



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** René M. Vargas M.

SANTAMBROGIO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**

Self-represented

**Counsel for Respondent:**

Jan Schrankel, UNHCR

Marietta Hristovski, UNHCR

## **Introduction**

1. The Applicant, a staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), filed an application contesting her non-selection for the G-7 position of Senior Resource Management Associate, Addressing Sexual Exploitation, Abuse and Sexual Harassment (“Addressing SEA and SH”) in Geneva, advertised under Job Opening No. 38433 (“JO 38433”).

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

## **Facts and procedural history**

3. The Applicant joined UNHCR in 2011 on a temporary appointment as a Senior Finance Assistant at the G-5 level in Budapest. Her temporary appointment ended on 1 January 2012. On 2 February 2015, she was rehired on a temporary appointment as a Human Resources Assistant at the G-4 level in Geneva, Switzerland and, on 1 May 2015, she was hired on a fixed-term appointment to the same position. In 2016, she was promoted to Senior Human Resources Assistant at the G-5 level and, in 2019, she was promoted to Human Resources Associate at the G-6 level. She currently serves in the Division of Human Resources (“DHR”), Local Assignment and Fast Track Unit in the Assignments Management Section.

4. On 13 July 2022, the G-7 position of Senior Resource Management Associate, Addressing SEA and SH in Geneva was advertised under JO 38433.

5. Seventeen candidates including the Applicant applied for the position. Out of these candidates, three candidates were shortlisted and invited for a written test and an interview: two female candidates, including the Applicant, from Group 1 and one male candidate from Group 2. Group 1 comprised current GS staff members holding an indefinite or fixed-term appointment and serving in the country of the vacancy at the grade of the position or one grade below or above. Group 2 comprised other candidates with UNHCR experience.

6. On 26 September 2022, the written test took place. The candidates were informed that the written test and the interview represented 30% and 70% of the total score, respectively. The test consisted of three questions (10 points maximum per question for a total maximum of 30 points).

7. On 6 October 2022, the Hiring Manager (Mr. A. D.) shared the scoring criteria with the Test Administrator who was the colleague in charge of administering the test and ensuring its anonymity. That same day, the Test Administrator shared the scoring criteria and the anonymized written tests with the other grader, the External Relations Officer, Addressing SEA and SH (Ms. N. A. A.), as well as with the Senior Coordinator, Addressing SEA and SH (Ms. D. G.), who did not grade the tests.

8. On 10 October 2022, the Test Administrator shared the anonymized written tests and the scoring criteria with the Hiring Manager.

9. On 11 October 2022, the Hiring Manager and Ms. N. A. A. returned their scoring inputs to the Test Administrator after individually grading the anonymized written tests.

10. The same day, the Test Administrator released the candidate's names after consolidating the scores received from the Hiring Manager and Ms. N. A. A. The Applicant scored 18.8 out of 30 points, the other female candidate scored 14.5 points and the male candidate scored 26.3 points.

11. On 14 October 2022, the interviews took place. Out of the three candidates who sat for the test, only the Applicant and the male candidate were available for the interview. Both candidates were asked the same four questions. The interview panel consisted of the Hiring Manager, Ms. N. A. A and Ms. D. G.

12. The Applicant's overall score for the test and the interview was 63%. The male candidate's overall score for the test and interview was 89%. The interview panel then recommended the male candidate as the only suitable candidate for the position.

13. On 15 November 2022, during the Assignments Committee (“AC”) review of the recruitment, the AC members sought clarifications from the Hiring Manager concerning the criteria used for grading the written tests, and the differences in scores awarded by the two graders of the written tests.

14. On 16 November 2022, the Hiring Manager replied to the AC request as follows:

We prepared a general guide and reference on what key issues or words to identify whilst reading the candidates’ answers, which I share with you here. The guide provides general advice for the purpose of the evaluation to coherently be able to assess and score in the context of drafting quality, analytical skills, and knowledge and technical skills, but beyond this, and given that this was not a True/False or multiple-choice exercise, one grader may value a demonstration of a particular drafting skill, jargon usage, or expression of creativity over another, which adds an element of subjectivity and scope for differences in the scores.

