



Before: Judge Jean-François Cousin

Registry: Geneva

Registrar: René M. Vargas M.

QUESADA RAFARASOA

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER ON AN APPLICATION FOR
SUSPENSION OF ACTION**

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Karen M. Farkas, UNHCR

Introduction

1. By application filed on 9 October 2013, the Applicant, a Supply Officer at the P-3 level at the Office of the United Nations High Commissioner for Refugees (“UNHCR”) in Budapest, Hungary, seeks suspension of action of the decisions to select external candidates for the following positions: 1) Senior Supply Officer, Field Procurement Support, P-4, post No. 10019625, Job Opening No. 8139; 2) Senior Supply Officer, P-4, based in Nairobi, post No. 10003078, Job Opening No. 8329; 3) Senior Supply Officer, Global Stock Management, P-4, Job Opening No. 8098.

Facts

Position No. 10019625, Job Opening No. 8139

2. This position was advertised in the March 2013 Compendium of posts at UNHCR and the Applicant applied for it. However, in the document sent by all-staff e-mail on 27 September 2013 and entitled “Summary of Decisions of the High Commissioner on Assignments Ref. No. 08/2013”, this position is listed as being under “Recruitment (2)”. Footnote (2) indicates that “the names of the recruited candidates will be released upon acceptance of the offer. Re-recruitments are of former staff members who are rejoining UNHCR”.

3. By e-mail of 8 October 2013, addressed to the Division of Human Resources Management (“DHRM”) at UNHCR, the Applicant asked to be provided with “all the relevant documentation regarding the selection process for what basis the external candidate has been selected, including Manager’s view, what DHRM wrote to JRB and the JRB recommendation to High Commissioner”; at the same time she asked that the implementation of the decision—namely the mailing of the job offer to the external candidate—be suspended, which would give her “an opportunity to formally submit Management evaluation”.

4. By a subsequent e-mail of the same day, addressed to the Management Evaluation Unit in the Office of the Deputy High Commissioner and entitled “Request for Management Evaluation”, the Applicant asked that the whole process with respect to the selection for the position be reviewed, and that the external recruitment be suspended until completion of the management evaluation.

Position No. 10003078, Job Opening No. 8329

5. This position, for which the Applicant indicated she had applied, was re-advertised under Job Opening No. 8870 in the September Compendium, sent to all UNHCR staff on 8 October 2013.

Job Opening No. 8098

6. According to the Applicant, the selection for this position, for which she indicated she had applied, is still pending, since no official selection decision has yet been issued.

Further developments

7. On 9 October 2013, the Applicant filed before this Tribunal the present application for suspension of action, referring to the three above-mentioned positions. In her application, the Applicant indicated that external candidates had been selected or were about to be selected for these three posts.

8. On 10 October 2013, the application was served on the Respondent, who was instructed by the Tribunal to submit his reply by 16 October 2013. The Tribunal also directed the Respondent not to undertake, as from the date of service, any further steps regarding the recruitment against the three positions.

9. By memorandum of 16 October 2013, addressed to the Applicant, the Deputy High Commissioner replied to the Applicant’s request for management evaluation regarding the selection procedure for post No. 10019625, Job Opening No. 8139, upholding the decision to appoint an external candidate to that position.

10. On 16 October 2013, the Respondent filed his reply, to which he attached the above-mentioned reply of the same day from the Deputy High Commissioner.

11. On 17 October 2013, the Applicant submitted for the Tribunal's consideration her reply to the Deputy High Commissioner's memorandum of 16 October 2013. In that reply, the Applicant commented on the views expressed by the Hiring Manager on her candidacy in the context of the selection process for post No. 10019625, Job Opening No. 8139.

