



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2022/046

Judgment No.: UNDT/2023/050

Date: 12 June 2023

Original: English

Before: Judge Francesco Buffa

Registry: Nairobi

Registrar: Abena Kwakye-Berko

ASGEDOM

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:
Self-represented

Counsel for the Respondent:
Elizabeth Brown, UNHCR
Francisco Navarro, UNHCR

Introduction

1. The Applicant was a staff member with the United Nations High Commissioner for Refugees (“UNHCR”) in Ethiopia, holding a fixed-term appointment as a Registration Assistant at the G-4 level.
2. On 23 February 2022, the Applicant was separated from service for having engaged in fraud registration activities on 17 March and 16 April 2019.
3. On 28 May 2022, he filed an application contesting the disciplinary measure imposed on him and requested the rescission of the decision of dismissal and reinstatement.
4. The Respondent filed his reply on 29 June 2022, contending that the application was without merit.
5. This case was assigned to the undersigned Judge on 11 January 2023, for his deployment starting on 6 February 2023.

Facts

6. On 1 October 2013, the Applicant joined the UNHCR as a Registration Assistant at the G-4 level in Ethiopia.¹ He served at Trefeber Field Office, (“FO”) under the UNHCR Jijiga Sub Office (“SO”)² on a fixed-term appointment expiring on 15 July 2021.³
7. The Applicant was responsible of the registration data on proGres.⁴ ProGres is an SQL-based database containing all information on a registered person and a record of UNHCR’s actions concerning that person. In addition, a physical file may be kept with documents related to the case.⁵ The Applicant was also in charge of the database

¹ Reply, annex R-1, *Investigation report with annexes*, page 3, para. 5.

² *Ibid.*, at para.1.

³ *Ibid.*, at annex 18, page 2, para. 4.

⁴ *Ibid.*, at page 3, para. 16.

⁵ *Ibid.*, at page 1, para. 8.

administration for Aw Barre Refugee Camp.⁶

8. From December 2016, the UNHCR and the Ethiopian Administration for Refugee and Returnee Affairs (“ARRA”) agreed to share personal data and to implement a Registration Plan of Action (“RPA”) to move towards joint registration and to include upscaling registration to the (“Level 3”) standard.⁷ At the UNHCR “a level 3 (L3) emergency is activated in exceptionally serious situations where the scale, peace, complexity or consequence of the crisis exceed the existing response capacities of both, the relevant country operations (s) and relevant Regional Bureau(x), and requires a corporate, whole-of-UNHCR response.”⁸In Ethiopia, the L3 emergency begun on 25 March 2019 with the registration of concerned persons carried out jointly with the ARRA.⁹

9. An audit report of proGres carried out by an UNHCR Registration officer reviewed all data and entries made by the Applicant from 1 August 2018 to 1 May 2019.¹⁰According to the audit report, on 17 March 2019, the Applicant uploaded a new photograph and reactivated case no. 810-000144444¹¹, inactive since 16 April 2014. No litigation events were recorded on proGres related to the case, which had not been referred to the litigation desk.¹²The report further indicated that on 16 April 2019, the Applicant replaced the existing photos by uploading new photographs¹³ in case no. 810-00002966¹⁴ and in case no. 810-00002968¹⁵, inactive since 24 January 2014 and reactivated on 17 April 2019 without referring to the litigation desk and without litigation events recorded on proGres.¹⁶

10. As the team leader’s Level 3 registration exercise complained about the way

⁶ *Ibid.*, at page 3, para. 16.

⁷ *Ibid.*, at page 2, para. 11.

⁸ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 6, para. 14.

⁹ *Ibid.*, at pages 6-7.

¹⁰ *Ibid.*, at page 3, para. 18.

¹¹ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 8, para 18.

¹² *Ibid.*, at page 3, para. 18 (i). Reply, *annex R-16, Photographs of refugees*.

¹³ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 8, para. 18.

¹⁴ *Ibid.*, at annex R-16, *Photographs of refugees. Reply*, page3, para. 18(ii).

¹⁵ *Ibid.*, at page 3, para 18 (iii) and at annex R-16, *Photographs of refugees*.

