



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

TSIAMITROS

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Self-represented

Counsel for Respondent:

Charlotte Servant-L'Heureux, UNHCR
Rebecca Britnell, UNHCR

Introduction

1. The Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), filed an application contesting the decision not to consider him eligible for a temporary appointment through the Administrative Officer Profile Talent Pool (“Talent Pool”), at the P-2 level, because he did not have the required years of experience.

2. For the reasons stated below, the Tribunal finds that the contested decision was lawful and rejects the application.

Facts and procedural history

3. The Applicant joined UNHCR on 2 October 2017, as a Senior Administrative/Finance Assistant at the G-5 level in Kos, Greece. On 1 November 2019, he was transferred to Lesbos, Greece, occupying the same position at the same level. On 14 September 2020, he resigned. On 5 July 2021, he was rehired as a Senior Administrative Assistant at the G-5 level in Samos, Greece. From 12 March 2022 to 15 June 2022, he was on a mission in Warsaw. He then returned to his position in Samos. He separated from service on 31 January 2023.

4. While the Applicant was on a mission in Warsaw, a Human Resources Associate requested a temporary appointment for the Applicant as an Associate Administrative Officer at the P-2 level in Poland, starting as soon as possible and for a period of six months. In this connection, the Applicant was requested to apply to the Talent Pool and confirm once done.

5. The Applicant applied to the Talent Pool at the P-2 level and, on 24 May 2022, the Division of Financial and Administrative Management (“DFAM”) received his application. According to the information on record, the role of DFAM is to assess the applications to determine whether to grant functional clearance.

6. On 24 May 2022, the Applicant received an invitation to take a test in the context of his application to the Talent Pool. The test was available from 25 May 2022 to 27 May 2022 and was administered online by a proctoring company.

7. On 26 May 2022, the Applicant responded to the invitation email confirming that he had completed the test.

8. On 27 May 2022, the proctoring company informed DFAM that the Applicant had breached the rules of the test by using a desk calculator, instead of the computer calculator. As a result, he was not granted functional clearance.

9. On 8 June 2022, the Applicant sent an email to the Controller and Director of DFAM seeking clarifications on the alleged breaches of the test rules.

10. On 17 June 2022, DFAM informed the Applicant that his functional clearance had been reviewed and that they had concluded that the test was erroneously administered to him given that he lacked the required two years of experience at the G-6 level. DFAM also noted that “a separate minor issue was reported by the exam proctor, however, the more fundamental matter is mentioned above”.

11. On 18 June 2022, the Applicant replied expressing his disagreement with the decision not to consider him eligible for a P-2 appointment. Further exchanges on the matter took place on 1 July 2022, including whether the Applicant had breached the test rules by using a desk calculator.

12. On 27 July 2022, the Applicant requested management evaluation of the contested decision.

13. On 12 September 2022, the Applicant filed the present application.

14. On 14 October 2022, the Respondent filed his reply.

15. By Order No. 107 (GVA/2023) of 23 August 2023, the Tribunal instructed the Applicant to file a rejoinder.

16. On 4 September 2023, the Applicant filed a rejoinder.

17. By Order No. 151 (GVA/2023) of 10 November 2023, the Tribunal instructed, *inter alia*, the Respondent to file additional information by 17 November 2023, and the Applicant to file an English translation on 24 November 2023 of two documents initially submitted in Greek. It also ordered the parties to file thereafter their respective closing submission by 1 December 2023.

18. On 17 November 2023, the Respondent produced the information ordered by the Tribunal, and, on 24 November 2023, the Applicant submitted the requested English translations.

19. On 1 December 2023, the Respondent filed his closing submission, and on 8 December 2023, the Applicant filed his.

Consideration

Receivability

20. The United Nations Appeals Tribunal has held that it is the role of the Dispute Tribunal to adequately interpret and comprehend the application submitted by the moving party, whatever name the party attaches to the document, as the judgment must necessarily refer to the scope of the parties' contentions. Thus, the Dispute Tribunal has the inherent power to individualize and define the administrative decision challenged by a party and to identify the subject(s) of judicial review (*Fasanella* 2017-UNAT-765, para. 20).

