



**Before:** Judge Sean Wallace  
**Registry:** Nairobi  
**Registrar:** René M. Vargas M., Officer-in-Charge

DALAL

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**JUDGMENT**

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**Counsel for Applicant:**  
Self-represented

**Counsel for Respondent:**  
Mariette Hristovski, UNHCR  
Jan Schrankel, UNHCR

## **Introduction**

1. The Applicant is a former Protection Associate/Head of Legal Unit at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Israel.
2. On 25 September 2023, the Applicant filed an application contesting his non-selection for the position of Protection Associate/Head of Legal Unit on a fixed-term basis at UNHCR in Tel-Aviv.
3. On 1 October 2023, the Respondent filed his reply. He submits that the contested decision was rescinded by the Administration, and that the application is not receivable and is without merit. The Respondent filed two annexes *ex parte*.
4. After *in camera* review of the *ex parte* annexes, the Tribunal ordered certain redactions and, on 30 May 2024, the Respondent filed redacted versions of the requested documents.
5. On 13 June 2024, the Tribunal held a case management discussion during which the parties confirmed that there was no need for further evidence, for witness testimony or a hearing, and that they will not file closing submissions.
6. Accordingly, by Order No 68 (NBI/2024), issued on 13 June 2024, the Tribunal announced that it would proceed to consider the case on the papers submitted.
7. On 16 June 2024, the Applicant submitted a “motion requesting to order the Respondent to provide necessary information”.

## **Facts**

8. On 8 November 2022, UNHCR advertised position No. 10014653, Protection Associate, at the G-6 level, in Israel. The Applicant applied for the position timely.
9. The interview for this position was held on 12 December 2022.

10. Between 12 and 15 December 2022, five short-listed external candidates including the Applicant underwent a written test. The written test had two questions, one to be answered in English and the other one in Hebrew.

11. By Memorandum dated 16 January 2023, the UNHCR Senior Protection Officer in Israel recommended a candidate for appointment to the position.

12. On 21 February 2023, the UNHCR Assignments Committee reviewed the selection process and agreed with the manager's recommendations to select candidates by ranked order, with the Applicant in third place.

13. On 29 March 2023, the Applicant was advised through Workday, the recruitment platform of UNHCR, that he was not selected for the position.

14. On 31 March 2023, the Applicant's temporary assignment ("TA") expired, and he was separated from the Organization.

15. On 7 April 2023, the applicant requested management evaluation of the contested decision.

16. By email dated 18 May 2023, the Applicant wrote to the UNHCR Representative in Israel requesting information regarding the selection committee, and the identity and professional credentials of the candidate selected for the position.

17. In his reply dated 24 May 2023, the UNHCR Representative referred to the Recruitment and Assignment Policy of UNHCR, dated 1 October 2022, prohibiting sharing of identifying information of candidates with unsuccessful candidates, and entitling only internal candidates to request documentation concerning candidates' applications. Due to his status as an external candidate, the Applicant was not entitled to information related to the selection process for the position.

18. On 12 June 2023, the UNHCR Deputy High Commissioner wrote to the Applicant that, after management evaluation, she “concluded that the selection process for the position suffered from procedural shortcomings [and that] UNHCR Israel will readvertise the position [for which he] will have the opportunity to reapply if [he] so wishes”.

19. On 13 June 2023, the Applicant wrote to the Regional Bureau for Middle East and North Africa (“MENA”), UNHCR, requesting information about the identity and professional credentials of the selected candidate and details on the recruitment process.

20. The same day, on 13 June 2023, the Regional Bureau for MENA replied to the Applicant that the Recruitment and Assignments Policy (“RAP”) of UNHCR (UNHCR/HCP/07) does not “foresee sharing of documentation with unsuccessful external candidates”.

21. The Applicant also wrote to a UNHCR Senior Human resources Partner on 14 June 2023, requesting if the two other recommended candidates met the languages requirements of the job description, namely: “Knowledge of English and Hebrew languages, and working knowledge of another relevant UN language”.

22. The following day, on 15 June 2023, a UNHCR Senior Human Resources Partner *inter alia* replied to the Applicant that “[he] was not in a position to share personal information regarding other candidates”.

23. From 27 June 2023 to 11 July 2023, the position was readvertised.

24. By email dated 27 June 2023 to the Applicant, the Office of the Deputy High Commissioner recalled that the Regional Bureau for MENA “exceptionally provided [him] with redacted versions of the manager’s recommendation and the [Regional Assignments Committee (“RAC”)] minutes [and that] [d]ue to data protection and privacy considerations, UNHCR [was] not in a position to disclose unreacted versions of these documents”.