¹⁶ *Ibid.*, at page 3, para 18. (ii) and (iii).

the Applicant supervised this exercise, around 15-20 April 2019, the Applicant received an informal message to hand over the registration tools.¹⁷

11. On 25 April 2019, the Level 3 Coordinator identified irregular data entries such as household identification (“ID”) and names of replaced individuals. He informed the head of UNHCR Jijiga SO that the Applicant “added photos and completed the data processing of at least one family” where proof of registration and identification cards were issued when the Applicant was not authorized to do so “without the creation of an event in proGres by the litigation team.”¹⁸

12. On 4 May 2019, the Inspector General’s Office (“IGO”) received a report of an alleged case of misconduct implicating the Applicant.¹⁹ It was reported that the Applicant exchanged photos of refugees in the database for photos of non-refugees to whom he provided refugee documents in exchange for payment.²⁰

13. On 27 May 2019, the Senior Registration and Identity Management Officer (“SRIMO”) at UNHCR Addis sent a report to the Head of UNHCR Jijiga SO about suspicious proGres entries made by the Applicant in case numbers 810 00014 444; 810 00002966 and 810 00002968.²¹

14. On 29 May 2019, the IGO opened an investigation.²²

15. On 6 August 2019, the Applicant was placed on Administrative Leave With Pay (“ALWP”).²³

16. On 7 August 2019, the Head of the UNHCR Jijiga SO informed the IGO that the life of the Applicant was under threat as the individuals who had paid him money

¹⁷ Application, section VII, page 4, para.1.

¹⁸ Reply, annex R-1, *Investigation report with annexes*, page 8, para 17.

¹⁹ *Ibid.*, at page 3, para. 1.

²⁰ *Ibid.*, at annex 18, page 2, para.2.

²¹ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 8, para. 18 and at annex 18, page 7, para. 17.

²² *Ibid.*, at page 4, para. 19, at annex R-1, *Investigation report with annexes*, page 3, para. 3 and at annex 18, page 2, para. 2.

²³ *Ibid.*, at annex 18, page 2, para. 4.

were threatening to harm him due to his inability to get them registered as refugees.²⁴

17. By letter dated 16 August 2019, the Director of the Division of Human Resources, (“DDHR”) confirmed to the Applicant his ALWP pending completion of the investigation. The conditions of the ALWP required the Applicant to remain available for cooperation with the IGO investigation, in accordance with staff regulations 1.2(r) and staff rule 1.2(c).²⁵

18. On 19 August 2019, the UNHCR Field Security Service(“FSS”) estimated that the threat against the Applicant was serious and recommended to relocate him to Addis Ababa.²⁶

19. On or around 20 August 2019, the UNHCR Deputy Representative (Administrative officer) wrote to the Applicant for his relocation to Addis Ababa.²⁷

20. On 21 August 2019, the Head of UNHCR Jijiga SO reported that the Applicant refused to acknowledge receipt of the letter informing him of his ALWP and relocation to Addis Ababa.²⁸

21. On 22 November 2019, the UNHCR Representative in Ethiopia informed the DHR that the office tried to reach the Applicant several times and that the latter did not answer the phone calls.²⁹

22. On 10 December 2019, the IGO interviewed the Head of UNHCR SO in Kosti, Sudan, who was the Head of Jijiga Sub-Office until September 2019.³⁰The latter stated that the Development Officer at the Jijiga SO had reported allegation of corruption against a staff member in Aw-Barre field Unit. The head of UNHCR SO in Kosti, Sudan, added that the same Development Officer stated that a Protection Officer mentioned that the ARRA “was complaining about UNHCR staff involved in the

²⁴ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 14, para. 45(e).

²⁵ *Ibid.*, at annex R-3 *Letter placing Applicant on ALWFP*.

²⁶ *Ibid.*, at page 4, para 22. See also reply, annex R-4, *PSRA for Applicant*.

²⁷ Application, section VII, page 4, para.2.

²⁸ Reply, annex R-5, *Email from Head of Field Office*. Reply, page 4, para. 23.

²⁹ *Ibid.*, at annex R-6, *Email from Representative in Ethiopia*. Reply, page 4, para. 22.

³⁰ *Ibid.*, at annex 18, page 8, para. 24.

substitution of individuals and registering people who are not refugees. ARRA felt that UNHCR is not doing anything and is complacent with what was happening.”³¹

23. The global pandemic and the armed conflict in Ethiopia impeached the IGO from moving to interview refugees in the field. However, the IGO interviewed two witnesses and gathered documentary evidence corroborating the allegations against the Applicant.³²

24. By email dated 23 October the IGO informed the Applicant about the allegations reported against him.³³

25. On the same day, 23 October 2020, the IGO Investigators interviewed the Applicant and invited him to submit comments thereon and asked to provide any evidence in support of his version of the facts, which he did not.³⁴

26. The Applicant then disregarded several IGO’s requests to sign and return the record of the interview.³⁵

27. On 18 December 2020, IGO’s investigator interviewed the Head of Refugee Programme Coordination Office(“HRPCO”) in Melkadia Camp in Ethiopia and reported a case of registration fraud committed in Aw Barre Camp in 2019 by a UNHCR staff member.³⁶

28. By email dated 15 February 2021, the IGO reminded the Applicant of his obligation to cooperate and to be available for the investigation indicating that that his failure to do so may be considered as an abandonment of post and lead to separation in accordance with “the Staff Rules and UNHCR/AI/2018/18 Misconduct and the Disciplinary Process.”³⁷

³¹ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 9, para. 22.

