UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NY/2017/005
Judgment No.: UNDT/2019/088
Date: 20 May 2019
Original: English

Before: Judge Alexander W. Hunter, Jr.

Registry: New York

Registrar: Nerea Suero Fontecha

MOHAMED

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:
Joseph Grinblat

Counsel for Respondent:
Christine Graham, ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a Human Resources Policies Officer at the P-4 level, step 12, with the International Civil Service Commission ("ICSC"), contests the "non-selection of [the] Applicant for a [Senior Human Resources Policies Officer] P-5 post … ["the Post"] and selection of a non-qualified candidate instead".

2. In reply, the Respondent submits that the application is without merit.

3. The case was initially assigned to Judge Alessandra Greceanu, but after various case management discussions and two hearings (on 15 March and 23 October 2017, respectively), the General Assembly decided not to extend her *ad litem* judge position in New York, which expired on 31 December 2018 (see General Assembly resolution 73/276 [Administration of Justice at the United Nations]). On 11 January 2019, the case was reassigned to the undersigned Judge.

4. On 26 March 2019, the Tribunal issued Judgment No. UNDT/2019/047 on receivability in which it held that the Applicant's claim that the selection process was tainted by ulterior motives on the basis that the Applicant had allegedly rejected sexual advances from the Chairman of the ICSC was not receivable. The parties were further ordered to file a jointly-signed statement to set out consolidated lists of agreed and disputed facts and to indicate if the undersigned Judge could rely on the transcripts provided for the hearings on 15 March and 23 October 2017 or if the relevant witness(es) instead needed to be heard again. For the entire procedural history leading up to Judgment No. UNDT/2019/047, reference is made to this Judgment.

5. On 8 April 2019, the parties filed the jointly-signed statement as per Judgment No. UNDT/2019/047 in which they, *inter alia*, confirmed that the Tribunal could rely on the transcripts of the hearings on 15 March and 23 October 2017.

6. By Order No. 63 (NY/2019) dated 9 April 2019, the Tribunal instructed the parties to file their closing submissions in a sequential order during the period from 24 April to 10 May 2019. The parties duly filed these submissions.

Facts

7. In the parties' jointly-signed statement dated 8 April 2019, the agreed facts are presented as follows (emphasis omitted):

> … In September 2015, a vacancy announcement for Senior Human Resources Policies Officers, Human Resources Policies Division, ICSC, was advertised ["the JO" (for Job Opening)]. This announcement had the following requirements: Education: Advanced University degree in human resources management, public administration, social sciences or related field. A first level University degree in combination with extensive experience in a related field may be accepted in lieu of the advanced university degree. Work Experience: A minimum of ten years of varied professional and managerial experience across the broad spectrum of global human resources management functions in an international setting is required.
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> … On 13 November 2015, the Applicant applied for the JO.
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> … On 20 January 2016, an external consultancy firm conducted an assessment, including a written test, for the 22 job candidates who were considered to possess the relevant experience for the JO. Eleven job candidates were shortlisted for the next phase of the selection process, including the Applicant who received one of the highest grades, 17 out of 20.
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> … On 29 February 2016 and 1 March 2016, seven job candidates, including the Applicant, participated in the competency-based interview organized by the Executive Secretary of the ICSC. The competency-based interviews were conducted by an interview panel composed of the Chairman of the ICSC, the Vice-Chairman of the ICSC, the Executive Secretary of the ICSC, the Chief of the Human Resources Policy Division of the ICSC, the Chief of the Salaries and Allowances Division of the ICSC, and the Director of Human Resources of the UN Population Fund.
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> … On 22 June 2016, the Chairman recommended the selection of a job candidate to the Secretary-General.
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> … On 15 July 2016, the Secretary-General approved the selection of the job candidate.

> … On 11 August 2016, the Applicant was informed of the selection of the job candidate.
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> … On 2 September 2016, Applicant filed a complaint [with] the [Management Evaluation Unit ("MEU")] about her non-selection to the post.
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> … On 12 January 2017, Applicant filed an application [with the] UNDT.