25. On 28 June 2023, the Applicant again wrote to the Office of the Deputy High Commissioner requesting information on the credentials and assessment of the two other candidates. The Office reiterated that no more information would be provided for the reasons previously explained, and that the rescission of the contested decision rendered any appeal moot and not receivable.

**Parties' submissions**

26. The Applicant's principal contentions are:

- a. The selection panel failed to carry out its function legally, and the Applicant raised matters relating to his non-selection for the post and the irregularity in the selection process. The interview for the position did not relate to professional questions regarding the functions of Head of Legal Unit;
- b. The Applicant was not given fair consideration in the recruitment process. The job announcement included: "Language Requirements: Knowledge of English and Hebrew languages and working knowledge of another relevant UN language." As noted in the contested decision, the other shortlisted candidates only "had a legal background and [were] fluent [in] or [natively spoke] Hebrew". The Applicant is fluent in three languages, including Arabic, one of the official and working languages of the United Nations, which is also essential for the proper and efficient execution of the required work;
- c. UNHCR is committed to multilingualism, and Arabic is essential for the execution of UNHCR Legal Unit's operations in Israel. Most refugees registered with UNHCR operations in Israel speak Arabic, and the Legal Unit is responsible in terms of "keeping the persons' records intact, identifying relevant vulnerable persons for potential resettlement solution, and coordinating with the refugees and organizations ... as well as with authorities in Israel when resettlement and departure become feasible". Specifically, the selection process failed to consider Arabian candidates who speak Arabic with no consideration for inclusion and diversity. Accordingly,

the non-selection of the Applicant for this position is unfair, discriminatory and unlawful;

d. The selection panel misrepresented his understanding of the position, his performance at work, his working relations with colleagues;

e. As an internal candidate, his familiarity with UNHCR was disregarded. The diversity and inclusion policy of UNHCR, stipulated in its RAP, was ignored. The staff recruitment policy of UNHCR, providing that preference shall be given to competent internal candidates in accordance with paragraphs 17 and 136 of the RAP, was equally ignored. Based on his professional legal experience and performance, the Applicant, who was on a TA on the same functions and grade as the position, was the suitable candidate fulfilling the requirements for it. Nevertheless, another candidate was recommended;

f. Given the circumstances and the evidence of bias from the hiring manager, the Applicant did not consider the option of reapplying for the same position; and

g. The Tribunal should find that the Applicant's rights were violated as a result of his non-selection, and award him two and a half year's net base salary in compensation.

27. The Respondent's principal contentions are:

a. The application should be dismissed as it is not receivable and without merit. The contested decision was rescinded, did not produce any effect and cannot be legally challenged;

b. The position was readvertised on 27 June 2023, but Applicant did not reapply. The Applicant was already advised of his non-selection for the position and of the non-renewal of his TA expiring on 31 March 2023. He did not search earlier for a new job, despite knowing that he was holding a TA

limited to 364 days with no expectancy of renewal. At the time of the application, the contested decision had produced no legal effect;

c. Contrary to the Applicant's allegations, the selection process did not suffer from bias or discrimination or failure to consider diversity and inclusion. The Applicant was not an UNHCR internal candidate entitled to consideration on a preferred basis. Paragraph 8 of the RAP provides that only staff members holding an indefinite or fixed-term appointment are considered internal applicants. Despite his status as an external candidate, the Applicant exceptionally had access to information about the recruitment process and was given a redacted version of the recommendation memorandum, including the evaluation of his candidacy in the RAC minutes;

d. Two of the three recommended candidates had Arab origins and indicated on their application for the position that their mother tongue was Arabic. Therefore, the Applicant's complaint of discrimination based on his origins has no factual basis;

e. The Applicant has not demonstrated how his rights are affected by a rescinded decision, nor has he shown that he is still suffering any damages because of the rescinded decision for which the Tribunal can award relief; and

f. Article 10.6 of the Tribunal's Statute provides that the Tribunal may award costs when it determines that a party has manifestly abused the proceedings before it.

## **Consideration**

### *The Applicant's 17 June 2024 motion*

28. First, the Tribunal will deal with the Applicant's "13th-hour" request for the Respondent to produce evidence.

29. As noted above, on 13 June 2024 the Tribunal held a case management discussion where the Applicant confirmed that he had received the redacted documents ordered to be turned over by the Respondent. When asked if there were

any other documents or evidence to be submitted by the parties, the Applicant responded “I don’t have any additional evidence. I can call my colleagues, but I estimate that there would be tension”.

30. He went on to say that “to this day, I don’t know what are the other irregularities that the management evaluation discovered. It’s not necessarily relevant essentially to the application because the application is contesting the non-selection decision ... But for my legal and psychological ... well-being, I would want to know what the other irregularities were other than conducting the written test not in an anonymous manner”.

