



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2016/031  
Order No.: 207 (NBI/2016)  
Date: 6 May 2016  
Original: English

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**Before:** Judge Nkemdilim Izuako

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

TARR

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 the Applicant:**  
Self-represented

**Counsel for the Respondent:**  
Alan Gutman, ALS/OHRM  
Nicole Wynn, ALS/OHRM

## **Introduction**

1. The Applicant is a P-4 Investigator with the Office of Internal Oversight Services (OIOS) in Monrovia, Liberia.
2. On 27 April 2016, she filed an Application seeking the suspension of the decision not to select her for the position of P-4 Investigator (Job Opening 50231) with the OIOS regional office in Vienna, Austria (contested decision).
3. The Respondent filed a Reply to the Application on 3 May 2016. He submitted that the Application was not receivable because the contested decision has been implemented since OIOS has notified the successful candidate of his selection.

## **Facts**

4. In January 2013, the Applicant was placed on the P-4 investigator roster for the United Nations Secretariat following an OIOS Investigations Division (ID) recruitment exercise.
5. In July 2013, the Applicant was appointed as a P-3 investigator for OIOS/ID in Monrovia, Liberia.
6. In January 2015, the Applicant was promoted from P-3 to P-4.
7. In January 2016, the Applicant applied for a P-4 investigator post in Vienna, Austria with OIOS.
8. On 26 April 2016, the Applicant was informed that a P-3 male investigator from the Vienna office was selected for the P-4 investigator post in Vienna.
9. On 27 April 2016, the Applicant was informed by the Officer in Charge, OIOS/ID, that she was not the selected candidate.
10. She requested management evaluation of the contested decision on 27 April 2016.

11. The Applicant made supplemental filings on 4 May 2016.

**Applicant's submissions**

12. The Applicant's case is hereunder summarized.

*Receivability*

13. The contested decision has not yet been implemented as the P-3 candidate has not yet been appointed. While initial steps have been taken by the Organization as to his selection, his appointment is not yet complete. This is evidenced by the fact that the Applicant is still listed as "under consideration" for the post in Inspira. This is also further evidenced by the fact that on 28 April 2016 at 8.31am during a discussion about seeking management evaluation, the Office-in-Charge OIOS/ID verbally confirmed to the Applicant that the administrative decision is not yet complete.

14. Again, the Respondent's Annex R1 states that the Administration must still undertake the "necessary action in INSPIRA so that the actual selection can be made". The selection of a candidate, as referenced by the Respondent in paragraph 5 of its response, is a separate and distinct action from the administrative decision appointing a candidate to a position and therefore the administrative action has not yet been implemented.

*Prima facie unlawfulness*

15. In accordance with para. 1.8(a) of ST/AI/1999/9 (Special measures for the achievement of gender equality), vacancies shall be filled by a woman candidate provided that: (i) her qualifications meet the requirements of the post; (ii) Her qualification are substantially equal to or superior to those of competing male candidates.

16. In accordance with para. 1.8(b) of ST/AI/1999/9, the fullest regard shall be given to the qualifications and experience of women already in service of the United Nations.

17. Paragraph 1.8(d) of ST/AI/1999/9 stipulates that when the qualifications of a woman candidate match the requirements for the vacant post and the department or office recommends a male candidate, the department or office shall submit to the appointment and promotions bodies a written analysis, with appropriate supporting documentation, indicating how the qualifications and experience of the recommended candidate, when compared to the core requirements of the post, are clearly superior to those of the female candidates who were not recommended.

18. The Respondent's evidence demonstrates that there is clear and convincing evidence that the Applicant was denied a fair chance of appointment as the procedure was procedurally or substantively defective, or was contrary to the Administration's obligations to ensure that its decisions are proper and made in good faith.

19. In the Respondent's annex R2, the qualification of the candidates at the supervisory level are not stated, which is the main function of the P-4 Investigative Team Leader position. Similarly, the current level of the candidates was not provided to the Head of Department, of which the Applicant was the only currently serving P-4 candidate for the post. Information also not provided to the Head of Department was the field service times for the candidates, of which only the Applicant has OIOS field service.

20. The OIOS Gender Focal Point confirmed that OIOS does not have a gender policy. Statistics concerning the representation of women in OIOS was also requested from the Executive Officer of OIOS, who has not provided any documentation or response.

