



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: Liliana López Bello

KITTI

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for Applicant:

Hilda Ojiambo, OSLA

Counsel for Respondent:

Nicole Wynn, AS/ALD/OHR, UN Secretariat

Introduction

1. The Applicant, a G-6 Procurement Assistant with the United Nations Peacekeeping Force in Cyprus (“UNFICYP”), filed an application contesting her non-selection for the post of Senior Procurement Assistant at the G-7 level with UNFICYP, advertised as Job Opening No. 209051 (“the JO”).
2. For the reasons set out below, the Tribunal decides to reject the application.

Facts

3. Between 24 June 2023 and 27 August 2023, UNFICYP advertised the JO.
4. Following a preliminary evaluation against the pre-established criteria, four candidates were longlisted, and four candidates were shortlisted, one of which was the Applicant. As a shortlisted candidate, the Applicant was invited to a competency-based interview (“CBI”). The Panel concluded that two shortlisted candidates, including the Applicant, met the applied evaluation criteria and passed the assessment process.
5. On 25 October 2023, the hiring manager recommended the selected candidate as the best suited for the functions of the position. The Applicant was not recommended.
6. On 30 October 2023, the Chief of Mission Support, UNFICYP, selected the recommended candidate.
7. On 9 November 2023, the Applicant learned of her non-selection.
8. On 7 December 2023, the Applicant requested management evaluation of the decision not to select her for the JO No. 209051.
9. By response dated 29 February 2024, the Under-Secretary-General for Management Strategy, Policy and Compliance (“USG/DMSPC”), decided that the contested decision was fully consistent with the regulatory framework concerning staff selection, including the requirements of the Classified Job Description

(“CJD”) for the G-7 Procurement Assistant, and that the Applicant received full and fair consideration during the selection process.

10. On 29 May 2024, the Applicant filed the instant application.

11. On 28 June 2024, the Respondent filed his reply, which he later amended on 10 July 2024.

12. On 27 August 2024, the Tribunal directed the Applicant to file a rejoinder, and the parties to explore resolving the dispute amicably.

13. On 10 September 2024, the Applicant filed her rejoinder.

14. On 17 September 2024, the parties informed the Tribunal that they were unable to amicably settle this dispute, and requested it to proceed with its judicial review of the matter.

15. By Order No. 17 (GVA/2025) of 28 February 2025, the Tribunal instructed the parties to file their respective closing submission, which they did on 21 March 2025.

Consideration

16. The primary legal issue before the Tribunal is whether the decision not to select the Applicant for the JO No. 209051 was lawful.

Scope of judicial review

17. 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).

18. When conducting judicial review regarding selection matters, the Tribunal’s role is limited to examine “(1) whether the procedure as laid down in the Staff Regulations and Rules was 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).

19. 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; *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 (*Flavio Mirella* 2023-UNAT-1334, para. 61).

20. Generally speaking, when candidates have received fair consideration, discrimination and bias are absent, proper procedures have been followed, and all relevant material has been taken into consideration, the selection or promotion should be upheld (*Ngokeng*, 2017-UNAT-747, para. 33).

21. 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

22. In her submissions, the Applicant asks that the selection process for the JO No. 209051 be cancelled because it was not in compliance with the Memorandum DOS-2022-04899, dated 5 December 2022, from the Office of Supply Chain Management, Department of Operational Support (“OSCM/DOS”), according to which, effective 1 January 2023, a professional certification, such as the completion of the Chartered Institute of Purchasing and Supply – Level 4 Diploma

(“CIPS-Level 4”) or equivalent, would become a mandatory requirement for all vacancy announcements for positions under the procurement job family.

23. Since the selected candidate did not meet the *alleged* mandatory requirement of having the CIPS–Level 4 certification, his selection would be unlawful. As one of the two shortlisted candidates and the only one with a CIPS-Level 4 certification, the Applicant argues that she had a real chance of selection and should be compensated for the loss of opportunity.

24. In opposition, the Respondent submits that the Organization has the discretion to choose the qualifications, skills and competencies required for a vacant position and the methods to determine if a candidate meets them. The Memorandum from OSCM/DOS referred to by the Applicant lacks legal authority and does not supersede promulgated administrative instructions. No legal provision in the current framework made CIPS-Level 4 certification a mandatory requirement for vacancy announcements under the procurement job family.

25. Even if the Memorandum was to be applied in this case, it contains an exception to allow for a candidate to be selected if the candidate was pursuing his or her certification at the time of the selection, which the selected candidate was. Indeed, he had even completed an equivalent certification to CIPS-Level 4 before being notified of his selection on 9 November 2023.