Consideration

Scope of the case

8. In Order No. 63 (NY/2019), the Tribunal delineated the issues of the case, as per Judgment No. UNDT/2019/047, paras. 13 and 19, as follows:

> a. Whether the selected candidate possessed the minimum educational requirements outlined in the vacancy announcement?
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> b. If the Applicant was substantively more qualified for the position than the selected candidate?
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> c. If the Chairman of ICSC inappropriately favorized [sic] the selected candidate?

9. In their closing statements, neither party made any objections to this delineation of the pending issues.

Did the selected candidate possess the minimum educational requirements outlined in the vacancy announcement?

10. The Applicant submits that the selected candidate did not have an advanced university degree as required by the JO – he only had a bachelor's degree in computer sciences, which is not in a field related to "human resources management, public administration, social sciences". The field of computer sciences is not related to human resources management simply because computer data is often used. If so, a person with

a degree in computer science would be qualified to do almost any other jobs as most occupations today use computer data, for instance, if working as an airline pilot, a lawyer or a banker.

11. The Applicant contends that the selected candidate's *curriculum vitae* shows that he was recruited as a general service staff member in 1992, then as a statistical assistant working on information technology ("IT") matters, and only started working as a professional on human resources issues in May 2005.

12. The selected candidate had exactly 10 years of professional experience and therefore not the minimum of 12 years of professional experience in a relevant field as otherwise required by the ICSC guidelines for an applicant with only a bachelor's degree.

13. Contrary to standard practice, the JO did not specify that candidates with only a first-level university degree needed an additional two years of experience but referred to it as "extensive experience". Obviously, as the selected candidate did not even have a bachelor's degree in a relevant field, even if he had had 12 years professional experience, he would not have had the minimum requirements of the post.

14. Therefore, the selected candidate did not have the required educational degree or minimum professional work experience and should not have been included in the long-list of potential candidates for the post.

15. The Respondent contends that the Appeals Tribunal has recognized the wide discretion vested in the Secretary-General in reaching decisions on staff selection and that the Dispute Tribunal is not to substitute its judgment for that of the Secretary-General regarding the outcome of a selection process. This extends to all discretionary matters in a selection process, including the choice of evaluation criteria, assessment method, appraisal of candidates and the final selection decision.

16. Following a minimal showing that the job candidacy was given full and fair consideration, the burden of proof shifts to the applicant, who must show through clear

and convincing evidence that he or she was denied a fair chance of appointment. The Respondent submits that the ICSC is not part of the United Nations Secretariat and that its selection procedures are governed by the Statute of the ICSC and the personnel arrangements established by the Secretary-General after consultation with the Chairman of the ICSC. The selection process is conducted in accordance with art. 20 of the ICSC Statute, para. 5 of the "Report of the Secretary-General on Human Resources Management Reform", and other relevant rules and procedures.

17. The Respondent contends that the JO required an advanced "university degree in human resources management, public administration, social sciences or related field" but noted that a first-level university degree, in combination with extensive experience in a related field, could be accepted in lieu of the advanced university degree.

18. The issue of "related field" must be defined in context, with the main duties of the position including "the development and dissemination of information tools to originations and field duty stations and the development of job evaluation projects and tools". According to the JO, "proficiency in software tools in conduct analysis and develop quantitative models is an advantage" and the selected job candidate's university degree in computer science met the criteria of a university degree in a "related field".

19. The Respondent submits that the selected job candidate had extensive experience related to human resources management. Also, his first level university degree, in combination with this extensive experience in a related field, was acceptable in the absence of an advanced university degree.

20. Notably, when the JO was posted in September 2015, the selected job candidate had served in human resources functions for ten years and four months. In addition, the selected candidate had 13 years of experience working on human resources management related issues as he served (a) from May 1992 to December 2001, as an IT Assistant working on several human resources projects relating to education grants,

grade equivalencies, daily subsidy allowance and headquarters salary surveys, (b) from January 2002 to May 2005, as Associate Information Systems Officer supporting human resources staffing management and analyzing human resources budget information to ensure compliance with relevant financial and human resources regulations and rules, (c) from May 2005 to August 2006, as Associate Human Resources Officer, and (d) since September 2006, as Compensation Officer providing authoritative advices on human resources related issues and participating in human resources monitoring missions to field offices. The selected candidate also has an advance certificate in strategic human resources management.