21. The Respondent's argument that the Applicant's position as a P-4 staff member who has received ratings of "exceeds expectations" does not make her a superior candidate is not sustainable because:

- a. The P-3 and P-4 investigator positions within OIOS have different roles. The P-3 investigator works as a member of a team of investigators while the P-4 investigator supervises the team.

b. While the competencies required for a P-3 investigator are Professionalism, Teamwork and Communication; the competencies required for a P-4 investigative team leader additionally include Performance Management and Leadership.

c. The work plans for the P-3 and P-4 level investigators are substantially different.

d. There is no documentary evidence that can show that the selected P-3 male candidate exceeds the performance, nor even meets the performance of the Applicant in relation to supervising an OIOS investigations team.

e. The 20.5 years of investigative experience that the male P-3 selected candidate has does not demonstrate that he has more relevant supervisory experience than the Applicant as the contested position requires managing investigations. Nowhere in the documentation provided by the Respondent is it evidenced how many, if any, of those years involve investigation supervision and management, especially at the international level. By virtue of his post, the selected P-3 male candidate has zero years of managing investigators in OIOS.

f. In the frequent absence of the Section Chief at ID-Monrovia, the Applicant acts as Officer-in-Charge taking on the functions of a P-5 Chief of Section. The selected male candidate does not possess this experience.

g. Seven years of professional experience is required for appointment to the P-4 level. As both the selected male P-3 candidate and the Applicant possess those qualifications as evidenced by the Applicant's appointment and the selected P-3 male candidate's roster membership, no information provided by the Respondent indicated that any number of the selected P-3 male Applicant's year of experience were directly related to the additional competencies of the position of P-4 investigative team leader.

h. The "years of investigative experience" comparison is moot as it provides the Head of Department with no additional information

concerning the managerial competencies required, and currently being performed by the Applicant, for the P-4 Investigative team leader position.

i. Of the four candidates listed in Respondent's Annex R2, the Applicant is the only current P-4 candidate.

j. In relation to the possession of desirable language skills by the P-3 male candidate that was selected, OIOS has stated that this is standard language and could be used for duty stations where French is the working language.

k. The Respondent's assertion that, according to section 9.2 of ST/AI/2010/3 (Staff selection system) (as amended), the Under-Secretary-General (USG) OIOS was mandated to select the P-3 male candidate is incorrect. Section 9.2 allows the Head of Department to select a candidate whom he or she finds is the best candidate for the position; no language is contained within section 9.2 mandating selection of any given candidate, except for the one deemed best suited for the post.

l. Section 9.2 does not give the Head of Department free range to select any candidate of their choosing. The exercise of managerial prerogative is not absolute and the Tribunal may examine whether the selection procedure was carried out in an improper, irregular or otherwise flawed manner, as well as assess whether the Applicant was given full and fair consideration or whether the resulting decision was tainted by undue considerations or was manifestly unreasonable.

m. The evidence produced by the Respondent demonstrates that the USG/OIOS only took into account the total years of experience of the selected P-3 male candidate and his language skills, and did not take into consideration all other required factors enumerated in section 1(x) of ST/AI/2010/3, namely, gender and geography, and staff members serving with downsizing Secretariat entities.

n. As outlined by section 9.2, the decision by a head of department/office, in this case the USG/OIOS, to select a preferred

candidate for a particular position up to and including the D-1 level from a list of qualified candidates who have been reviewed by a central review body, must take into account the Organization's human resources objectives and targets as reflected in the departmental human resources action plan, especially with regard to geography and gender, and giving the fullest regard to candidates already in the service of the Organization as well as those encumbering posts that are slated for abolition or are serving in secretariat entities undergoing downsizing and/or liquidation.

o. The Applicant is a female, a group which is under-represented overall in OIOS-ID, at the P-4 investigator level, and is from a member state whose geographic representation is also under-represented. Furthermore, the Applicant is serving in a field mission, which is currently undergoing downsizing and will reach her three-year anniversary on 5 July 2016, which is suggested under ST/AI/2010/3 to be the maximum duration in a field post when giving priority to candidates for vacant positions. OIOS has not provided the Applicant with a human resources plan and has no policies in place for the consideration of gender in the recruitment process.

p. The recommended priority considerations for a department's Human Resources Action Plan, which OIOS does not possess, has not been considered by the selection panel or has not been turned over to the Applicant.

