



**Before:** Judge Sun Xiangzhuang

**Registry:** Geneva

**Registrar:** René M. Vargas M.

WAMBUGU

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON AN APPLICATION FOR  
SUSPENSION OF ACTION PENDING  
MANAGEMENT EVALUATION**

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**Counsel for Applicant:**

Kalaycia Clarke, OSLA

**Counsel for Respondent:**

Jan Schrankel, UNHCR

## **Introduction**

1. By application filed on 28 June 2024, the Applicant, a staff member of the United Nations High Commissioner for Refugees (“UNHCR”), requests suspension of action, pending management evaluation, of the decision not to select her for the position of Programme Officer (P-3) in Pretoria, South Africa (“the position”).
2. The application for suspension of action was served on the Respondent, who filed his reply on 2 July 2024.

## **Facts**

3. In October 2023, the Applicant, an Associate Programme Officer (P-2), UNHCR, Geneva, applied for the position. She was shortlisted and interviewed on 2 November 2023.
4. By broadcast announcement of 6 June 2024, the Applicant was notified that another candidate had been selected for the position (“the contested decision”).
5. On 28 June 2024, the Applicant requested management evaluation of the decision not to select her for the position. Subsequently, she filed the instant application for suspension of action pending management evaluation.
6. On the same day, the case was assigned to the undersigned Judge.
7. On 2 July 2024, the Respondent filed his reply informing the Tribunal that the selected candidate for the position had assumed her functions on 19 June 2024. Accordingly, he moved the Tribunal to dismiss the application as not receivable because the impugned decision has been implemented.

## **Consideration**

8. Art. 2.2 of the Tribunal’s Statute provides that the Tribunal shall be competent to suspend the implementation of a contested administrative decision during the pendency of management evaluation where the decision appears *prima facie* to be unlawful, in case of particular urgency, and where its implementation would cause irreparable damage. These three requirements are cumulative. In other words, they

must all be met in order for a suspension of action to be granted. Furthermore, the burden of proof rests on the Applicant.

9. It is well-established in the jurisprudence of the Dispute Tribunal that if a contested decision has been implemented, suspension of action cannot be granted (see *Dalgamouni* Order No. 137 (NBI/2014), *De Luca* Order No. 79 (GVA/2019), *Laurenti* Order No. 243 (NBI/2013), *Rudolf Jocondo* Order No. 71 (NBI/2024)).

10. As stated in *Applicant* Order No. 87 (NBI/2014):

24. A suspension of action order is, in substance and effect, akin to an interim order of injunction in national jurisdictions. It is a temporary order made with the purpose of providing an applicant temporary relief by maintaining the status quo between the parties to an application pending trial. It follows, therefore, that an order for suspension of action cannot be obtained to restore a situation or reverse an allegedly unlawful act which has already been implemented.

11. Before examining whether the Applicant has met the requirements for the test of suspension of action under art. 2.2, the Tribunal must first determine whether or not the impugned decision can properly be stayed.

12. As indicated by the Respondent in his reply, the selected candidate signed the letter of appointment and assumed her functions on 19 June 2024. She further completed the onboarding formalities on 24 June 2024.

13. Consequently, the Tribunal finds that it can no longer entertain the instant application. Granting an injunction would require reversing the onboarding of the selected candidate, which it clearly cannot do.

14. Accordingly, the Tribunal finds that the present application for suspension of action is not receivable *ratione materiae*.

Case No. UNDT/GVA/2024/025

Order No. 80 (GVA/2024)

**Conclusion**

15. In view of the foregoing, the application for suspension of action pending management evaluation is dismissed.

*(Signed)*

Judge Sun Xiangzhuang

Dated this 4<sup>th</sup> day of July 2024

Entered in the Register on this 4<sup>th</sup> day of July 2024

*(Signed)*

René M. Vargas M., Registrar, Geneva