21. The Tribunal notes that the Appeals Tribunal has consistently upheld that the principle of presumption of regularity is to be applied when judicially reviewing selection decisions. For instance, in *Lemonnier* 2017-UNAT-762, it stated that (references to footnotes omitted):

> 30. Initially, the Secretary-General has "broad discretion" in staff selection decisions under Article 101(1) of the Charter of the United Nations and Staff Regulations 1.2(c) and 4.1.12 However, the Secretary-General's "discretion is not unfettered and is subject to judicial review". [reference to footnote omitted]
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> 31. Judicial review of a staff selection decision is not for the purpose of substituting the Dispute Tribunal's selection decision for that of the Administration. [reference to footnote omitted] Rather, as we stated in *Abassi* [reference to footnote omitted] the Dispute Tribunal's role in reviewing an administrative decision regarding an appointment is to examine: "(1) whether the procedure laid down in the Staff Regulations and Rules was followed; and (2) whether the staff member was given fair and adequate consideration". The role of the UNDT is "to assess whether the applicable Regulations and Rules have been applied and whether they were applied in a fair, transparent and non-discriminatory manner". [reference to footnote omitted]
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> 32. As the Appeals Tribunal has explained, the starting point for judicial review is a presumption that official acts have been regularly performed: [reference to footnote omitted]
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> > … But this presumption is a rebuttable one. If the management is able to even minimally show that the [staff member's] candidature was given a full and fair

> consideration, then the presumption of law stands satisfied. Thereafter, the burden of proof shifts to the [staff member] who must show through clear and convincing evidence that []he was denied a fair chance of promotion.

22. In the present case, the first question is therefore whether the Respondent has been able to minimally show that the selected candidate's candidature was given a full and fair consideration. In *Finniss* UNDT/2012/200 (affirmed by 2014-UNAT-397), the Appeals Tribunal elaborated on what is meant by such a minimal showing:

> 107. Administrative decisions must be capable of being demonstrated to be legal, rational, procedurally correct [reference to footnote omitted] and based on well-founded facts. The Respondent will have made a minimal showing of regularity and will have met his evidentiary burden if he provides the Applicant and the Tribunal with information about the decision being challenged.
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> 108. This information should include the findings of fact material to the decision; the evidence on which the findings of fact were based; the reasons for the decision and all of the documentation in the possession and control of the decision maker which is relevant to the review of the decision.

23. As for the educational requirement in the JO, the Tribunal notes that the parties agree that, pursuant to the JO, this was stated as, "[An advanced] University degree in human resources management, public administration, social sciences or related field. A first level University degree in combination with extensive experience in a related field may be accepted in lieu of the advanced university degree". The Respondent admits that the selected candidate did not hold one of the aforementioned advanced university degrees, but instead argues that the selected candidate held a first-level university degree in combination with extensive experience in a related field.

24. When interpreting a written norm, such as the description of the educational requirement in the JO, the point of departure for the Tribunal is the plain meaning rule, meaning that it is to, "[pay] attention to the literal terms of the norm. When the language used in the respective disposition is plain, common and causes no comprehension problems, the text of the rule must be interpreted upon its own reading, without further

investigation" (see the Appeals Tribunal in *Scott* 2012-UNAT-225 and also, for instance, *De Aguirre* 2016-UNAT-705, *Timothy* 2018-UNAT-847 and *Ozturk* 2018-UNAT-892).

25. The Tribunal observes that it follows from the case record that the selected candidate held a bachelor's degree in computer science and an advance certificate in strategic human resources management. Neither of these educational accreditations evidently equals an advanced university degree. However, a bachelor's degree is a first-level university degree and, from a plain reading of the JO, such first-level university degree did not have to be in human resources management, public administration or social sciences. Rather, it was the candidate's "extensive experience" that had to be related to any such specified area. Unlike what the Applicant is contending, the subject of the first-level advanced university degree was therefore not important for this JO.

