), sec. 15.1 of which permitted rebuttal of the "fully successful performance" rating.

22. The issue of the finalization of her e-PAS, as well as the rebuttal proceedings initiated by the Applicant, are separate administrative decisions that are not within the scope of this case. The Applicant's management evaluation request was submitted on 14 June 2010, and the present application was filed on 22 October 2010. The Applicant sought rebuttal of her e-PAS for the period of 2008 to 2009 on 25 October 2010, after the filing of the present case with the Tribunal. Therefore, the issue of the rebuttal proceedings (and possibility thereof under ST/AI/2002/3 and ST/AI/2010/5) and the finality of the e-PAS report are not part of the present case, although the Tribunal has taken the parties' submissions and related documents into account as background information in so far as they are relevant.

Consideration

Judicial review of non-selection cases

23. The Secretary-General has broad discretion in substantive determinations of eligibility and in matters of selection and promotion, and it is not the role of the Tribunal to substitute its own decision for that of the Secretary-General (*Abbassi* 2011-UNAT-110). As the Dispute Tribunal stated in *Rolland* UNDT/2010/095 (affirmed by the Appeals Tribunal in *Rolland* 2011-UNAT-122), an assessment of candidates in a promotion exercise involves a high degree of judgment and experience which will not be replicated by a judge; it is not the Tribunal's role to determine the outcome of a promotion or appointment process. However, the exercise of managerial prerogative is not absolute and the Tribunal may examine whether the selection procedures were properly followed or were carried out in an improper, irregular or otherwise flawed manner, as well as assess whether the resulting decision was tainted by undue considerations or was manifestly unreasonable (*Abbassi, Charles* 2012-UNAT-242).

24. Full and fair consideration means that the persons evaluating the Applicant's qualifications do so rationally and fairly in the sense and to the extent necessary to reasonably assess her qualifications as against others competing with her, taking into account and appropriately weighing up all relevant matters free of improper and irrelevant considerations and based upon relevant information and considerations (*Sefraoui* UNDT/2009/095).

Priority consideration as a 30-day candidate

25. The selection process was governed by ST/AI/2006/3 (Staff selection system), dated 15 November 2006, as it was in effect at the time of the commencement of the selection exercise. Section 7.1 of ST/AI/2006/3 required that 30-day candidates be considered prior to 60-day candidates.

26. The Tribunal finds that the Administration followed the correct procedures by first considering 30-day candidates. Based on the record before the Tribunal, at the time when 60-day candidates were considered by the panel, the 30-day candidates, including the Applicant, had already been considered and deemed not suitable. Therefore, the Applicant was afforded priority consideration as a 30-day candidate under the selection framework that existed at the time.

27. Although the Applicant questions the comparative assessment of 30-day and 60-day candidates, alleging that some of the 30-day candidates were better than the 60-day candidates, the Tribunal finds that the comparison of 30-day and 60-day candidates provides no useful guidance in this case as 30-day candidates were considered and deemed not suitable prior to the consideration of the 60-day candidates.

Written test

28. With respect to the written test, the Applicant alleges that the test graders were her direct line managers who reviewed reports prepared by her “since 2005” and were “very familiar with her writing”. She states that it is “practically impossible that, in reviewing the tests on topics that were being dealt with everyday, they would not have recognized her writing”. She concludes that “scoring could have been influenced—whether consciously or unconsciously—by their preconceptions about the Applicant and her work”.

29. There is no evidence before the Tribunal that would place in doubt the Respondent’s submission, supported by the record, that the names of the candidates were not known to the test scorers at the time of the written test and therefore the Applicant could not have been prejudiced by any alleged bias. Further, there is no evidence to suggest that the Applicant’s test was graded unfairly. Notably, she tied for third place among the seven 30-day candidates who sat the test.

Criteria considered during the interview

30. The Applicant alleged that the criteria used in the selection process were not pre-approved as required by sec. 7.4 of ST/AI/2006/3, which provides that “[t]he programme manager shall evaluate [candidates] ... on the basis of criteria pre-approved by the central review body”. The Applicant further submits that the criteria for selection “appear to have been arbitrarily imposed after the results were known in order to exclude internal candidates at the 30-day mark”.