³² *Ibid.*, at page 4, para. 25.

³³ Application, section VII, page 4, para.3.

³⁴ *Reply, annex R-1, Investigation report with annexes*, page 6, para 10.

³⁵ *Ibid.*, at para. 11.

³⁶ *Ibid.*, at pages 10-11, paras. 29 and 30.

³⁷ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 6, para. 11. Reply, ANNEX 08.

29. On 17 February 2021, the Applicant returned the signed record of the interview.³⁸

30. By email dated 1 April 2021, the IGO convoked the Applicant for a second interview scheduled on 9 April 2021 for which he did not reply. The Applicant did not reply to the IGO emails dated 3, 5, 6 and 7 April 2021.³⁹

31. On 30 June 2021, the IGO shared its findings with the Applicant and invited him to address comments, which he did on 5 July 2021.⁴⁰

32. The IGO transmitted the investigation report to the DDHR on 12 July 2021.⁴¹

33. By letter dated 06 September 2021, the DDHR transmitted to the Applicant a copy of the investigation Report by which he was accused of fraud in the refugee registration exercise and failing to cooperate with the IGO's investigation.⁴²

34. On 29 September 2021, the IGO interviewed a witness who knew the refugee in case no. 810-0014444 and who testified that this refugee already passed away when the Applicant uploaded a photograph and reactivated her case on proGres.⁴³

35. By memorandum dated 01 October 2021, the Applicant wrote to the DDHR and replied to the allegations of misconduct.⁴⁴

36. By email dated 25 October 2021, the DDHR informed the Applicant on the witness's statements to the IGO dated 29 September 2021 in case no. 810-0014444 with the possibility to comment this statement in accordance with paragraph 7.7 of UNHCR/AI/2018/18 (Misconduct and the Disciplinary Process), before 10 November 2021.⁴⁵

³⁸ *Ibid.*, at page 4, para. 26.

³⁹ *Ibid.*, at page 4, para. 27 and at annex R-1, *Investigation report with annexes*, page 6, para. 12.

⁴⁰ *Ibid.*, at annex R-1, *Investigation report with annexes*, page 6, para 13. Reply, page 5, para. 28.

⁴¹ *Ibid.*, at page 5, para. 29.

⁴² Application, section VII, page 4, para.4. Reply, annex R-8, *Letter issuing allegations*.

⁴³ Reply, *EX PARTE annex R-11 Record of interview with refugee*. Reply, page 5, para. 32.

⁴⁴ *Ibid.*, at annex R-10 *Applicant's response to allegations*. Application, section VII, page 4, para.5. Reply, page 5, para. 31.

⁴⁵ *Ibid.*, at annex R-12, *Email about new evidence and Applicant's response*.

37. By email dated 10 November 2021, the Applicant explained to the DDRH that without information on a death case at the time of inactivation, he could not refer to proGres and know that the person who presented herself for reactivation of the case was acting at the expenses of a person already deceased. He further claimed that as a registration staff member, he could only perform data actions following the recommendation made by a protection staff member.⁴⁶

38. On 2 December 2021, the IGO requested an Associate Durable Solutions Officer (“ADSO”) in Jijiga SO to verify whether the physical files of the three cases contained Ethiopian ARRA’s notes requesting data changes from proGres.⁴⁷

39. On 5 December 2021, the ADSO replied that she did not find documents from ARRA requesting such changes.⁴⁸

40. For unrelated reasons to the case, the Applicant was arrested on 6 December 2021 in Addis Ababa.⁴⁹ He claims that he was arbitrarily arrested due to his ethnic background related with the civil war in North Ethiopia at that time.⁵⁰

41. By letter dated 23 February 2022, the DDHR informed the Applicant of the High Commissioner’s decision to dismiss him in accordance with staff rule 10.2(a)(ix).⁵¹

Submissions

The Applicant’s case

42. The Applicant’s submits that his actions cannot be categorized as misconduct. The Applicant claims that he was not the only Administrator to have access to the

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*, at page 5, para. 34 and annex R-13, *Emails about verification of physical files.*

⁴⁸ *Ibid.*, at page 5, para. 34.

⁴⁹ *Ibid.*, at para. 35.

⁵⁰ Application, annex titled: *Asgedom’s Closing Submission Response to Respondent’s reply*, para. 30.

⁵¹ Reply, annex R-14, *Notification of disciplinary measure.*

database. He was notified of the IGO's findings on 6 September 2021. He responded rejecting all the allegations made against him.