26. However, the JO did not specify what was meant by either "extensive" or "experience"—for instance, it could both be professional and scholastic experience. The Respondent contends that the selected candidate's work experience with various fields of human resources from 1992 and his advance certificate in strategic human resources management equaled "extensive experience". In this context, the Tribunal finds that this determination does not appear to be manifestly unreasonable nor arbitrary (as for the relevant judicial test, see *Sanwidi* 2010-UNAT-084, para. 42, which has been affirmed in many subsequent Appeals Tribunal cases, including *Jibara* 2013-UNAT-326, *Balan* 2014-UNAT-462, *Said* 2015-UNAT-500, *Munir* 2015-UNAT-522, *Jaffa* 2015-UNAT-545, *Ogorodnikov* 2015-UNAT-549, *Wilson* 2016-UNAT-676, *Ouriques* 2017-UNAT-745, *Auda* 2017-UNAT-787 and *Dibbs* 2017-UNAT-798).

27. Accordingly, while also emphasizing that the Tribunal is not to substitute its decision for that of the administrative decision-maker, it finds that the Respondent has shown, by a minimal showing, that the selected candidate possessed a "first level

University degree in combination with extensive experience in a related field", thereby satisfying that part of the minimum educational requirement.

28. The Applicant is, therefore, required to rebut this finding with clear and convincing evidence. In this regard, the Tribunal observes that in *Aghadiuno* 2018-UNAT-811, when considering the standard of clear and convincing evidence, amongst other circumstances, the Appeals Tribunal considered what would be the "most probable, if not only reasonable, inference" and "a high probability the fact".

29. The Tribunal notes that the Applicant's main argument is that computer science is not related to human resources management, public administration or social sciences. While, in principle, the Tribunal agrees with the Applicant, as also stated above, this was, nevertheless, not a requirement under the JO, which differently stated that, insofar as a candidate held a first-level university degree, any additional "extensive experience" had to be in such related field.

30. In conclusion, as the Applicant has not provided any evidence to disprove that the selected candidate did not possess such extensive experience, she , therefore, has not been able to meet her required level of proof. Her claim in this regard therefore fails.

31. Finally, the Tribunal notes that, while acknowledging that the selected candidate had ten years of relevant work experience, the Applicant also takes issue with the JO only requiring ten and not twelve years of relevant work experience, which he submits is the standard practice of the ICSC. In this regard, the Tribunal notes that in her application to the Tribunal, the Applicant only challenges the administrative decisions to not select her but to, instead, choose the selected candidate. She did not challenge the independent and separate decision on how the JO was formulated. Nevertheless, the Tribunal observes that the Applicant has not substantiated the existence any ICSC standard practice that would require the JO to require a minimum of twelve years of relevant work experience. The Applicant's claim in this regard therefore fails. .

Was the Applicant substantively more qualified for the position than the selected candidate?

32. The Applicant submits that, while the selected candidate did not possess the minimum qualifications required for the post, neither in terms of education nor professional experience, the Applicant received the highest grade from the "outside organization" that did the first evaluation of the candidates.

33. The Applicant's educational qualifications are that she holds two master's degrees in, respectively: (a) transportation engineering and planning, and (b) administrative sciences. She further has a post-graduate degree in diplomacy and international relations.

34. The Applicant's professional work experience is as follows: from (a) 1990 to 1998, in the field of civil engineering, as instructor, design and planning engineer, research associate, transport and traffic engineer, etc.; (b) 1999 to 2000, at the P-2 level, with the Economic and Social Commission for Asia and the Pacific, tourism and infrastructure development; (c) 2002 to 2003, at the P-3 level, Office of the Special Adviser on gender issue; (d) 2003 to 2005, at the P-3 level, the Officer of Human Resources Management, Human Resources Officer; (e) 2005 to present, at the P-4 level, ICSC, Human Resources Policies Officer.

35. The Applicant contends that, given that the selected candidate did not even possess the required minimum educational nor the required professional qualifications, the Applicant was much more qualified for the post.