While in the end there was some discrepancy in terms of the scoring between the two graders of the exercise, in all cases the scores follow a clear pattern in terms of either an upward or downward slope. As this exam was administered anonymously, after the scoring exercise and prior to receiving the names of the candidates, I asked the exam administrator to confirm no significant score inconsistencies existed between the graders. The administrator did not raise any concerns regarding the scores prior to releasing the names of the candidates, noting as well that finally both of the graders also scored the candidates in the same order in terms of highest to lowest ranking. A smaller gap between the scores in this specific scenario would not alter the final assessment.

The exam was followed by a standard Competency Based Interview. The panelists looked for specific competences to be demonstrated by each candidate in each question. This was agreed at the time of the composition of the interview questionnaire.

15. In its session on 22 November 2022, the AC members reviewed the additional information provided by the Hiring Manager and noted that the document containing the “general criteria for correction was not dated or signed”. However, the committee unanimously agreed to endorse the Manager’s recommendation for the position. The AC minutes were signed by the Secretary and the Chair of the AC on 24 November 2022.

16. On 30 November 2022, via a broadcast email, the “Summary of Decisions of the Deputy High Commissioner – 16/2022” was issued. The summary included the G-7 position of Senior Resource Management Associate, Addressing SEA and SH, indicating that the selected candidate was from Group 2 and that his/her name would be released upon acceptance of the offer.

17. On 26 January 2023, the Applicant requested management evaluation of her non-selection (“the contested decision”).

18. By letter dated 16 March 2023, the Applicant received the outcome of her request for management evaluation. The contested decision was upheld.

19. On 23 May 2023, the Applicant filed the present application.

20. On 28 June 2023, the Respondent filed his reply.

21. By Order No. 110 (GVA/2023) of 28 August 2023, the Tribunal directed the Applicant to file a rejoinder by 27 September 2023, and the parties to explore resolving the dispute amicably, instructing them to revert to the Tribunal in this respect by 6 October 2023.

22. On 26 September 2023, the Applicant filed a rejoinder.

23. Following an extension of the initial deadline, on 13 October 2023, the parties informed the Tribunal that they had not been able to amicably resolve the dispute.

24. On 27 February 2024, the present case was assigned to the undersigned Judge.

25. By Order No. 45 (GVA/2024) of 1 May 2024, the Tribunal directed the parties to file their respective closing submission, which they did on 15 May 2024.

## **Consideration**

### *Receivability*

26. The United Nations Appeals Tribunal (“UNAT” or “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 (see *Fasanella* 2017-UNAT-765, para. 20).

27. The Tribunal notes that in her application, the Applicant requests a change of policy, namely, the removal of a part of para. 34 of the Recruitment and Assignments Policy (UNHCR/HCP/2022/07) ("RAP"), which provides as follows:

In case of a conversion from National Officer or General Service categories, the assignment should not take place in the same country where the staff member is currently serving as NO or GS (irrespective of nationality).

28. In this respect, the Tribunal recalls that its jurisdiction is clearly set out in art. 2 of its Statute and that "making recommendations for legislative amendments is a clear excess of jurisdiction" (see *Latimer* 2019-UNAT-901, para. 51).

29. Consequently, the Tribunal finds that to the extent the Applicant challenges the legal framework of UNHCR, and requests the removal of a part of para. 34 of the RAP, her application is not receivable *ratione materiae* in this respect.

30. The Tribunal determines that the application is only receivable concerning the decision not to select the Applicant for the G-7 position of Senior Resource Management Associate, Addressing SEA and SH.

#### *Scope of judicial review*

31. 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 (see *Lemonnier* 2017-UNAT-762, paras. 30-31).

32. 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" (see *Abbassi* 2011-UNAT-110, para. 23; *Majbri* 2012-UNAT-200, para. 35; *Ljungdell* 2012-UNAT-265, para. 30).

33. The Tribunal recalls that in selection and appointment matters, there is a presumption of regularity concerning the performance of official acts (see *Krioutchkov* 2021-UNAT-1103, para. 29; *Rolland* 2011-UNAT-122, para. 26). Accordingly, in a recruitment procedure, if the Administration minimally shows 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 of promotion (see *Flavio Mirella* 2023-UNAT-1334, para. 61).

34. 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;
- c. Whether the decision was tainted by any bias or extraneous factors; and
- d. Whether the Applicant is entitled to any remedies.

*Whether the applicable procedures were properly followed*

35. The Tribunal refers to the Administrative Instruction on Recruitment and Assignment of Locally Recruited Staff ("RALS") (UNHCR/AI/2020/1/Rev.2), which sets out the procedure for filling vacancies in the General Service ("GS"), Field Service ("FS") and National Professional Officer ("NPO") categories.