43. The Applicant explained that the three individuals concerned in the alleged cases of fraud were not scheduled for the Level 3 Registration Exercise. The re-activation of their cases was part of routine activities done as per the old established re-activation procedures. He did not know that in case 810-000144444, the individual was an impostor. Therefore, the established facts do not constitute misconduct.

44. When a refugee seeks for re-activation of his file, the UNHCR protection staff interviews him and make recommendations before referring his case to a UNHCR registration staff member.⁵²

45. The IGO endorsed ARRA's misinformation. The Applicant requests the testimony of those three individuals who misrepresented themselves at the time of the cases'-activation.

46. The Applicant claims that the investigation was conducted with procedural flaws that compromised his due process rights and are indicative of bias against him, namely that:

a. He was not given the opportunity to cross-examine the witness heard by IGO in case no. 810-0014444. Without a written copy of this witness' examination, the Applicant claims that he was deprived of the right to contest the (veracity) credibility of this witness and to see in totality what was exactly stated by the "new un-named witness."

b. The other witnesses interviewed by the IGO investigators were not credible. The investigators disregarded pertinent facts and failed to conduct an investigation based on relevant facts in violation of the UNHCR Strategic Framework for the Prevention on Fraud and Corruption dated July 2013. The Applicant's due process rights were also violated.

⁵² *Ibid.*, at annex R-10, *Applicant's response to allegations*.

47. The Applicant relies on the UNHCR Strategic Framework for the Prevention of Fraud and Corruption dated July 2013 which defines fraud as: “Any act or omission, including misrepresentation or concealment of a material fact, that knowingly or intentionally misleads, or attempts to mislead, a party to obtain a benefit, whether directly or indirectly, whether for oneself or for a third party. Fraud could involve misappropriation of cash (such as fraudulent claims/disbursements) or other assets (such as fraudulent shipments, falsifying inventory records), or fraudulent statements (purposefully misreporting or omitting information)”. Therefore, the main definition of fraud can be skimmed as” i. An act or omission including misrepresentation or concealment of fact that knowingly or intentionally misleads/attempts to mislead; ii. A party to obtain benefit directly/indirectly for oneself or third party”.

48. The IGO failed to establish that the Applicant received money to undertake the unlawful refugees’ registration or to obtain benefit. Due to security reasons, travel restrictions and shutdown of telecom and internet service, the IGO could not contact the refugee witnesses in the camps. Furthermore, the IGO has misrepresented the facts described by an Ethiopian government official of ARRA who could not indicate the amount of money allegedly paid to the Applicant and facilitated by an unknown refugee.

49. As the Ethiopian government official of ARRA indicated to the IGO that additional information could be provided by the camp coordinator, the latter should have been interviewed.

50. The Applicant explains that he could not be available for a second interview with the IGO Officer. He could not access his email on time. His mother was hospitalised in a remote location. The Applicant’s comments on the investigation report and on the charge letter, as well as further clarification given to the IGO and to the Administration, indicate his cooperation with the investigation.

51. The Applicant seeks the rescission of the contested decision and reinstatement to his position.

The Respondent's case

52. The Respondent submits that the charges against the Applicant are proven and amount to serious misconduct. He was the only person with access to the database. The reactivation by the Applicant of the three cases and the record of the photos violated the procedure prescribed by Standard Operating Procedures (“SOPs”).

53. The SOPs contained safeguards to prevent fraud with ten scenarios requiring referral to a “litigation desk” and ARRA officials for a decision with procedure for reactivating cases. Specifically, the SOPs require to refer each person to “a litigation officer to examine the reasons for the inactivation and for a decision on reactivation as well as for the recording of specific events on proGres”. Neither proGres, nor the physical file contains a record of UNHCR and ARRA requests to change the inactivated cases.

54. In view of his tasks, the Applicant was aware of the regulations and practice in Ethiopia with respect related to the handling of refugee cases registration. At his own admission, he registered three non-refugees’ cases as refugees (810-000144444, 810-00002966 and 810-00002968). In case 810-000144444, there was already a note on proGres about a fraudulent reactivation and impersonation attempt in January 2018.

55. The Applicant failed to cooperate with the investigation. He did not reply to several IGO’s emails requesting for an interview on 9 April 2021. The IGO followed up nine times before the Applicant signed and returned the record of his interview on 23 October 2020.

56. The conditions were explicit that he had to remain available to cooperate with the investigation. Furthermore, the Applicant’s disregard for the IGO’s requests to sign his record of interview corroborates the fact that the Applicant purposefully withheld cooperation with IGO and breached the terms of his administrative leave and his basic obligation to cooperate with a duly authorized investigation under staff rule 1.2(c).