31. Four days later, the Applicant filed his “Motion Requesting to Order the Respondent to Provide Necessary Information”. Specifically, he requested that the Respondent provide information about:

- a. The “procedural shortcomings detected by Management Evaluation in the selection process aside from not conducting the written test anonymously”; and
- b. “Whether the departure of UNHCR Representative in Israel ... from his post and from UNHCR, long before the end of his tenure, is related in any manner to the content of the [a]pplication”.

32. Of course, the Tribunal has authority to “order production of documents or such other evidence as it deems necessary”. Article 9.1 of the Tribunal’s Statute and art. 18.2 of its Rules of Procedure provide that the Tribunal “may order the production of any information that appears to the Dispute Tribunal to be necessary for a fair and expeditious disposal of the proceedings”.

33. The Tribunal exercised that authority when it directed the Respondent to file certain relevant documents after redacting personal information of third parties (the other candidates for the position). However, the Tribunal declines to do so again regarding the latest request for information because it deems the evidence to be unnecessary for the disposal of the case.



34. As conceded by the Applicant at the case management discussion, information about the procedural irregularities detected during the management evaluation is “not necessarily relevant essentially to the application”. Although he felt that it may be helpful to his psychological well-being, that is not a valid basis upon which the Tribunal may issue an order for production of evidence.

35. The same is true as to information about whether the UNHCR Representative’s departure is related to his application. The Applicant gives no basis upon which he even suspects such link. He only offers his supposition that “if indeed there is a connection” it would be relevant to this case.

36. The Tribunal takes note that the past nine months have been a time of great turmoil in Israel. Major combat operations are taking place daily and these impact hundreds of thousands of refugees. In this context, there are a myriad of reasons for the UNHCR Representative’s departure, of which a rescinded selection process is the least likely. As such the Applicant’s request is a classic “fishing expedition”.

37. Accordingly, the Applicant’s motion for production of further information is denied as not necessary for a fair and expeditious disposal of the proceedings.

#### *Receivability*

38. The Tribunal must next consider the issue of receivability that the Respondent raised.

39. Article 2.1(a) of the UNDT Statute provides, *inter alia*, that the Dispute Tribunal “shall be competent to hear and pass judgement on an application” that appeals “an administrative decision that is alleged to be in non-compliance with the terms of appointment or the contract of employment”.

40. Article 8.1(a) of the UNDT Statute provides, *inter alia*, that an application shall be receivable if the Dispute Tribunal is competent to hear and pass judgment on the application under art. 2 of its Statute.

41. In *Gehr* UNDT/2011/211, the Tribunal held that in cases where the Administration rescinds the contested decision during the proceedings, an applicant's allegations may be moot unless the applicant can prove that he or she still sustains injury for which the Tribunal can award relief. See also *Lahoud* UNDT-2017-009 and *Kallon* 2017-UNAT-742 para. 44.

42. In *Crotty* 2017-UNAT-763, at para. 15, referring to *Gebremariam* 2015-UNAT-584, para. 19, the Appeals Tribunal recalled its conclusion that an administrative decision that becomes moot does not come within the Dispute Tribunal's competence:

The Appeals Tribunal is of the view that since the Administration rescinded the impugned decision even before [the staff member] had filed his UNDT application, it thereby rendered the claim before the Dispute Tribunal moot. There was thus no administrative decision on which UNDT was competent to pass judgment in terms of Articles 2 and 8 of the UNDT Statute.

43. The Tribunal notes that the Administration may decide to rescind administrative decisions for any reasons. The UNHCR Deputy High Commissioner's letter dated 12 June 2023 indicates that the recruitment was rescinded for procedural shortcomings. and that, as a result, the position would be readvertised. This is completely within the purview of the administration. Indeed, it is the purpose of management evaluation.

44. The contested decision was, therefore, not a final administrative decision, it is moot and not subject to review by this Tribunal.

45. To the extent that the Applicant claims that his case is exceptional in that he continues to suffer from the rescinded decision, that claim is unavailing. Since the decision was rescinded, the Applicant is no longer "not selected". The selection decision will be made at the end of a new recruitment exercise following the re-advertisement. Since the Applicant chose not to reapply, his "non-selection" is the result of his own decision and not a decision of the Administration.

46. And to the extent that the Applicant claims that he still suffers harm due to the discrimination against Arabs in the recruitment, that claim lacks a factual basis.

47. The record indicates that two of the three recommended applicants were of Arab descent and indicated that Arabic was their native language. This negates the possibility of discrimination against Arabs and Arab speakers. Thus, there is no cognizable harm from the rescinded decision that can be addressed by the Tribunal, and the application is not receivable.