31. The Tribunal finds that the evaluation criteria applied for the purposes of the exercises were in line with those in the vacancy announcement and were overall fair and appropriate. Documents provided by the Respondent indicate that the selection criteria for the contested position were pre-approved by OIOS’ Review Body (see, e.g., memorandum dated 28 October 2010 from the Executive Officer, OIOS, to the Administrative Law Section, OHRM, as well as email dated 27 October 2010 from the OIOS Review Body Secretary to the Executive Officer, OIOS). From the record before it, the Tribunal is satisfied that the evaluation criteria were known to the panel and established before the Applicant was interviewed.

32. The vacancy announcement listed, among the values and competencies, “professionalism”, “communication”, “teamwork”, “planning and organizing”, “accountability”, “leadership”, “commitment to continuous learning”, “managing performance”, and “judgement/decision-making”. The Applicant drew the Tribunal’s attention to the panel’s original scoring table, which only included columns (and therefore scores) for four of the nine competencies appearing in the vacancy announcement (“professionalism”, “communication”, “leadership”, and “managing performance”) and also listed “vision” and “respect for diversity”. The Applicant alleges that the panel relied on inappropriate considerations and material in assessing her candidacy.

33. The Tribunal finds that, based on the evidence before it, including the panel’s scoring table, all of the interviewed candidates were assessed based on the same

criteria. It was not unreasonable for the panel to determine that several of the nine competencies listed in the vacancy announcement should be given more emphasis in the selection process. There is no evidence that the panel's scores or comments with respect to the competencies taken into account were based on any improper considerations.

34. The Tribunal also finds that the inclusion of criteria of "vision" and "respect for diversity" was not manifestly unreasonable and did not render the entire selection process unlawful. Vision and respect for diversity are general requirements expected of United Nations staff members, particularly at the P-5 level, and closely relate to the core competencies, such as leadership. These criteria were applied to all of the interviewed candidates. Furthermore, the criteria of "vision" and "respect for diversity" were not determinative as far as the Applicant was concerned as her scores under those criteria were not significantly different from those of other candidates. However, with respect to the competencies of "leadership" and "managing performance", which appeared in the vacancy announcement, the Applicant's scores were significantly lower than those of other candidates. Her average score for "leadership" among the three panel members was 13, whilst five other interviewed candidates averaged approximately 16, 21, 20, 17 and 15 points. The same is true with respect to the competency of "managing performance": the Applicant's average score among the three panel members was approximately 14, whilst other candidates averaged approximately 16, 21, 20, 20, and 18 points. The Applicant's overall score for the interview was 52 points, or 23 points below the two top-scoring 30-day candidates both of whom had 75 points and both of whom were nevertheless found not suitable. Further, as noted above, the scores given to the Applicant by the IED Acting Deputy Director, one of her supervisors, were generally higher than the scores given to her by the external member of the panel from UNIFEM, with regard to whom the Applicant makes no allegations of bias.

35. The record before the Tribunal does not allow it to make an inference that the selection process was tailored to result in the Applicant's non-selection. Rather,

the selection panel was not satisfied that any of 30-day candidates were suitable for the position and proceeded to consider 60-day candidates. Of course, selection of a 60-day candidate cannot in and of itself serve as proof of a procedural violation—there may well be cases in which 60-day candidates are found suitable and qualified for the job.

Interview evaluations

36. The Applicant submits that two of the three panel members were her supervisors with whom she had recently had a strained relationship and disagreements over her future in the Division. The Applicant also submits that she “is not arguing that disagreements over performance constitute harassment or unfair treatment”, but that her supervisors had an important role in the selection process and must have influenced it to her disfavour (para. 11 of submission dated 11 February 2013).

37. The Tribunal has reviewed the records maintained by the selection panel and is not persuaded that there were irregularities such as to vitiate the selection process. Overall, having reviewed the selection records, the Tribunal finds that they reflect a reasonable examination of the candidates. The Applicant tied for third place with respect to the written test but received the lowest interview score among all interviewed candidates.