q. The Tribunal should consider the factors as set forth for the new staff selection system under ST/AI/2010/3 which is broken into two main categories to be incorporated into a Human Resource Action Plan. Such factors were put forth by the International Civil Service Commission and following such factors in recruitment under ST/AI/2010/3 would demonstrate recruitment in good faith.

r. The Administration has breached several sections of ST/AI/2010/3 concerning the involvement of the hiring manager in this process. A panel of three P-5 investigators reviewed the application for consideration by the

Head of Department. In this regard, this practice is highly irregular as the panel was not created by the hiring manager nor was the hiring manager involved in the recruitment process. The panel was appointed by the Officer-in-Charge of Investigations Division, also a Deputy Director (D-1) in OIOS.

s. The Deputy Director (D-1) for the Vienna office is the job opening's hiring manager, however, the Officer in Charge of Investigations Division formed a panel allowing the hiring manager to have no ability to select a candidate from the roster for recommendation to the USG/OIOS. In this light, the formation of the selection panel, none of which the P-5s represented the field personnel, violated the process set for selection of a candidate from the roster.

t. In relation to the compliance with gender requirements as set forth by ST/AI/2010/3, the hiring manager is the responsible party to ensure compliance with relevant regulations and manuals. In this case, the hiring manager did not have the ability to fulfil his function as he was excluded from the recruitment process and as such, the processes breached ST/AT/2010/3 and the Officer-in-Charge of OIOS/ID exceeded his authority in the formation of the selection panel.

u. The hiring manager was precluded from involvement in this recruitment process in violation of para.13 of the United Nations Manual for the Hiring Manager.

t. The Deputy Director for the Vienna office is the job opening's hiring manager; however, the Officer in Charge of Investigations Division formed a panel and did not allow the hiring manager to select a candidate from the roster for recommendation to the USG/OIOS. In this light, the formation of the selection panel in which no P-5 officer represented the field personnel, violated the process set for the selection of a candidate from the roster. Two of the three panel members have close working or personal relationships with the selected P-3 male candidate.



*Irreparable harm*

22. The contested post is a regular budget post at the P-4 level in Vienna. Such posts are not regularly advertised within OIOS and the availability of such a post is not likely to be available for years to come. This will have direct consequence on the Applicant's career.

23. The selected candidate will likely not leave the position for several years and he has been a staff member assigned to that duty station for several years prior to this most recent selection.

24. The Applicant has been posted in a non-family duty station for approximately three years.

25. Monetary damages would be the only remedy if the selected candidate's appointment is complete, which is insufficient for the detrimental effect this could have on the Applicant's career.

26. The Respondent has erred in stating that the Applicant has enjoyed numerous opportunities to advance her career with OIOS. While there have been numerous postings for various positions over the past year, as of the date of the P-4 Vienna post in question, there were no other P-4 investigative team leader posts advertised at a family duty station.

27. The P-4 advertised for New York with the Operations Standards and Support Section, which, while categorized as an investigator post, is the head of the Analysis, Intake and Research Team and is not operational in nature. This position and unit has no investigative area of responsibility and has no staff for investigative purposes; it is an administrative and legal post.

28. The Respondent contends that the Applicant's allegations concerning the future availability of posts is mere speculation. Given the fact that there are two P-4 (males) investigative team leaders who were assigned in early 2015, both of which came from duty stations in Africa, it is unlikely with the most recent selection of the male P-3 candidate, that any P-4 opportunities will arise within the next years.

29. Three P-4 investigative team leader posts in Vienna have been advertised since 2012; one in 2012, one in 2014, and one in 2016, all of which the Applicant submitted applications for. The Applicant notes that many of the other posts listed by the Respondent were in other field missions and posts during the first year of the Applicant's appointment to the Monrovia P-4 position while other positions required French (Port-au-Prince, Abidjan and Bangui) which the Applicant does not speak. The Respondent's list is generally misleading as some posts are for forensic investigators, therefore making the Applicant ineligible due to her lack of qualification in that discipline.

30. It is of importance for career advancement that staff members be provided with the opportunity to serve in both a field mission setting and a headquarters or office away from headquarters setting. Given the fact that diversified experience is necessary for the advancement of the Applicant's career, the Applicant should have been given an opportunity to serve as a P-4 investigations team leader in Vienna, and if the selected male P-3 candidate wanted to advance his position in OIOS, he could likewise apply for positions in field missions.