*On the merits of the application*

48. Moreover, even if the case were receivable, the application would fail on the merits. The Applicant argues that his non-selection was unlawful because the panel (a) failed to consider the language requirements, (b) failed to consider diversity and inclusion, and (c) misrepresented his conduct during the interview and at work.

49. The first two arguments are premised on the Applicant's assertion and/or supposition that the top ranked candidates did not speak Arabic and were not ethnically Arabs. The record shows that this is incorrect and thus the claim is unsupported by facts.

50. The third argument really comes down to the Applicant's personal view of his interview performance and his performance at work. He claims that his supervisor misrepresented his conduct at work and during his interview, pointing to two passages in the selection panel notes.

51. The first passages is as follows:

In terms of legal and human rights advocacy experience, he is quite over-qualified for the position. He has carried out the work of the position competently, has very good legal analytical and drafting skills. Both in the interview and the panel member's experience of working with him over a one-year period, it was evident that he sees himself as overqualified for the position. This was apparent during the interview in the way he described his skills and how he described his experiences so far in UNHCR.

52. In rebuttal before the Tribunal, he argues that he does not consider himself overqualified and that he "told the selection panel confidently and explicitly that he is interested in this position because he wanted to 'contribute to international law and humanitarianism'".

53. The second passage says: “He has demonstrated, both in the interview and in his time working with UNHCR, some deficits in terms of developing cooperative and respectful working relationships with colleagues”.

54. To this the Applicant argues that his working relations with his supervisor and colleagues were professional, collegial, cordial, and friendly. He says that he had a good working relationship with his supervisor and as evidence submits email correspondence between them. The first email chain reflects the Applicant is sharing with the supervisor his own statistical assessment of the work he performed in the second half of 2022. In the second, the Applicant asks his supervisor if the subject job opening is for the position that he was holding as a temporary assignment, to which she replies, “Hi Marwan, yes it’s your post” [with a blush emoji].<sup>1</sup>

55. In the Tribunal’s view, the Applicant’s evidence supports the panel’s assessment rather than refuting it.

56. More importantly, neither the Applicant’s perspective nor the Tribunal’s view are important. It is “the purview of the panel to determine and depend greatly on ... its interview and its capacity to make a fair assessment of the candidate without further enquiry”. *Abbassi* UNDT/2010/086, para. 22 (affirmed in *Abbassi* 2011-UNAT-110).

57. And, as this Tribunal has previously observed, “[a]lthough the Applicant disagrees with the assessment made during the interview as to whether she satisfied particular competency requirements and regarding her overall suitability for the

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<sup>1</sup> The significance of a blush emoji in this email is certainly ambiguous. For various meanings of emojis, see the glossary of smiley emoji meanings at <https://www.dashhudson.com/emoji-meanings/smileys>. To the extent that this emoji implies happiness of some sort, it is still unclear as to the reason for the supervisor’s happiness. Is she happy that the Applicant guessed correctly? Is she happy that a TA position reporting to her will be made more permanent? Is she implying that the Applicant is likely to be selected and she is happy for him? Or is she happy that the recruitment means soon she will be rid of the Applicant? Or does it carry yet another meaning? For an interesting analysis of the legal implications of misunderstood emojis, see Eric Goldman, *Emojis and the Law*, 93 *Washington Law Review* 1227 (2018) <https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=5033&context=wlr>

post, the interview panel was entitled to come to its own conclusions regarding the Applicant's suitability". *Lex* UNDT/2013/056, para. 41.

58. Moreover,

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

59. In this case, the Tribunal also finds that the evidence does not allow for a conclusion that the panel's assessment was erroneous.

60. Accordingly, the Tribunal finds that the Applicant has not demonstrated that the non-selection decision, which was later rescinded, was unlawful or improper. As a result, the Tribunal is not in a position to award compensation for damages resulting from the contested decision.

61. Finally, the Tribunal does not observe any abuse of proceedings by the Applicant in this case. Thus, the Respondent's request for an award of costs is denied.

### **Conclusion**

62. In view of the foregoing, the Tribunal DECIDES to:

- a. Reject the Applicant's motion requesting to order the Respondent to provide necessary information;
- b. Find that the application is not receivable and that, even if it were, there is no merit to it, thus it would dismiss it; and

- c. Deny the Respondent's request for an award of costs.

*(Signed)*

Judge Sean Wallace

Dated this 29<sup>th</sup> day of July 2024

Entered in the Register on this 29<sup>th</sup> day of July 2024

*(Signed)*

René M. Vargas M., Officer-in-Charge, Nairobi