38. The Applicant alleged also that her supervisors were biased during her interview and must have been influenced by their own assessment of her performance for the period of April 2008 to March 2009. However, there is no evidence before the Tribunal that the interview assessment was based on anything other than the Applicant’s performance at the interview. In fact, the Applicant acknowledged this in her submission of 11 February 2013, stating that “[t]here is no indication that any factor other than the subjective interview scores was considered in determining eligibility”. It should be noted that the interview was conducted in February 2010, before her supervisors added their comments to her performance

evaluation for April 2008 to March 2009, and that the Applicant did not seek a rebuttal of her e-PAS until October 2010. There is no evidence that, in the absence of a finalized e-PAS report for April 2008 to March 2009, the interview panel did not act upon the assumption that the Applicant's performance was fully successful (notably, her performance was also marked as "fully successful" in the subsequent e-PAS report).

39. The Applicant's claim of bias during the selection process is further weakened by the fact that the external member of the interview panel (Head of Evaluation, UNIFEM) gave her 43 out of 100 points, which was the lowest score given by any of the three panel members to any of the candidates. The external member of the panel rated other candidates significantly higher than the Applicant, giving them scores ranging between 65 and 78 points. The Applicant's supervisors, IED Acting Director and IED Acting Deputy Director, gave her 45 and 67 points respectively. The panel's overall score (i.e., the average score among the three panel members) for the Applicant was 52 points, which was the lowest score of all the interviewed 30-day candidates and way below the 83 points scored by the successful 60-day candidate. No allegations of bias were made by the Applicant regarding the Head of Evaluation, UNIFEM.

40. The Applicant also stated that there was no indication that all the candidates were asked the same questions. The interview process is not a robotic exercise in which each staff member must necessarily be asked identical questions without any regard to their background and answers provided by them (*Sefraoui*). A reasonable degree of flexibility during interviews is permitted, provided that all candidates are given full and fair consideration.

41. The Applicant also asserted that the panel's comments contained factual inaccuracies. For example, they stated that she "worked in different agencies", when she actually worked in five different parts of the United Nations Secretariat. She states that she has two Master's degrees and not one (the panel stated that the Applicant "has a Master[']s in social sciences and in business administration").

She further states that she has 12 years of experience in leading and conducting inspections, and not 10 years, as reflected in the panel's comments. Assuming the Applicant's factual corrections are correct, the Tribunal does not find them to be of such significance as to vitiate the selection exercise. The panel correctly determined that the Applicant satisfied the education and years of experience requirements stipulated in the vacancy announcement, namely an "advance university degree (Master's degree or equivalent)" and "at least ten years of progressively responsible experience". Although the Applicant disagrees with the assessment made during the interview as to whether she satisfied particular competency requirements and regarding her overall suitability for the post, the interview panel was entitled to come to its own conclusions regarding the Applicant's suitability. As the Dispute Tribunal stated in *Abbassi* UNDT/2010/086 (affirmed in *Abbassi* 2011-UNAT-110), it was "well within the purview of the panel to determine and depend greatly on ... its interview and its capacity to make a fair assessment of the candidate".

42. Assessment of the Applicant's suitability is a matter upon which reasonable minds could reasonably differ and such a difference does not lead to the conclusion that one or the other was in error. Although the Applicant's view is that she was suitable for appointment, the interview panel had a different opinion. The Tribunal finds that the evidence before it in this case does not allow it to conclude that the panel's assessment of the Applicant's interview was vitiated by significant errors of fact or by any improper considerations.

Two versions of the selection panel's evaluation report

43. The Applicant has also alleged that the version of the selection panel's evaluation report attached to the Respondent's reply, filed on 22 November 2010, differs substantively from the version of the selection panel's evaluation report provided by the Respondent on 4 February 2013. The Respondent explained in his submission dated 4 February 2013 that the second version of the evaluation report

was downloaded from Galaxy (UN's job website) and that the evaluation report attached to the reply "had been cut off in printing and transmission".