36. The RALS applies to the present case as it concerns "individuals currently serving on, eligible for, or interested in applying to positions" in the GS category and to staff members involved in the recruitment process.

37. The Applicant alleges that the selection process was not properly conducted for several reasons.

The alleged forgery of the document containing the evaluation criteria

38. The Applicant asserts that the Hiring Manager “forged and prepared an *ad hoc* file” listing the evaluation criteria over a month after the test took place. She argues that the metadata of the document indicates that it was created by the Hiring Manager on 16 November 2022, whereas the test took place on 26 September 2022. This indicates, in her view, that the evaluation criteria were not decided in advance and that the evaluators assessed the test without any pre-established parameters, in contradiction to para. 53 of the RALS.

39. The Respondent refutes the Applicant’s allegation that the scoring criteria were decided *post facto*.

40. The RALS at para. 53 provides that:

When a written test is applied, all shortlisted candidates must be given the opportunity to sit for the test. The test should be anonymous and rated by at least two staff members, preferably members of the future interview panel. *The criteria used for assessing the test must be decided in advance*, as well as whether the test will be eliminatory or complementary to the interview (emphasis added).

41. According to the evidence on record, the Hiring Manager’s sworn declaration, and his email exchanges with the Test Administrator, the Hiring Manager shared the first version of the scoring criteria document on 6 October 2022. The Test Administrator shared the three candidates’ anonymous tests and the scoring criteria with the other grader (Ms. N. A. A.) on 6 October 2022 and with the Hiring Manager for grading purposes on 10 October 2022. The two test graders applied the same scoring criteria to the three candidates.

42. The Tribunal recalls that the determination of whether the Applicant was denied procedural fairness must rest upon the nature of any procedural irregularity and its impact (see *Sarwar* 2017-UNAT-757, para. 87). In this respect, the Tribunal notes that while the written test took place on 26 September 2022 and the scoring criteria were only determined on 6 October 2022, this was still in advance of the graders receiving the anonymous tests for their marking.



43. Furthermore, the wording in para. 53 of the RALS did not expressly require the scoring criteria to be decided in advance of the candidates undergoing the written tests, and the candidates were informed that the written test and the interview represented 30% and 70% of the total score respectively before the written test.

44. Therefore, the Tribunal determines that the candidates did not suffer any prejudice and that the selection process, in this respect, was not improperly conducted.

45. Concerning the Applicant's claim that the metadata of the evaluation criteria document indicates that it was created on 16 November 2022, the Tribunal refers to the explanation provided by the Hiring Manager in this respect.

46. In his sworn declaration, the Hiring Manager explains that he worked on the grading criteria both at home, on his personal laptop, and in the office, on his work laptop and that, as a result, there were two copies of the document in both laptops. He further indicates that on 16 November 2022, he sent an email to the AC in response to their request for clarifications from the Hiring Manager concerning the criteria used for grading the written tests and the differences in scores awarded by the two graders of the written tests.

47. The Tribunal further notes that the version of the document containing the scoring criteria shared by the Hiring Manager with the Test Administrator on 6 October 2022 and with the AC on 16 November 2022 are the same, except for the words "*weighed equally*" in the following sentence "[t]he scores should be allocated in line with the following general criteria, *weighed equally*". These words were not included in the version shared with the AC on 16 November 2022.

48. In this respect, the Hiring Manager explains in his sworn declaration that he may have inadvertently shared an earlier version of the scoring criteria document on 16 November 2022 with the AC.

49. In any event, the difference in the scoring criteria document did not negatively impact the selection process as the correct version of the document including the words “weighed equally” was shared with the Test Administrator before the release and grading of the tests. Furthermore, as the tests and their evaluations were anonymous, all the candidates received the same treatment. Hence, the procedure was not flawed nor was the Applicant’s right to a fair consideration affected.

50. The Tribunal determines that the evidence does not support a finding that the scoring criteria document was forged, or that the evaluation of the written tests was flawed. On the contrary, the evidence on record demonstrates that all candidates, including the Applicant, were given a fair opportunity to compete.

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

The alleged poor drafting of the scoring criteria

52. The Applicant asserts that the scoring criteria were poorly written. In particular, she claims that “the criteria narrative was vague, without clear metrics allowing an objective and valuable comparison of candidates’ responses, and without parameters to explain the results”. She adds that “the criteria should have included an evaluation grid or a benchmarking answer to ensure a fair and equitable grading process from the two test graders”.