36. The Respondent submits that selection is a competitive process and that the Applicant's own assessment of her performance and her qualifications is irrelevant.

37. Following the preliminary screening and the written assessment, seven job candidates remained in the process, including the Applicant, and participated in the

competency-based interview. The Executive Secretary of the ICSC organized this interview and served as the head of the six-member interview panel. Each member of the panel independently graded each job candidate during the competency-based interview and passed their scores directly after the interviews to the Chief of the Human Resources Policy Division of the ICSC, who also served on the panel. The seven job candidates' final scores were the combination of their respective performance during the written assessment and the competency-based interview. The selected job candidate received the highest score and the Applicant received the second lowest score. Consequently, the Applicant was not recommended for selection.

38. The Tribunal notes that, with reference to the principle of presumption of regularity and *Lemonnier* and *Finniss* as cited above, if the Respondent is capable of minimally showing that the Applicant received full and fair consideration for the relevant position, it is for the Applicant to rebut with clear and convincing evidence that the selection process was flawed.

39. The Tribunal observes that, as part of the evidence, the Respondent has submitted a written record in which the individual candidates' scores from the written test and the competency-based interview are stated and their total combined score is computed. The Tribunal notes that none of these documents have been signed or otherwise endorsed by any of the members of the interview panel and no guidance is provided on what questions and/or criteria the scoring and the computation were based. However, the Applicant has not questioned the manner in which the different assessments were handled or the veracity of the record. Rather, she is contending that her *curriculum vitae* demonstrated that she was a better candidate than the selected candidate.

40. The Tribunal notes that, among seven candidates, with a total score of 26.42 points, the selected candidate was the candidate with the highest combined score in the written test and the competency-based interview. In comparison, the Applicant only scored 23.75 points and therefore ended up as number six. Consequently, by a minimal

showing, the Respondent has demonstrated that, based on the written test and the competency-based interview, it was appropriate that the selected candidate was chosen instead of the Applicant.

41. In rebuttal, the Applicant's main argument is that her curriculum vitae, which she alleges is superior to that of the selected candidate, was not properly taken into consideration when assessing the candidates.

42. However, the Tribunal notes that the purpose of a written test and a competency-based interview in a selection process is not to examine the candidates' personal and professional experiences based on their curriculum vitae but to assess the candidates' competencies as outlined in the JO, which in the present case were: professionalism, planning and organizing, judgment/decision-making, and communication.

43. Furthermore, in the transmittal memorandum dated 31 March 2016, by which the selected candidate was recommended for the relevant position, it was stated that, "Based on the entire selection process, the panel considered that one of the candidates, [the selected candidate (name redacted)], who has extensive experience in Human Resources Management and is already in a senior P-5 position, would be a very good candidate for a higher level leadership position".

44. As highlighted in the memorandum, the recommendation was therefore based on "the *entire* process" (emphasis added), and, in addition to the performance at the written test and the competency-based interview, the candidates' experiences as stated in their curriculum vitae was presumably also taken into account.

45. Accordingly, the Tribunal finds that the Applicant has not clearly and convincingly established that she was substantively more qualified for the position than the selected candidate.

Did the Chairman of ICSC inappropriately favor the selected candidate?

46. The Applicant submits that the other members of the "selection committee" were all high-level professionals in the field of human resources management, who not only knew the rules but also that the selected candidate did not possess the minimum requirements of the post. The only possible explanation for them to have gone along with the selection decision is that the ICSC Chairman must have pressured them to favor his former statistical assistant, namely the selected candidate.

47. The Applicant contends that, in the ICSC Chairman's transmittal memorandum to the Secretary-General in which the selected candidate was recommended, he misrepresented facts because he wrote that the selected candidate "worked on a broad range of Human Resources related issues, since 1992" and held "an Advance Certificate in Strategic HR management". The truth is that the selected candidate only started working on professional issues related to human resources in 2005.