44. The Tribunal has examined the two versions of the evaluation report produced by the Respondent. In the first version, which appears to have been printed through one type of computer interface, the last several words on the right side of each line were cut off. Furthermore, part of the assessment section ("teamwork", "accountability", "commitment to continuous learning", "managing performance", "judgement/decision-making") were missing. (The missing section appears in block quotation in para. 14 above in italics.) The version produced on 4 February 2013 contained the full text of the evaluation report. Both versions contain identical scores (including the Applicant's overall score of 52 and individual scores under various sub-categories) and, except for the words that were cut off on the right margin and the missing section of the narrative (see para. 14 above), appear identical. The Tribunal notes that the first version is marked "print preview", whereas the second version is marked "print", and the two versions have different layouts of the page, indicating that the issue may be of technical nature. Although it is not certain whether or not the difference between the two versions indeed resulted from a technical issue, the Tribunal has no reason to believe that it was caused by some deliberate actions on the part of the Respondent. In any event, in the end, both versions were disclosed by the Respondent to the Tribunal and the Applicant, they are the same except for the issues mentioned above, and both of them indicate that the selection panel found the Applicant unsuitable for the position.

45. The Applicant also questions how the original interview scoring table was translated into the scores in the Galaxy evaluation report. The Tribunal has examined the original scoring table; the overall score given to the Applicant in the original scoring table is consistent with what appears in both versions of the Galaxy evaluation, and, as discussed above, the criteria in the scoring table are reasonably consistent with those in the vacancy announcement and the Galaxy evaluation report. The Tribunal is not persuaded that, when inputting its original scoring table into

the Galaxy evaluation, the panel made any significant errors, was biased against the Applicant, or acted in a manner that was otherwise unlawful.

Allegations of bias

46. The Applicant also alleged that, in mid-January 2010, even before the selection process was completed, the IED Acting Director announced during one of the IED meetings that there would be “new people coming in” at the level of Chiefs of Section. According to the Applicant, this statement “presupposes that a decision had been taken to recruit from outside of the regular P-5 vacancy as well even before the internal candidates have been evaluated”. The Respondent submitted in rebuttal that the reference to “new people”, made by the Acting Director, did not concern the contested selection exercise but was in relation to a new Chief of one of the Sections in IED who had been selected for his position in December 2009. The Tribunal finds this explanation credible in view of the facts in this case, including that the outcome of the contested selection exercise was far from decided at that point in time and continued for several months after the alleged statement by the Acting Director.

47. Having examined the Applicant’s claim of bias and prejudice, the Tribunal finds that the evidence before it does not demonstrate that the selection exercise was influenced by bias against the Applicant.

Observation on the e-PAS report for April 2008 to March 2009 and non-selection

48. As explained above, the Applicant’s e-PAS report for the period of April 2008 to March 2009 is not part of the present case. However, the Tribunal also notes that even if the Applicant rebutted her e-PAS report earlier and made it part of her claim in the present case, it is unlikely that it would have changed the outcome of the case. Firstly, she was rated as fully successful even prior to the rebuttal. Secondly, the main reason for the Applicant’s non-selection was not her incomplete performance evaluation for 2008 to 2009, but the panel’s consideration, based on

the interview, of the extent to which she was able to demonstrate the necessary competencies at the required level. Thirdly, as explained above, the Tribunal is not persuaded that the panel's consideration of her candidacy was marred by improper considerations vitiating the process.

Conclusion

49. The Tribunal finds that the Applicant was afforded priority consideration as a 30-day candidate. The Tribunal finds that the Applicant was evaluated fairly with respect to both the written test and the interview, which was based on appropriate criteria. The Tribunal finds that the selection process was not biased against the Applicant and that consideration of her candidacy was not marred by significant errors or procedural violations that would vitiate the selection process or result in a failure to give her proper consideration.

50. The application is dismissed.

(Signed)

Judge Ebrahim-Carstens

Dated this 20th day of March 2013

Entered in the Register on this 20th day of March 2013

(Signed)

Hafida Lahiouel, Registrar, New York