57. The likelihood and severity of the threats against the Applicant from individuals who had paid him for services that he was unable to provide were such that the FSS recommended the Applicant's immediate evacuation out of the area.

58. The Respondent claims that the Applicant's conduct constitutes a breach of his obligations under staff regulations 1.2(b) and (g), staff rule 1.2(i), and the Strategic Framework for the Prevention of Fraud and Corruption. It additionally amounts to a breach of the standards of conduct expected from an international civil servant under para. 5 of the Standards of Conduct for the International Civil Service.

59. The Applicant was informed of all allegations against him. The identity and full testimony of the refugee who was interviewed on 29 September 2021 was not shared with him for safety and security purposes.

60. In accordance with paragraph 7.4(c) of UNHCR/AI/2018/18, UNHCR may take measures to ensure witnesses' safety and security during a disciplinary process. Given the circumstances, the witness identity and protection and the non-disclosure of his interview were reasonable measures.

61. Due process was given, and the interests of justice were served. The Applicant was given an opportunity to defend himself and was unable to establish any violation of due process that would justify the reversal of the disciplinary action.

62. UNHCR, like all United Nations agencies, applies a zero-tolerance approach to fraud in accordance with the Strategic Framework for the Prevention of Fraud and Corruption. The Applicant's fraudulent misconduct rendered the employment relationship with UNHCR unacceptable.

Considerations

Standard of review

63. In reviewing a disciplinary measure, the Dispute Tribunal should determine (a) whether the alleged facts have been established; (b) whether the established facts constitute misconduct; (c) whether the disciplinary measure is proportionate to the

offence; and (d) whether due process was respected (see *Molari*, 2011-UNAT-164, and *Masri*, 2010-UNAT-098).

a. Whether the alleged facts have been established;

64. As recalled in para. 41, the Applicant was dismissed for engaging in registration fraud by substituting the photographs of three refugees on proGres with photographs of unknown individuals and by reactivating their cases in breach of the applicable SOPs, as well as for failing to cooperate with the investigation while still on administrative leave.

65. The Tribunal finds it important preliminarily to recall that a person must be registered with UNHCR to receive protection and assistance; registration involves collecting and recording personal data, including biographic data and information on a person's circumstances. Registration enables UNHCR to manage cases, issue identity documents, and record the provision of assistance.

66. UNHCR uses a computer system called "proGres" for registration. ProGres is an SQL-based database containing all information on a registered person and a record of UNHCR's actions concerning that person. In addition, a physical file may be kept with documents related to the case.

67. In Ethiopia, in December 2016, UNHCR and ARRA agreed to share personal data and to move towards joint registration, upscaling to the "level 3" standard (also known as "Individual Comprehensive Registration"), which includes, about a registered person, in addition to basic biodata, full information about a person's education and occupation, the reasons for her unwillingness to return to the country of origin, and other information.

68. To safeguard integrity and ensure that only eligible refugees benefit from UNHCR's protection and assistance, registration is subject to strict procedures. UNHCR staff members' tasks are clearly defined and compartmentalized, and every action taken in connection with registration must be recorded on proGres.

69. On 30 August 2018, UNHCR and ARRA jointly published SOPs for level 3 registration in Ethiopia. The SOPs regulated the process and assigned roles and accountabilities. They were circulated to all UNHCR Sub-Offices and stakeholders on 30 August 2018. In Aw Barre Refugee Camp, information and dissemination actions about the SOPs were conducted in early March 2019, before the level 3 registration exercise started on 25 March 2019.

70. The SOPs contained safeguards to prevent fraud. Specifically, they provided 10 scenarios that required a referral to a “litigation desk” of UNHCR and ARRA officials for a decision. The scenarios or “litigation triggers” included when an individual’s photograph on proGres did not match the person who showed up during the exercise and when a person did not match existing proGres records. The litigation desk was charged with examining every case and deciding what to do. The existence of a litigation trigger and the specific follow-up had to be recorded on proGres.

71. The SOPs for registration jointly adopted by UNHCR and ARRA on 30 August 2018, whose aim is also to prevent fraud, prescribed that individual identified at the waiting area as having inactive cases had to be referred to the Reception Desk “to verify the fingerprint and avoid impostors”. Following that check, the Reception Desk referred the individuals to the Litigation Officer, who alone could reactivate the case of individuals who were “physically present in the Registration Centre” and enter specific events on proGres to record their actions.

72. To ensure that information is accurate and up to date, UNHCR conducts verification exercises periodically. When contact is lost with a person, for example if the person does not show up during a verification exercise, the case is “inactivated”.