48. The ICSC Chairman also invented the word, "advance", to make it appear that the certificate that the selected candidate received for having followed a 12-day seminar was an "advance university degree". The Applicant contends that her educational and professional experience were such that she should have been shortlisted among the recommended candidates, as also determined by the "outside organization". The only explanation as to why the Applicant was not on the shortlist is that, upon the request of the ICSC Chairman, the members of the selection committee gave her a negative evaluation as opposed to the selected candidate, who did not even possess the minimum qualifications and should therefore not have been longlisted. The ICSC Chairman's reason for doing so could have been that he was subsequently forced to resign after an investigation by OIOS found him guilty of sexual harassment against Applicant.

49. The Respondent submits that the burden of establishing prejudice, or other improper motives, rests with the Applicant and that this burden must be met with clear and convincing evidence. The Applicant has not met this burden as she has provided

no clear and convincing evidence to support the claim that the ICSC Chairman requested the panel members to give her a "bad evaluation" and that the panel members complied with the request. Similarly, the Applicant has provided no clear and convincing evidence that the ICSC Chairman "lied" in his 31 March 2016 memorandum to the Secretary-General. Rather, he was providing an overall description of the selected job candidate's various educational and training experiences. The selected job candidate had worked on a broad range of human resources management related issues since his first United Nations appointment in 1992 and also holds an advance certificate in strategic human resources management.

50. The Tribunal observes that when adjudicating selection decisions, the same judicial review applies to all types of claims, namely the principle of presumption of regularity, even if the claim concerns ulterior motives (see *Lemonnier* as cited above—the onus of proof appears to be different for other types of cases when dealing with claims regarding improper intentions; see, for instance, *Parker* 2010-UNAT-012 and *Charles* 2013-UNAT-284). The Tribunal further notes that the motivation or mental state of a decision-maker will often need to be proved by circumstantial evidence and inferences drawn therefrom (see, for instance, *He* 2016-UNAT-686, para. 39).

51. The Tribunal observes that the Respondent has submitted in evidence the written record of the candidates' performance at the written test and the competency-based interview. From this written record follows that the selected candidate received an "assessment score" of 17 points from the written test. At the interview, the selected candidate's average score from all panel members was 9.42 points as he received 56.5 points in total when all six panel members' scores were added up, which was then divided by 6 (56.5/6 = 9.42). This average score was assumedly out of a maximum of 12 points, as it appears that the maximum score was 3 points for each competency, namely, as stated above, professionalism, planning and organizing, judgment/decision-making, and communication. However, while "Member 1" gave the selected candidate a total of 10.5 (3 + 3 + 3 + 1.5) points as the highest score for his interview performance, "Member 4" only awarded him 8 (2 + 2 +

2 + 2) points. The total combined score was then calculated as the sum of the assessment score from the written test and the average interview score, which led him to receive a total of 26.42 (17 + 9.42) points.

52. In comparison, the Applicant received 17 points for her written test and her average interview score was 6.75, which added together came up to a total combined score of 23.75 (17 + 6.75) points. When assessing the Applicant's individual scores from each of the interview panel members, the panelists awarded her total scores ranging from 6.0 (2 + 2 + 1 + 1) points from "Member 1" to 7.0 points from four other panel members (notably, none of the panel members, however, gave her the same points for the different competencies). Also, the discrepancy of 2.5 points for the selected candidate was not the highest among the candidates as "Candidate A" received a total of 6.5 (2 + 1.5 + 1.5 + 1.5) point from "Member 1", but 10.5 points from both "Member 3" (2.5 + 2.5 + 2.5 + 3) and "Member 6" (2.5 + 2.5 + 3 + 2.5).

53. Based on the written record, the Tribunal therefore finds that the only fact that can be inferred with some clarity is that the individual interview panel members apparently scored the candidates somewhat differently. Rather than any particular favoritism, this variation of scores would appear to show that each individual panel members must have given priority to different aspects of the candidates' answers in the competency-based interviews when scoring their performances.

54. However, as also stated above, the Tribunal does not understand how it can be that no other documentation is available from the written test and the competency-based interview, including documentation for the panel members' endorsement of their individual scores as presented in the written record. This is particularly important because, according to the Respondent's submissions, the combined total score of these tests appears to have been the main criteria for choosing the selected candidate for the position (in his closing submissions, he submitted that, "The selected job candidate received the highest score and the Applicant received the

second lowest score. Consequently, the Applicant was not recommended for selection").