21. Under art.8.1(c) of its Statute, the Tribunal has jurisdiction to review an administrative decision for which an applicant has previously requested management evaluation.

22. The Applicant refers in his application to the limited extension of his mission in Poland as well as to his applications and non-selections to "fast track positions" at the P-2 and P-3 levels in several countries around Ukraine. In his rejoinder, he also refers to the abolition of his post and his separation from service effective 31 January 2023.

23. However, in his request for management evaluation, the Applicant only challenged the determination that he was not considered eligible for a temporary appointment through the Talent Pool, at the P-2 level. This is, therefore, the only decision receivable and subject to judicial review before the Tribunal.

24. Any other decision to which the Applicant refers in his submissions is consequently not receivable *ratione materiae*.

Scope of judicial review

25. It is well established that the Secretary-General has broad discretion in matters of appointment and promotions and that, in reviewing such decisions, it is not the role of the Tribunal to substitute its own decision for that of the Administration (*Lemonnier* 2017-UNAT-762, paras. 30-31).

26. The Tribunal's role is limited to examine "(1) whether the procedures as laid down in the Staff Regulations and Rules were followed; and (2) whether the staff member was given fair and adequate consideration" (*Abbassi* 2011-UNAT-110, para. 23; *Majbri* 2012-UNAT-200, para. 35; *Ljungdell* 2012-UNAT-265, para. 30).

27. The Tribunal recalls that in selection and appointment matters, there is a presumption of regularity concerning the performance of official acts (*Krioutchkov* 2021-UNAT-1103, para. 29 and *Rolland* 2011-UNAT-122, para. 26). Accordingly, in a recruitment procedure, if the Administration is able to even minimally show that a staff member's candidature was given full and fair consideration, the burden of proof shifts to the candidate, who must then be able to show through clear and convincing evidence to have been denied a fair chance.

28. In view of the foregoing, and having reviewed the parties' submissions and the evidence on record, the Tribunal defines the issues to be examined in the present case as follows:

- a. Whether the applicable procedures were properly followed;
- b. Whether the Applicant was given full and fair consideration; and
- c. Whether the decision was tainted by any bias or extraneous factors.

Whether the applicable procedures were properly followed

29. The Tribunal notes that the Administrative Officer Profile, including positions at the P-2 level, to which the Applicant applied indicates the following:

Years of Experience/Degree level

For P2/NOB – [three] years relevant experience with Undergraduate degree; or [two] years relevant experience with Graduate degree; or [one] year relevant experience with Doctorate degree[.]

...

For positions at the P2 level:

Education: Public or Business Administration; Economics; or other relevant field.

Job Experience: Work experience in at least one of the following fields: Human Resources, Administration, Budget, Finance, and Procurement. Excellent computer skills, in MS Office applications, integrated ERP systems.

Language: Proficiency in English is required.

30. Since the Applicant's fact sheet indicates that he has two master's degrees, two years of relevant experience was required in his case to be eligible for a temporary appointment at the P-2 level.

31. Para. 15 of UNHCR/AI/2019/16/Corrigendum (Administrative Instruction on the Management of Temporary Appointments) provides that the granting of a temporary appointment is subject to the "required clearances, including reference checks as well as checks against the UN's ClearCheck SEA and SH database". Concerning the required clearances, a footnote in the Administrative Instruction refers to "visa, security and medical clearances, as applicable".

32. Functional clearance by DFAM is not explicitly foreseen in UNHCR/AI/2019/16/Corrigendum. However, according to the DFAM Functional Assessment Standard Procedures ("DFAM SOPs"), "all professional positions that include in their Job Description the management of financial resources or discharge

finance related functions are subject to functional assessment, including Administrative Officers”.

33. Evidence in the form of sworn declarations from the Controller and Director, DFAM, and the Chief, Strategic Management and Field Support Section, DFAM, also indicate that DFAM is responsible for granting functional clearance to, *inter alia*, applicants applying to appointments involving administrative and finance functions. It follows that all applicants to the Talent Pool require functional clearance by DFAM as part of the selection process.