73. A UNHCR Registration Officer ran an audit report of proGres and reviewed all data entries made by the Applicant between 1 August 2018 and 1 May 2019. The audit report showed that: (i) on 17 March 2019, the Applicant uploaded a new photograph in case no. 810-00014444, inactive since 16 April 2014, and reactivated the case; (ii) on 16 April 2019, the Applicant uploaded a new photograph in case no. 810-00002966 inactive since 24 January 2014 and, the following day, reactivated the case; and (iii) on

16 April 2019, the Applicant uploaded a new photograph for case no.810-00002968, inactive since 24 January 2014 and, the following day, reactivated the case.

74. The proGres audit report, which records all changes made to proGres data, clearly shows that “tesfaye” (that is Applicant’s username for proGres) uploaded the photos and changed the processing status from I (inactive) to A (active) on the specified dates; the Applicant recorded the photos and reactivated the three cases before their scheduled appointments for the level registration 3 exercise. The Applicant reactivated the cases himself, without authority, without the cases having been referred to or checked by the Reception Desk or the Litigation Officer.

75. No litigation events were recorded on proGres.

76. The Applicant himself does not contest that he re-activated the cases, that he uploaded the photos, or that the photos were of different individuals.

77. As to the reactivation case no. 810-00014444 (the refugee in the first case), it results from the IGO report that a witness interviewed on 29 September 2021 testified that the refugee was dead when the Applicant uploaded a photograph and reactivated her case on proGres. The Applicant, who reactivated the case, should have been aware of the death because a printout from proGres dated 16 January 2014 had the following handwritten annotations with respect to the refugee and two relatives of hers: “Not present. Inactivate. Heard to be dead. Heard to die in the sea while migrating”; there was also information on record (a litigation referral form dated 10 January 2018, jointly signed by UNHCR and ARRA officials during a verification exercise and kept in the physical file and on proGres, that the Applicant must have seen as he accessed the refugee’s case on proGres to reactivate it) that a fraudulent attempt to substitute her and reactivate her case had already taken place in 2018, when it was realized that the person “did not match neither photo nor finger print in the Progress data”.

78. As to case no. 810-00002966, a comparison of the photographs (in records, reply annex 16) shows also to a layperson’s eye that the person in the photograph uploaded by the Applicant in 2019 is not the person in the 2007 and 2009 photographs.

79. The same can be said about the photographs in case no.810-00002968.
80. This emerges clearly from a comparison exercise, and it should also have been apparent to the Applicant (certainly more used to this kind of checks).
81. The Applicant reactivated the cases and uploaded the photos, although he was not involved in data-processing activities during the level 3 exercise, was not in the Field Office and had never met the individuals, so clearly contravening the procedure prescribed by the SOPs.
82. Moreover, he did it without a referral to the litigation desk and without recording of any litigation events on progress. By not following the established procedure, the Applicant avoided any control over his reactivation.
83. As the Respondent pointed out, the Applicant bypassed four key safeguards to prevent fraud i.e. the checking of fingerprints to avoid impostors, the requirement that individuals who sought reactivation be physically present, the segregation of duties, and the obligation to record every step on proGres.
84. The Applicant's defence that he had acted on the recommendation from ARRA has remained undemonstrated; the Head of the ARRA Refugee Programme Coordination Office, Mr. Abdulahi, testified that the Applicant had "modified data by making substitutions to existing data without informing ARRA or consulting with our field officer based in Aw Barre".
85. The Applicant further defence concerns the lack of his bad faith, given that in overseeing the data of over 13,000 refugees, making a data entry and/or verification errors including reactivation of a wrong person, mismatch pictures and fingerprints and other errors are always expected. He added that in his long experience, he came across many similar errors, which usually occur and are rectified once detected.
86. The claim is without merit. Indeed, apart from the consideration that the Applicant was accurate in avoiding to leave traces of his operations in the information system, where he did not record the event in contrast with his specific duty required in

the SOPs, the evidence that the Applicant intentionally engaged in fraud results from the fact that the photos of three originally registered refugees, taken in 2009, were all deleted from proGres, as it results from the documentation provided by the Respondent.

87. The proGres manual provides that, “For anti-fraud reasons photos can not be deleted from proGres. You can add new photos to an individual, but the photo history is stored in the system”; the only way to delete a photo from proGres is to delete the file containing the photo from the back-end database.

88. The only explanation for the absence of the oldest photographs of the refugees from proGres is that they were deleted from the SQL database’s back end.

89. Evidence is clear that it was the Applicant who deleted the photographs of the refugees to avoid the impostor’s detection.

90. The Applicant was indeed the database administrator for Aw Barre and the custodian of the laptop that physically stored the back-end database; he was specifically charged with “safeguarding the database by keeping it in a safe and secure place and taking adopting backup reserves on a daily basis for the purpose of data security”.