26. Furthermore, staff rule 2.1 mandates that posts be classified according to standards set by the International Civil Service Commission or the Secretary General. Sections 1 and 4.5 of the Administrative Instruction on Staff Selection System (ST/AI/2010/3/Rev.2) require that evaluation criteria be objective and related to the generic job profile or description. The Administration followed the Classified Job Description for G-7 Senior Procurement Assistant, which lists CIPS-Level 4 as a desirable criterion, not a required one.

27. The Tribunal notes that the Applicant did not challenge the pre-screening, preliminary evaluation against the pre-established criteria and the CBI process. He primarily challenged that the selection process for JO No. 209051 was not in compliance with Memorandum DOS-2022-04899, which included the

CIPS-Level 4 certification as a mandatory requirement for the vacancy announcement.

28. The ensuing analysis will examine whether the fact that the CIPS-Level 4 certification was included as a desirable criterion, not required, constitutes a procedural irregularity, as the Applicant alleges.

Legal hierarchy

29. In classification of posts, staff rule 2.1 provides:

(a) Posts other than those of Deputy Secretary-General, Under-Secretaries-General and Assistant Secretaries-General shall be classified in categories and level according to standards established by the International Civil Service Commission or by the Secretary-General, as applicable.

30. ST/AI/2010/3/Rev.2 on the Staff selection system provides in its relevant parts as follows:

Section 1

Definitions

...

(e) *Evaluation criteria*: criteria used for the evaluation of applicants for a particular job opening. Evaluation criteria must be objective and related to the functions of the generic job profile or the individually classified job description and must reflect the key competencies that will be assessed;

...

(g) *Generic job profile*: classified standard job description that encompasses a large group of related jobs with similar characteristics in terms of duties and responsibilities, education, work experience, technical skills and essential core competencies;

...

Section 4

Job openings

...

4.5 The job opening shall reflect the functions and the location of the job and include the qualifications, skills and competencies required. *Job openings, to the greatest extent possible, shall be based on generic job profiles approved by the Office of Human Resources, a previously published job opening or a previously classified individual job description reflecting the actual functions of the job.* The evaluation criteria of job openings created on the basis of individually classified job descriptions require approval by a central review body. Each job opening shall indicate the date of posting and specify a deadline date by which all applications must be received. [emphasis added]

31. In the present case, the case record shows that the hiring manager followed the CJD for G-7 Senior Procurement Assistant, which is the generic job profile approved by the Office of Human Resources (“OHR”) specifically for G-7 positions in the procurement family in 2015. Essentially, section 3 “[q]ualifications required to perform the assigned duties of the post” includes that “[a] certificate of procurement or contract management training is desirable”.

32. The Applicant correctly observes that the above CJD for the G-7 Senior Procurement Assistant did not appear or was not replaced on the OHR website posted on 12 January 2024, even though she aims to challenge the existence of the CJD.

33. The Applicant submits that the Memorandum DOS-2021-05784 dated 29 December 2021 from the ASG for Supply Chain Management directs all missions and UN Secretariat entities to ensure that a professional certification such as CIPS-level 4 diploma or equivalent be a mandatory education requirement for all vacancy announcements, including temporary job openings and standard job opening, for positions under the procurement job family.

34. To provide additional time for all procurement personnel to comply with the certification requirement and for clarity purposes, the Memorandum DOS-2022-04899 dated 5 December 2022 from the ASG for Supply Chain Management reiterated that personnel in the procurement job family must have a CIPS-Level 4 or equivalent certification by the compliance deadline of

31 December 2022. This memorandum was circulated to all Directors and Chiefs of Mission Support and Administration of the UN Secretariat entities.

35. While the Applicant admits that the memorandum is at the bottom of the legal hierarchy and lacks legal authority, contrary to the one vested in promulgated administrative issuances, the Applicant contends that the Respondent has not demonstrated any inconsistency between the foregoing memorandum and the applicable higher norms that would render the memorandum unlawful.

36. In this respect, the Tribunal is mindful that, in the present case, the primary legal issue is whether the contested decision was lawful or not, and whether any inconsistency between the applicable higher legal norms and the said memoranda may render the latter unlawful.

37. As it follows, when a *prima facie* conflict of qualification requirement arises from a CJD established and approved previously by OHR based on the formal classification procedures under relevant administrative insurances vis-à-vis the foregoing memoranda, a hiring manager or person concerned might be in a dilemma. For the sake of clarity, the Tribunal will explore this issue further.

