



Before: Judge Thomas Laker

Registry: Geneva

Registrar: René M. Vargas M.

SABIR

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

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

Counsel for Applicant:
Self-represented

Counsel for Respondent:
Karen Madeleine Farkas, UNHCR

Introduction

1. On 22 September 2014, the Applicant, a staff member of the United Nations High Commissioner for Refugees (“UNHCR”) filed a request for suspension of action against the decision by UNHCR management, Kabul, Afghanistan, not to select him for the reclassified post of Head of Field Office, Kandahar.
2. The application was served on the Respondent on 23 September 2014 and he was required to file his reply by Thursday, 25 September 2014.
3. In filing the reply, the Tribunal directed the Respondent’s counsel to inform it about the state of implementation of the selection decision and not to undertake, as from the date of service, any further steps regarding the recruitment against the contested post until the determination of the suspension of action.
4. The Respondent filed his reply on 25 September 2014, submitting three annexes on an *ex parte* basis.

Facts

5. Following an operational review of the UNHCR Office in Afghanistan, the post of Associate Durable Solutions Officer (position No. 10013684) encumbered by the Applicant was reclassified to Head of Office, Kandahar. The post was advertised internally and externally on 1 April 2014. The Applicant applied to the reclassified post on 9 April 2014, and was invited for a written test and an interview. On 12 June 2014, the Applicant was informed orally that he had not been selected for the post. The same day, the summary of decisions on assignments announced that an external candidate had been selected.
6. At a date unknown to the Tribunal, the Applicant filed a request for management evaluation; he subsequently filed a “revised” request for management evaluation on 24 July 2014.
7. The external candidate was informed of the selection decision on 16 June 2014, and, on the same day, accepted the offer. He signed the letter of

appointment on 4 September 2014 and arrived at the duty station to take up his new functions on 8 September 2014.

Parties' contentions

8. The Applicant notes that the selected candidate was introduced beginning of September 2014. He states that the whole selection process was biased and that the decision affects his reputation and impacted on his health and moral.

9. The Respondent submits that the application is not receivable, since the selection decision has already been implemented. He therefore requests the Tribunal to reject the application.

Consideration

10. Art. 2.2 of the Tribunal's Statute and art. 13.1 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 harm.

11. 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 (*see Neault* Order No. 6 (GVA/2011); *Quesada-Rafaraso* Order No. 20 (GVA/2013); *Al-Baker et al.* Order No. 99 (NY/2013)).

12. Concerning the date of implementation of the selection decision, the case law of the Tribunal has taken different approaches (*see Wang* UNDT/2012/080 on the one side and *Nwuke* UNDT/2012/116 on the other). However, there is no dispute that a selection decision is implemented once the Administration receives the selected candidate's unconditional acceptance of the offer of appointment (*see Tiwathia* UNDT/2012/109; *Murnane* UNDT/2012/128).

13. In the case at hand, the selected external candidate was informed of his selection to the post on 16 June 2014, and he unconditionally accepted the offer

by email of the same day. He signed the letter of appointment on 4 September 2014, and arrived at the duty station to take up his functions on 8 September 2014.

14. As a consequence, the Tribunal cannot but find that the contested decision in this case had been implemented prior to the filing of the present application for suspension of action, and the Tribunal is not in a position to order its suspension.

15. Therefore, it is not necessary to examine if the three statutory requirements specified under art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure are met.

16. The Tribunal reviewed the documents filed on an *ex parte* basis by the Respondent and did not find that they contained any personal information that needed to be protected; therefore, and since the documents had to be taken into consideration to make the present ruling, it decided to classify them as non-confidential.

Conclusion

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

(Signed)

Judge Thomas Laker

Dated this 18th day of August 2014

Entered in the Register on this 18th day of August 2014

(Signed)

René M. Vargas M., Registrar, Geneva