34. According to sec. 6 of the DFAM SOPs, functional clearance involves, *inter alia*, the assessment of whether candidates have the required relevant experience.

35. Section 8 of said SOPs further provides that “relevant experience refers mostly to years of experience at the professional level and relevant experience at G6 and above level can be included for up to two years”. This is in line with the sworn declaration from the Controller and Director, DFAM, indicating that the practice of DFAM is to only consider experience at the G-6 level and above (or equivalent experience outside of the UN system) for positions at the P-2 level.

36. The Applicant, a staff member at the G-5 level, argues that “no G-6 experience [was] required” in the Talent Pool to which he applied. However, the Tribunal notes that it does require “two years of relevant experience” for candidates with a Graduate degree. In this respect, the Tribunal finds it reasonable for the Administration to only consider experience at the G-6 and above level as “relevant experience” for positions in the Professional category for candidates with prior working experience in the UN system.

37. The Tribunal, therefore, finds that the Applicant’s argument has no merit.

Whether the Applicant was given full and fair consideration

38. The Applicant claims that his experience was not properly assessed. Concerning his experience at UNHCR, he submits that he was acting as an Administrative Officer at the P-2 or P-3 level while on a mission in

Poland. Regarding his external experience, he submits that his experience as a Finance Consultant at the North Aegean Regional Office, as an Operations Support Officer at Save the Children International, and as a Field Support Officer at the European Union Agency for Asylum was not properly considered.

39. The Respondent submits that the Applicant does not have two years of relevant experience, both in and outside the UN system, for an appointment at the P-2 level via the Administrative Officer Profile. In support of this argument, he produced a sworn declaration of the Chief, Strategic Management and Field Support Section (“SMFSS”), Office of the Controller, DFAM, about the functional assessment of the Applicant’s candidature.

40. In her sworn declaration, the Chief, SMFSS, indicates that her role includes “management of the functional clearance administration for Finance and Administration positions in the Professional staff category at UNHCR globally”, and that she leads the team that administers technical review of profiles shared with DFAM from the Division of Human Resources (“DHR”) as well as written assessments for functional clearance for the Finance and Administration function.

41. The Chief, SMFSS, further states that following an initial technical review of the Applicant’s profile, she reviewed each of the Applicant’s past experiences as he had described in his application and concluded that he had 13 months of relevant experience, whereas functional clearance at the P-2 level requires two years of experience at the G-6 level or above.

42. With regards to the way the assessment is conducted, the Tribunal notes that sec. 6 of the DFAM SOPs provides that profiles of candidates are compared to the requirements of Job Descriptions for the functional assessment.

Experience at UNHCR

43. The Respondent submits that, at the relevant time, the Applicant’s four years of experience was at the G-5 level and, therefore, he did not meet the experience required for functional clearance for administrative and finance posts at the P-2 level.

44. A review of the Applicant's application shows that, indeed, he had around four years of experience in UNHCR serving in different offices in Greece including Samos, Lesbos and Kos. However, all his experience was at the G-5 level, which was not considered relevant for the functional clearance.

45. Although the Applicant argues that his grade did not reflect the level of responsibilities that he had throughout his career with UNHCR, the Tribunal finds it reasonable for DFAM to consider the official grade of the positions held for its functional assessment as it reflects, in principle, the nature and complexity of the tasks required for a job. To rule otherwise would open the door to uncertainty.

46. With respect to the Applicant's mission in Poland, the Tribunal notes that in his letter of interest the Applicant indicated that "[s]ince 14 March 2022 [he] had been deployed in ... mission to Warsaw Country Office as Administrative Officer" but did not include it as a separate experience in the work experience section. He only made a brief reference to it within his experience as a Senior Administrative Assistant at the G-5 level.

47. Therefore, the Tribunal finds that the Applicant did not properly reflect his experience as an Administrative Officer at either the P-2 or P-3 level in his application. In light of this, he cannot claim that this experience was not properly considered.