53. In this respect, the Appeals Tribunal has held that “the Administration has wide discretion to choose the best evaluation method in order to assess which candidates are most qualified for selection”, and that the Tribunal should not assume the role of deciding which evaluation method should have been used (see *Recan* 2017-UNAT-802, para. 22).

54. Similarly, the Appeals Tribunal has ruled that the “mere fact that [a candidate] disagrees with the evaluation method and his personal grade does not mean that the evaluation method applied by the interview panel was unreasonable and unfair. [A candidate] cannot substitute his own evaluation method for that of the Administration” (see *Wang* 2014-UNAT-454, para. 42).

55. The Tribunal has also stated that “[a]bsent any element of flagrant unreasonableness, the Tribunal will not interfere with such choices and the content of an assessment” (see *Mashayekhi*, UNDT/2018/091, para. 35).

56. After reviewing the “Criteria for Exam Grading” prepared by the Hiring Manager, the Tribunal finds that they are not arbitrary, discriminatory, or irregular.

57. Although the quality of the drafting of the scoring criteria may not be free from criticism, the evidence on record concerning the selection process indicates that said evaluation criteria have no fundamental defects.

58. The Tribunal, therefore, determines that the Applicant’s argument is unfounded.

#### The composition of the interview panel

59. The Applicant argues that the interview panel was non-compliant with paras. 55b) and c) of the RALS. In particular, she claims that the interview panel was composed of three members, but that there was no member from human resources and no diversity in functions as all panellists worked at the same service.

60. The RALS states in its paras. 55b) and c) that the following applies to interviews (emphasis added):

- b. Interviews shall be conducted by an interview panel composed of a minimum of three members, a majority of whom must be holding UNHCR Indefinite or Fixed Term Appointments. *The panel should include a representative from HR/Admin, whenever possible* and may also include panel members from other UN organizations, affiliate workforce or external experts. The manager of the position or a person designated by the manager must be represented on the interview panel;
- c. Interview panels should be *diverse in terms of function and gender, when possible*.

61. The Respondent submits that the above provision does not require an HR/Admin representation in all circumstances and in every interview panel. He adds that the composition of an interview panel that is not diverse in function and/or

that does not include an HR/Admin staff does not render the selection process unlawful or unfair.

62. The Tribunal notes that neither the inclusion of a representative from HR/Admin nor the diversity in terms of function and gender is mandatory as the RALS reads “whenever possible” and “when possible”.

63. Concerning the power of directory and mandatory provisions, the Tribunal refers to *Sarwar* 2017-UNAT-757, para. 87, where the Appeals Tribunal made the difference between them determining that “[n]on-compliance with directory provisions [as in the present case] normally will not result in illegality”.

64. The Tribunal, therefore, rejects the Applicant’s argument.

*Whether the Applicant was given full and fair consideration*

65. The RALS provides at para. 9 as follows:

Candidates will be assessed against position requirements set out in the job description and Operational Context (where applicable) on the basis of their qualifications, experience and performance as well as on the results of any written tests or interviews, as may be required.

66. The Tribunal notes that out of the seventeen candidates that applied for the position, the Applicant was one of three candidates shortlisted for the assessment. Three candidates including the Applicant sat for the written test. The Applicant scored 18.8 out of a total of 30 points (63%), the other female candidate scored 14.5 points (48%) and the male candidate scored 26.3 points (88%).

67. The three candidates were then invited to the interview, but only the Applicant and the male candidate were interviewed as the other female candidate was not available.

68. The Tribunal reviewed the Recommendation Memorandum to the AC dated 31 October 2022, which describes the selection process, and notes the following in respect of the Applicant’s interview:

Ms. Santambrogio's interview answers generally demonstrated a commitment to using her professional expertise in human resources as a base to further expand her skillset and experience into finance and administration. However overall, the Panel found that not all elements of each question were answered. It was additionally felt by all Panel members that the answers provided were limited in perspective, in that they did not sufficiently acknowledge issues like team dynamics, teamwork, and the role of the individual staff member in a team. Furthermore, the Panel noted that Ms. Santambrogio's responses and examples focused primarily on her knowledge and competence in human resource affairs and activities, whilst the areas of administration, programme, and finance management were not accounted for or otherwise presented by the candidate. Overall based on the interview, the Panel felt that the candidate did not fully demonstrate that she possesses the full scope of competencies required for this position, particularly as concerns administration programme and finance.