38. The Tribunal recalls *Villamorán* UNDT/2011/126, para. 29, which reads:

At the top of the hierarchy of the Organization's internal legislation is the Charter of the United Nations, followed by resolutions of the General Assembly, staff regulations, staff rules, Secretary-General's bulletins, and administrative instructions (see *Hastings* UNDT/2009/030, affirmed in *Hastings* 2011-UNAT-109; *Amar* UNDT/2011/040). Information circulars, office guidelines, manuals, and memoranda are at the very bottom of this hierarchy and lack the legal authority vested in properly promulgated administrative issuances.

39. As the Tribunal explained, “[d]ue to the importance of administrative issuances, the Administration must follow specific steps when promulgating them”. “The reasons for the existence of these requirements are quite obvious. Administrative issuances regulate matters of general application and directly concern the rights and obligations of staff and the Organization” (*Villamorán*, paras. 30-31).

40. Promulgating matters of general application must go through the mandatory consultative, control, and clearance procedures established by ST/AI/2009/4 (*Villamorán*, paras. 44-45). In this sense, no evidence suggests that the memoranda followed the aforementioned procedures, and circulating them across the entire Organization alone does not automatically render them generally applicable.

41. Further, *Korotina* UNDT/2012/178, para. 32 states:

Circulars, guidelines, manuals, and other similar documents may, in appropriate situations, set standards and procedures for the guidance of both management and staff, but only as long as they are consistent with the instruments of higher authority and other general obligations that apply in an employment relationship.

42. Applying the aforementioned jurisprudence to the case at hand, it is clear that the Administration was obliged under ST/AI/2010/3/Rev.2 to reflect the evaluation criteria in the CJD and in the JO. In this connection, the CJD for the G-7 Senior Procurement Assistant, approved by OHR in 2015, lists a “certificate of procurement” as a desirable criterion.

43. While the established CJD does not restrict an additional professional qualification in an advertised JO as a requirement based on the hiring manager’s assessment of the needs of the post in question, the absence of a mandatory requirement based on the aforementioned memoranda did not necessarily render the JO under dispute unlawful. Indeed, no actual conflict occurs between the two requirements.

44. The rationale behind this is legal hierarchy. In fact, the memoranda lacked the legal authority vested in the classified documents approved by OHR as per administrative issuances, as admitted by the Applicant.

Exception in the DOS Memorandum

45. The Applicant contends that the language of the ASG memorandum does not leave room for any interpretation other than the fact that a professional certification such as the CIPS-Level 4 diploma or equivalent is a mandatory education

requirement for all vacancy announcements under the procurement job family, including in the General Service (GS-5 and above) with effect from 1 January 2023.

46. The Respondent argues that even applying the DOS Memorandum, the selected candidate met the exception for selection of a candidate who was in the process of studying to obtain the CIPS-Level 4 certification or equivalent.

47. The record shows that, as per the “Compliance Deadline Extension Request Form for New Hires”, effective 1 January 2023, “a professional certification such as the CIPS-Level 4 diploma or equivalent is also a mandatory education requirement for all vacancy announcements ... for positions under the procurement job family”. According to this document, an “extension to the compliance deadline may be granted to selected candidates who are currently pursuing the required certification to allow for completion of studies after onboarding”.

48. The record also shows that the selected candidate’s contract start date was 10 January 2024, and that he was already an APICS Certified Supply Chain Planner (“CSCP”) and needed two modules to complete the CIPS-Level 4 certification. His extension request to obtain the CIPS-Level 4 certification was approved by the Procurement Division, OSCM/DOS, UNHQ New York.

49. Having analysed the evidence on record, the Tribunal disagrees with the Applicant’s interpretation that this exception only applies to a selected candidate whose recruitment process precedes the effective date of 1 January 2023, as the plain wording of said exception does not support such interpretation. Furthermore, the Procurement Division, OSCM/DOS, has accepted the selected candidate’s extension request.

50. The Tribunal thus agrees with the Respondent that, in implementing the requirement established by the memoranda above, an exception exists for selected candidates to obtain the CIPS-Level 4 qualification after the onboarding process has begun.

51. As it follows, the remaining question is whether the selected candidate felt within that exception.

52. In this respect, the Applicant argues that the selected candidate did not possess the certification at the time of applying to the position, as admitted by the Respondent in his amended reply (i.e., that the selected candidate “was in the process of obtaining APICS certification” and completed it on 3 November 2023). The Applicant further submits that an APICS certification alone is not equivalent to a CIPS-Level 4 certification. A holder of the APICS CSCP would need to complete two additional modules of CIPS-Level 4 to be considered equivalent to CIPS-Level 4, according to the OSCM/DOS equivalency tool.

53. The Respondent submits that the selected candidate obtained the APICS certification on 3 November 2023 before he was notified of his selection on 9 November 2023.

54. The evidence on record shows that the hiring manager considered that the selected candidate’s master’s degree in business administration (MBA), together with his completed coursework for the APICS Certified Supply Chain Planner Accreditation (APICS CSCP), satisfied the required and desirable criteria under the education section of the JO.