Parties' contentions

12. The Applicant's primary contentions may be summarized as follows:

Prima facie unlawfulness

a. The three decisions subject of the request for suspension of action violate the Rules and Procedures and the UNHCR Policy and Procedures on Assignments and Promotions of 14 June 2010: the three above-referenced positions have been unlawfully opened to external recruitment and her candidacy as a suitable internal candidate was not duly considered. She was not even interviewed for the positions, for which she had applied, which constitutes a violation of the applicable rules that give priority to internal over external candidates;

b. She is an experienced internal candidate with more than 14 years of UNHCR experience, out of which 11 in the professional category, specialized in Supply Management. Her standard assignment length will end in December 2013 and she has a "special constraint" approved by the UNHCR Special Constraint Panel, due to the medical condition of her daughter. She has already been performing on P-4 positions and she is performing her current job to full satisfaction. She should have been considered as an eligible and suitable internal candidate prior to opening the job openings to external applicants. Also, even after the three positions were advertised externally, she should have been given priority over external candidates;

Urgency

c. UNHCR Administration is certainly about to send an offer of appointment to the selected external candidates, hence the decisions are about to be implemented;

Irreparable damage

d. Her current post occupancy ends on 31 December 2013 and she has not yet been assigned to another post, which could result in her becoming a “staff in-between-assignments”;

e. She would lose the possibility of being selected for a position compatible with her special constraint;

f. The treating doctor advised that for the time being, her daughter should not be moved to a difficult environment; however in the September 2013 Compendium there are no suitable positions compatible with her daughter’s medical condition.

13. The Respondent’s primary contentions may be summarized as follows:

a. The Applicant refers to three different job openings in Section V of her application before this Tribunal, however “she appears to only contest her non-selection for position [N]o. 10019625, Job Opening [No.] 8139, Senior Supply Officer (Field Procurement Support)”;

b. In any event, in her request for management evaluation of 8 October 2013, the Applicant only refers to her non-selection for the above-mentioned position;

c. The management evaluation for that position has in the meantime been completed and communicated to the Applicant by letter of 16 October 2013 from the Deputy High Commissioner;

d. Consequently, “the contested administrative decision is not anymore the subject of an ongoing management evaluation in terms of [art.] 2.2. of

the UNDT Statute, and the suspension of its implementation pending such management evaluation is no longer possible”, which is confirmed by the jurisprudence of the UNAT;

e. In view of the foregoing, the application “has been rendered moot and should be dismissed as not receivable”.

Consideration

14. Article 2.2 of the Dispute Tribunal’s Statute and art. 13 of its Rules of Procedure provide that it may order the suspension, during the pendency of management evaluation, of the implementation of a contested administrative decision that is the subject of an on-going management evaluation, where the decision appears *prima facie* to be unlawful, in cases of particular urgency and where its implementation would cause irreparable damage.

15. It follows from these provisions that an application for suspension of action may only be granted if the contested decision has not yet been implemented. Also, it is plain from the wording of these provisions that the suspension of action of a challenged decision may only take place when management evaluation for that decision has been duly requested and is on-going.

16. In the present case, the Applicant challenges the fact that external candidates are being considered by the UNHCR Administration for three different positions for which she had applied as an internal candidate and for which she considers herself suitable. However, in her request for management evaluation of 8 October 2013, the Applicant only referred to the position of Senior Supply Officer No. 10019625, Job Opening No. 8139. The Tribunal therefore considers that the two other decisions the Applicant seems to challenge in her request for suspension of action have not been the subject of a formal management evaluation request and hence her request for suspension of action in respect of those two decisions is not receivable.

17. As regards to post No. 10019625, Job Opening No. 8139, Senior Supply Officer, the Tribunal notes that the Applicant received a reply to her request for

management evaluation on 16 October 2013; it follows that art. 2.2 of the Tribunal's Statute relating to a request for suspension of action pending management evaluation may no longer be invoked.

18. The Tribunal concludes that since the Applicant failed to submit requests for management evaluation of the decisions relating to Job Openings Nos. 8329 and 8098, and since a reply to the Applicant's request for management evaluation with respect to Job Opening No. 8139 had already been issued by the Deputy High Commissioner at the date at which the present application was considered by the Tribunal, the request for suspension of action has to be rejected in its entirety.

19. It follows that it is not necessary for the Tribunal to examine if the three statutory requirements specified in art. 2.2 of its Statute and art. 13.1 of its Rules of procedure, namely *prima facie* unlawfulness, urgency and irreparable damage, are met in the case at hand.

Conclusion

20. In view of the foregoing, the application for suspension of action is rejected in its entirety.

(Signed)

Judge Jean-François Cousin

Dated this 18th day of October 2013

Entered in the Register on this 18th day of October 2013

(Signed)

René M. Vargas M., Registrar, Geneva