55. In particular, the Respondent has not shown that the methodology for rating the candidates and computing their combined total scores was in fact established *prior* to undertaking and grading the written test and the competency-based interviews. From the written record, the Tribunal can merely deduct that it appears as if the written test was given greater priority in the combined total score (the highest score given was 17 points) than the competency-based interview (the highest possible total score appears to have been 12 points). This was crucial to the selected candidate because he received 17 points for his written examination but only 9.42 points for the interview performance. This led to a combined total of 26.42 points. In comparison, "Candidate G" received only 16 point for her/his written test, but 10.17 (61/6) points in the interview. This led to a total of 26.17 points. Had the performance at the competency-based interview been given a relatively higher weight, Candidate G would therefore likely had received a higher total than the selected candidate.

56. However, as concerns the Applicant, she scored the same points for the written test as the selected candidate (17 points) but significantly lower at the competency-based interview (6.75 point). When adding up all points from all panel members in the competency-based interview, the Applicant's total score from the interview was only 40.5 points whereas the selected candidate received 56.5 points, which amounts to almost 40 percent more points. In other words, even if the relative weight between the points given for the written test and for the competency-based interview had been manipulated to ensure the selected candidate would be recommended for the position, the Applicant would, under any circumstances, have received a lower combined total score than him.

57. In the Applicant's witness testimony, in support of her allegations of favoritism, she explained about the selected candidate that:

> All colleagues, we talk. Everybody says, 'He's [the selected candidate] the one'. And because before the vacancy—just before the vacancy announcement was posted, he was sent on a secret trip to London to get some certificate in job evaluation, which is one of the elements in the job description. He has not had training before. So it was known to us later on, we could—anyone of us could have gone. If somebody should be going, that should be from our division. This person who got the job was in the other division, salaries and allowances. So job evaluation is done by our division, the human resources policy division. Then one of us, me or my other colleagues, could have gone for that training; that was never known to us there was a training or he was sent. When he came back, we heard that he went on—so they were like kind of bolstering his credentials.

58. When the Applicant was asked whether she had done this training herself, she replied that she had, although some other training requests had been denied. The Applicant added that:

> To have—because that person only having a bachelor's degree in IT and all the people who applied had master's. I have two master's and also some other applicant had PhDs. So this person only had a bachelor's degree; so chairman wanted to make his resume better and better before giving the job or sending the resume to the Secretary-General.

59. The ICSC Chairman, who in his witness testimony before the Tribunal explained that he was not the chair of the interview panel but only participated as a panelist, responded negatively when asked, "Did you attempt to influence the process so that the candidate who was ultimately selected was selected?". When asked about the Applicant's performance at the interview, the ICSC Chairman further stated that, "Yeah, unfortunately, she was not among the best".

60. Consequently, the Tribunal is perplexed about the lack of the written documentation for the written test and the competency-based interviews and how the computing of the scores might have favored the selected candidate, at least compared to Candidate G. The Tribunal, nevertheless, finds that the Respondent has minimally shown that even if significant procedural flaws occurred, these did not affect the Applicant's chance of promotion (see also *Krioutchkov* 2016-UNAT-691, paras. 23 and 24), because the panel members did not appear to have colluded regarding the

scoring at the competency-based interviews and, even if the computing of the scores was subsequently fixed to favor the selected candidate, the Applicant's total combined score would still have been lower than that of the selected candidate.

61. In conclusion, with reference to *Krioutchkov*, any irregularity in the selection process, therefore, had no impact on the selection status of the Applicant because, no matter what, she had no foreseeable chance of promotion.

Conclusion

62. Based on the above findings, the application is rejected.

(*Signed*)

Judge Alexander W. Hunter, Jr.

Dated this 20th day of May 2019

Entered in the Register on this 20th day of May 2019

(*Signed*)

Nerea Suero Fontecha, Registrar