Additionally, Ms. Santambrogio scored a 63% on the written exam. Whilst the exam was not eliminatory, the candidate's exam performance as well demonstrated the need for further development of the admin/finance/programme skillset management prior to undertaking a G7 Resource Management Associate function. In particular, the candidate scored an average of 5.5/10 on question 3 concerning budget preparation and management, which indicated the need for further technical knowledge and skill development in this critical area of the work.

In light of the current team capacity and specific needs in the management of budget issues and financials in particular, and as demonstrated by the combined written exam and interview results (63% overall, with 63% on the written exam, 63% in interview), Ms. [...] Santambrogio was found to have only partially demonstrated to possess all the competencies and skills required to perform in the position and is therefore found unanimously to be not suitable by the Panel.

69. The same Memorandum provides the following in respect of the male candidate's interview:

Throughout the interview Mr. [...] overall provided relevant examples through which he was able to demonstrate a cooperative and team-oriented approach. The candidate clearly demonstrated his motivation, and successfully shared direct and relevant examples to showcase that he possesses the competencies under examination by the questions. The Panel took specific note of Mr. [...]’s existing expertise in matters concerning administration and finance, gained

in his previous functions and particularly in his roles as [...]. His examples indicated fluency over the major financial tasks and issues and assured the Panel that he would be able to immediately take ownership of the portfolio at hand. This is especially important as the team does not currently have his expertise and capacity. [...] Lastly, the Panel noted through discussion that Mr. [...] would bring important diversity to the Office of the Senior Coordinator as a male colleague and send an important message from an organizational perspective to all colleagues on the importance of men to be fully engaged and committed in combating sexual misconduct in UNHCR, a topic in which male participation remains inadequate globally. Finally, the Panel appreciated the thoughtful and reflective approach of this candidate which is required on a team which is looking at the challenging issue of sexual harassment. The Panel also noted specifically Mr. [...]’s strong performance on the written exam (88%). The Panel concluded that the highest scoring candidate, in the written exam and interview (89% overall), Mr. [...], is the only suitable candidate for the position as he fully demonstrated to possess the overall and full scope of qualification, experience, competencies and skills required for the position, including in administration, programme, and finance. This is clearly established both through the candidate’s results in the technical written exam (88%) and the interview performance (89%), Mr. [...] overall score is 89%.

70. Following the interviews, the interview panel unanimously found that the male candidate was the only suitable candidate for the position. The Applicant was consequently not recommended for the position.

71. In her application, the Applicant submits that allowing a staff member in the Professional category (Group 2) to apply for a lower category and compete with the staff member in the GS category (Group 1) is unfair and lacks any legal basis.

72. The Applicant, however, does not indicate any legal provision that the decision-maker had allegedly breached. On this issue, the Tribunal finds that the RALS at para. 35b.v. specifically refers to UNHCR staff members in the International Professional category who are considered in Group 2 when applying for GS positions, as in the present case.

73. Therefore, the Tribunal deems that there is no restriction in this respect.

74. In light of the above and based on the evidence on record, the Tribunal finds that the Applicant was given full and fair consideration.

*Whether the decision was tainted by any bias or extraneous factors*

75. The Tribunal recalls that it is for a party who alleges that ulterior motives tainted a decision to substantiate this claim by way of evidence (see *Ross* 2019-UNAT-944, para. 25; *Morsy* 2013-UNAT-298, para. 23).

76. The Applicant claims that the panellists were biased against her. However, she failed to provide evidence to substantiate her allegation. Consequently, the Tribunal finds that the Applicant's claim has no merit.

77. In light of the above, the Tribunal concludes that the Applicant failed to demonstrate that the contested decision was unlawful.

*Whether the Applicant is entitled to any remedies*

78. In her application, the Applicant requests the Tribunal to order, *inter alia*, a) rescission of the contested decision and b) monetary compensation.

79. Since the contested decision is deemed lawful, the Applicant is not entitled to any remedies.

**Conclusion**

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

*(Signed)*

Judge Sun Xiangzhuang

Dated this 12<sup>th</sup> day of July 2024

Entered in the Register on this 12<sup>th</sup> day of July 2024

*(Signed)*

René M. Vargas M., Registrar, Geneva