55. The Tribunal is of the view that, as admitted by the Applicant, the APICS Certified Supply Chain Professional certification is listed under the OSCM/DOS equivalency tool for CIPS-Level 4 as broadly equivalent to CIPS-Level 4. In any event, the selected candidate’s extension request to complete two additional modules to obtain the CIPS-Level 4 certificate, as also indicated by the Applicant, had been approved by the Procurement Division, OSCM/DOS.

56. Accordingly, the Tribunal finds that even applying the requirement provided for in the DOS Memorandum, the selected candidate, who was in the process of obtaining the required certification, complied with the requirement through the established exception.

Other arguments

57. The Applicant also contends that the transmittal memo to the Central Review Body dated 8 October 2023 indicates that the desirable requirement, i.e., CIPS-

Level 4 certificate or equivalent, was not applied by the hiring manager in the evaluation process.

58. In the Tribunal's view, it was for the hiring manager to decide whether to assess this desirable requirement through the interview and what questions were most appropriate, as per the applicable rules. The absence of a specific technical assessment does not render the selection process unlawful.

59. The Applicant further submits that her email correspondence with the ASG for Supply Chain Management dated 22 December 2023 showed the hiring manager's contradictory positions between the ST/AI/2010/3 and the memorandum, reinforcing the Applicant's argument of the existence of procedural irregularities and breach of proper procedures in the recruitment process.

60. The Tribunal observes that the ASG's explanatory words cannot be construed as the irregularities the Applicant claims.

61. The Applicant further asserts that her own extension of delegation of authority was made conditional upon her attainment of CIPS-level 4 certification, and without a CIPS-Level 4 certificate or equivalent, delegation of authority cannot be assigned to staff in procurement positions.

62. In this respect, the Tribunal agrees with the Respondent that it is evident that delegation of authority cannot be used as a criterion for recruitment, and it will be granted after the selected candidate takes up his or her procurement functions.

63. Therefore, the Tribunal finds that the Administration had followed the applicable procedures and the Applicant's claims of procedural irregularities have no merit.

Whether the Applicant was given full and fair consideration

64. The Applicant submits that she was the only candidate eligible for selection (as she was the only one with the CIPS-Level 4 qualification), and that the recruitment and filling of posts with ineligible candidates constituted a violation of

her right to a full and fair consideration, as held by the Tribunal in *Nikolarakis* UNDT/2017/068, para. 49.

65. The Respondent submits that the selection process was conducted in a fair, transparent, and non-discriminatory manner.

66. The record shows that the competency-based interviews were held on 27 September 2023. The shortlisted candidates were technically assessed under the competencies of Professionalism, Accountability, Client Orientation and Planning and Organizing, as determined in the JO, and they were asked the same questions and evaluated using the same criteria.

67. The comparative analysis report on record shows that the overall interview rating of the Applicant was “successfully meets requirements”, while the selected candidate obtained an “exceeds the requirements”.

68. Comparing the two candidates, the hiring manager concluded that the selected candidate was the most suitable for the position, and recommended him for selection.

69. In this context, the Tribunal finds that the Applicant was given full and fair consideration.

Whether the decision was tainted by any bias or extraneous factors

70. The Applicant avers in this case that the selected candidate received an undue advantage because, despite not meeting the mandatory and desirable criteria, he was shortlisted for the position and ultimately selected.

71. The Respondent submits that the Applicant has produced no evidence of bias, discriminatory practices or *mala fides* by the Administration.

72. In this respect, it is well-established jurisprudence that the exercise of the Respondent’s broad discretionary authority must not be tainted by forms of abuse of power, bad faith, prejudice, arbitrariness or other extraneous factors, the presence of which contribute to a flawed administrative decision. It is incumbent on the staff

member to prove that such factors played a role in the administrative decision (*Nouinou* 2019-UNAT-902, para. 47; *He* 2018-UNAT-825, para. 43).

73. The Tribunal notes that the Applicant did not adduce any evidence to prove that any discrimination and bias influenced the contested decision.

74. Accordingly, the Tribunal finds that the contested decision was lawful.

Whether the Applicant is entitled to any remedies

75. In light of the Tribunal's finding that the decision not to select the Applicant for the position advertised under JO No. 209051 was lawful, there is no basis for the remedies pleaded for in the application. Accordingly, the Tribunal rejects the Applicant's requests for remedies.

Conclusion

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

(Signed)

Judge Sun Xiangzhuang

Dated this 25th day of July 2025

Entered in the Register on this 25th day of July 2025

(Signed)

Liliana López Bello, Registrar, Geneva