91. Considering that when a photograph is deleted from the back end, the proGres audit tool cannot detect the fact that the picture was deleted or record who deleted it and it is as if the photograph had never existed, it can be affirmed that the deletion of a photograph from the database’s back is thus a conclusive evidence of fraud; the Applicant did it to conceal his fraud and the fact that he had uploaded photos of three impostors.

92. The objection raised by the Applicant that he was not the only person that had access to the database server and also to the back end of the database because there are other staff members (at least 3) who have the clearance to the server and back end of the database is not relevant, as the other personnel authorized to access the said resources are not connected at all with the registration of the cases and the reactivations of the refugees’ positions in the database.

93. The Applicant's failure to provide a credible explanation for his actions in breach of the SOPs supports the inference that the Applicant intended precisely to commit fraud.

94. But in this case there is more. Indeed, the fact that the Applicant received credible threats from members of the local community who had allegedly paid bribes to him, which warranted his relocation to Addis Ababa, is corroborating circumstantial evidence that the Applicant was involved in fraudulent practices.

95. In any case, the Applicant's conduct qualifies as fraud even if it has not been established that he received money; receiving something of value in exchange for doing something improper is an element of the definition of corruption, which is a distinct form of misconduct.

96. It results from the records (and in particular from the investigation report and its annexes, and notably from the email to the IGO dated 7 August 2019) that the Administration received information that "certain individuals from the host community who claim to have paid various sums of money to [the Applicant] are threatening to harm him due to his inability to provide the requested services".

97. Threats were so relevant that the Applicant's life itself was "under imminent threat from the individuals he allegedly took money from" and that the Field Security Service recommended the Applicant's immediate evacuation out of the area.

98. The Applicant, although complaining because the Administration did not investigate properly the situation and did not hear from the Field Security Associate of Sub Office Jijiga, Mr. Hassen Teiyb, confirmed however that he received an email from Monica Lewanika, the then Assistant Representative (Admin), regarding the security threat against him and the decision of the relocation of the Applicant from Aw Barre Field Office to Addis Ababa.

99. It also results from the file that on 19 August 2019 the UNHCR Field Security Service assessed that the threat to the Applicant was real and recommended his relocation to Addis Ababa.

100. The applicable standard of proof in the disciplinary matter is clear and convincing evidence. The Appeals Tribunal has held that, “Disciplinary cases are not criminal. Liberty is not at stake [...] Clear and convincing requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt—it means that the truth of the facts asserted is highly probable.” (*Molari*, 2011-UNAT-164, para. 30).

101. The Appeals Tribunal has also specified that “clear” means that, “evidence of misconduct must be manifest as opposed to suppositional” and that “convincing” requires, “that this clear evidence be persuasive to a high standard.” By the same token, “Evidence, which is required to be clear and convincing, can be direct evidence of events, or may be of evidential inferences that can be properly drawn proof from other direct evidence.” (*Negussie*, 2020-UNAT-1033, para. 45) .

102. In this case, the facts have been established and there is a clear and convincing evidence that the Applicant committed fraud on purpose.

103. Finally, it has to be noted that it results from the file that there was also a lack of cooperation by the Applicant in the investigation, who –apart from any alleged obstacles in relation to the familial problems which prevented him from getting in contact with the investigators)- demonstrated he was not interested in being heard whenever requested and in justifying his acts. This is relevant not only because it could entail a violation of the specific obligation of staff members to cooperate with the investigations, but because the Applicant missed an occasion to give a full explanation of his acts.

(b) Whether the established facts constitute misconduct.

104. The Applicant’s conduct amounts to a breach of his basic obligations under staff regulations 1.2(b) and (g), staff rule 1.2(i), and the Strategic Framework for the Prevention of Fraud and Corruption.

105. In particular, UNHCR IOM No. 044/2013 – FOM 044/2013 Strategic Framework for the Prevention of Fraud and Corruption (the “Strategic Framework”) prohibits in paragraph 8.3:

Any act or omission, including misrepresentation or concealment of a material fact, that knowingly or intentionally misleads, or attempts to mislead, a party to obtain a benefit, whether directly or indirectly, whether for oneself or for a third party. Fraud could involve misappropriation of cash (such as fraudulent claims/disbursements) or other assets (such as fraudulent shipments, falsifying inventory records), or fraudulent statements (purposefully misreporting or omitting information) [...] Fraudulent acts constitute serious acts of misconduct, and include the following examples:

Forging of documents, preparing false entries in UNHCR systems or making false statements to obtain a financial or other benefit to which a person is not entitled.