48. Despite the above, the Tribunal notes that the Applicant's mission in Poland lasted for three months (mid-March to mid-June 2022). It follows that even if this experience had been considered, it would have only added three months to the calculation of his relevant experience.

External experience

49. The evidence shows that the Applicant's 13-month experience as a Finance Consultant with the North Aegean Regional Office was considered relevant.

50. However, the Applicant's experience as an Operations Support Officer at Save the Children International was not considered relevant for functional clearance. In this respect, the Chief, SMFSS, stated in her sworn declaration that:

When [the Applicant] worked as an Operation Support Officer for 12 months with Save the Children, his duties consisted of logistics, procurement, inventory management, admin/finance and human resources. [She] noted that the nature of the finance and administrative duties appeared to be relevant. However, the duties were commensurate with [the Applicant's] responsibilities at the G-5 level. For example, being the custodian of the office petty-cash, [verifying] that financial transactions and reconciliations are processed in line with relevant policies and procedures, [maintaining] financial records and issuing vouchers for requisitions of goods and services are all tasks that would be accomplished at the G-4 or G-5 level by UNHCR's admin/finance staff[.] Therefore, while some of [the Applicant's] administrative and finance duties in this role were relevant, they did not demonstrate the level of autonomy and complexity of tasks, including supervisory, decision-making, problem-solving duties typically observed at the G-6 level and above. As such, this experience was not considered to meet the experience required at the G-6 level and above, for functional clearance for P-2 level positions.

51. Similarly, his experience as a Field Support Officer at the European Union Agency for Asylum was not considered relevant. In this respect, the Chief, SMFSS, indicated that:

The description of [the Applicant's] duties [in this role] focused on asylum and reception operations such as processing applications for international protection, contract management and reporting. His duties did not include administrative or finance functions and this experience was not found relevant.

52. Apart from the above, the evidence on record shows that the Applicant's other external experiences with the International Organization for Migration, the European Union Agency for Asylum, Christos Anagnostou and Inkhouse were assessed by DFAM but were not considered relevant. Consequently, they were not included in the calculation to determine if the Applicant had two years of relevant experience.

53. DFAM assessed that, in total, the Applicant had 13 months of relevant experience. Therefore, even considering the Applicant's three-month mission in Poland, he would have had 16 months of relevant experience. This falls short of the two years of experience required for functional clearance at the P-2 level.

54. In light of the above, the Tribunal finds that the Applicant's candidacy was given full and fair consideration.

Whether the decision was tainted by any bias or extraneous factors

55. The Applicant claims that since he was eligible for a mission in Poland, which according to him was at the P-2 or P-3 level, he was functionally cleared for a post at the P-2 level and should have been eligible for the temporary appointment. However, the evidence on record shows that he was deployed at his G-5 personal level and according to sec. 3 of the DFAM SOPs, "candidates deployed on mission status do not require functional clearance". Therefore, the Applicant's argument is rejected.

56. The Applicant argues that he was invited to the functional clearance test in August 2023. He indicates that his experience did not sufficiently change between September 2022 and July 2023 implying that he was eligible for the temporary appointment in September 2022. However, a review of his 2023 application shows changes in the dates, duration and/or position titles of three of his periods of employment compared to his 2022 application which, as the Respondent noted, caused some of his experience to be counted twice adding 11 months to his actual experience.

57. In any event, the assessment of DFAM of the Applicant's 2023 application does not prove that there were improper motives in its assessment of the Applicant's 2022 application or that such assessment was unlawful.

58. In summary the Tribunal finds that in the present case, the proper procedures were followed, the Applicant's candidacy was given full and fair consideration, and the contested decision was not tainted by any bias or extraneous factors.

59. Consequently, the Tribunal finds no basis for awarding the Applicant the requested remedies.

Conclusion

60. In view of the foregoing, the Tribunal DECIDES to reject the application in its entirety.

(Signed)

Judge Sun Xiangzhuang

Dated this 28th day of December 2023

Entered in the Register on this 28th day of December 2023

(Signed)

René M. Vargas M., Registrar, Geneva