106. The said definition requires three elements: (i) an act or omission that misleads or attempts to mislead a party; (ii) that the purpose be to obtain a benefit, whether directly or indirectly, whether for oneself or for a third party; (iii) fraudulent intent: the perpetrator must act knowingly or intentionally. The Applicant’s reactivation of the three refugees’ cases and the substitution of their photos on proGres meets all the elements in the definition; the Applicant’s actions fall squarely within the said definition of fraud.

107. First, by substituting the photos of refugees with photos of different individuals and reactivating the cases, the Applicant attempted to mislead UNHCR and ARRA (i.e., the officials who would look up the refugees’ cases on proGres) into believing that the impostors were the originally registered refugees and that their cases were active.

108. Second, the purpose of the Applicant’s misrepresentation of their identity and status could only be to obtain a benefit for the impostors, because, by posing as the refugees with active status, the three individuals were eligible for protection and assistance.

109. Third, for the reasons above mentioned, the evidence is clear and convincing that the Applicant acted with knowledge and intent to mislead (and even with a possible personal economic interest).

c. Whether the disciplinary measure is proportionate to the offence.

110. Given the nature and gravity of the Applicant's misconduct, the sanction is not absurd, unreasonable, or disproportionate.

111. In this case, the High Commissioner considered both aggravating and mitigating circumstances as well as the parity principle to determine the appropriate measure. As aggravating circumstances, the High Commissioner considered that the misconduct went to the heart of UNHCR's mission to find solutions for refugees and presented grave risks to confidence in the integrity of registration processes, which are of fundamental concern to donor and resettlement countries, and that the Applicant's conduct was repeated; as a mitigating circumstance, the High Commissioner considered that the Applicant had had a long and satisfactory service record with UNHCR.

112. UNHCR applies a zero-tolerance approach to fraud and corruption pursuant to the Strategic Framework. This means that there is no place for fraud or corruption in UNHCR and that, where established, such misconduct attracts severe disciplinary sanctions.

113. The Appeals Tribunal held in *Payenda*, 2021-UNAT-1156, at para. 38, that:

As a general rule, any form of dishonest conduct compromises the necessary relationship of trust between employer and employee and will generally warrant dismissal.

114. Accordingly, the Appeals Tribunal has consistently upheld the imposition of disciplinary measures involving the termination of employment in cases of fraud and other forms of dishonest conduct.

115. Moreso, the Tribunal is of the view that the Applicant's registration fraud for a single person alone renders the continuation of the employment relationship intolerable and warrants dismissal.

116. For this reason, the Tribunal finds it not necessary to deal with disciplinary count two, related to the minor offense of lack of cooperation of the Applicant in the investigation.

d. Whether due process was respected.

117. The Appeals Tribunal has held that the key elements of an Applicant's rights of due process are that he must be fully informed of the charges against him and be given the opportunity to contest them (*Applicant* 2013-UNAT-302, para. 37 and *Nadasan* 2019-UNAT-918, para. 56).

118. In this case, the Applicant was fully informed of the allegations against him in a detailed manner and the evidence supporting them; he was informed of his right to be assisted by counsel and he was given adequate opportunity to mount a defence; he was afforded adequate time and opportunity, even though he didn't always respond, to comment on the draft investigation findings and provide countervailing information.

119. The Applicant's contention in the application that his due process rights were violated because the identity and full testimony of the refugee who was interviewed on 29 September 2021 was not shared with him, is without merit.

120. In the circumstances of the case, not disclosing the identity of the witness and the record of interview were reasonable measures to protect the witness, a vulnerable refugee, in accordance with paragraph 7.4(c) of UNHCR/AI/2018/18, as well as to safeguard the integrity of an ongoing IGO investigation into allegations raised by the witness during the interview. In any case, the Applicant did not reiterate the contention in his closing submissions.

121. In the application, the Applicant called for the testimony of the three individuals who tried to misrepresent themselves by the time of reactivation.

122. The Tribunal notes that the evidence would have not added relevant elements to the investigation, which was based to univoque clear results of a technical assessment of the activities performed on the proGres information system and was complete as such; the testimonies of these people (probably interested, given the contest, in benefiting of a registration as refugee at whatever cost) would have added nothing to the outcome of the investigation nor to this judgment, lack of decisiveness of their statements.

123. The Applicant, in sum, has failed to establish any violations of due process that could impact the disciplinary measure.

Conclusion

124. In light of the foregoing, the application is dismissed.

(Signed)

Judge Francesco Buffa

Dated this 12th day of June 2023

Entered in the Register on this 12th day of June 2023

(Signed)

Eric Muli, Legal Officer, for
Abena Kwakye-Berko, Registrar, Nairobi