31. It is established law that a loss of a career opportunity with the United Nations is considered irreparable harm for the involved individual. As much as this applies to the situation where an applicant may lose her/his employment with the Organization, the effect is similar if, as in the present case, a staff member ineradicably loses out on a promotion opportunity. In this regard, the Tribunal observes that only few, if any, job openings similar to the post may be advertised in the near future.

32. Only if the Management Evaluation Unit (MEU) finds in favour of the Applicant may she be able to obtain a new assessment of her candidature for the post. Otherwise, if the selection decision is made before the management evaluation process has finished, the Applicant will have no other remedy than momentary compensation under art. 10.5 of the Statute of the Dispute Tribunal. Thus, the consequential effect on the Applicant's professional career cannot adequately be compensated by money.

*Urgency*

33. Appointment of the selected staff member has not yet been completed and the error is reversible until he is appointed. The finalization could occur at any time and is not within the Applicant's control.

**Respondent's case and submissions**

*Receivability*

34. The Application is not receivable *rationae materiae*. Under art. 2.2 of the Dispute Tribunal's statute, the Tribunal is competent to hear an application for suspension of action during the pendency of management evaluation, where the contested decision has not yet been implemented. The contested decision has been implemented. As such, it cannot be suspended.

35. The recruitment of staff is governed by ST/AI/2010/3<sup>1</sup>. Section 10.2 addresses when a selection decision is deemed to have been implemented. Specifically, section 10.2 provides that the decision to select a candidate shall be implemented upon its official communication to the individual concerned.

36. The selection decision was made on 15 April 2016 by the USG/OIOS pursuant to section 9.2 of ST/AI/2010/3. Following this decision, the hiring manager officially notified the selected candidate of his selection by the USG/OIOS. In accordance with section 10.2 of ST/AI/2013/3, the contested decision has been implemented, and can no longer be suspended.

37. If the Dispute Tribunal considers the Application to be receivable, it should be dismissed on the merits. The Applicant has failed to satisfy the three prerequisites for a suspension of the decision.

*Prima facie unlawfulness*

38. The Applicant has not demonstrated that the contested decision is *prima facie* unlawful. The prerequisite of *prima facie* unlawfulness requires that

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<sup>1</sup> Counsel for the Respondent incorrectly refer to this as "ST/AI/2013/3" at para. 5 of the Reply.

an applicant establish that there are serious and reasonable doubts about the lawfulness of the contested decision.

39. The Secretary-General has broad discretion in matters of appointment and promotion. There is a presumption that official acts have been regularly performed. Following a minimal showing by the Administration that the candidacy of a staff member was given full and fair consideration, the burden of proof shifts to the applicant who must be able to show through clear and convincing evidence that he or she was denied a fair chance of appointment.

40. It is not the Dispute Tribunal's function to consider the correctness of the selection decision made by the Secretary-General amongst the various job applicants recommended for selection, including the Applicant.

41. The Applicant received full and fair consideration. Both the Applicant and the selected candidate were roster candidates. The Head of Department may lawfully select a roster candidate without further referral to a central review body. In making the selection decision, the USG/OIOS fully considered the Applicant's experience and qualifications.

42. On 7 April 2016, the hiring manager submitted his proposal for the selection of a candidate to the USG/OIOS. The proposal was the result of a comprehensive review by a panel of three senior (P-5) officials of the personal history profiles of the roster candidates, who had applied for the contested position. Following its review, the panel produced a matrix comparing the experience and qualifications of the roster candidates for the contested position.

43. The matrix highlighted that the selected candidate possesses 20.5 years of relevant investigative experience as opposed to the Applicant's 12.5 years. The selected candidate also possessed knowledge of 4 languages, including French, a desired skill in accordance with the job opening. The Applicant, on the other hand, indicated proficiency in the English language only. The successful candidate also possesses two advanced degrees (Administration and Investigations). Lastly, the selected candidate possesses significantly more

experience working with OIOS than the Applicant, that is., 10 years compared to 2.5 years.

44. In light of the documented experience of the selected candidate, it was reasonable for the USG/OIOS to consider him the best suited for the position. Section 9.2 of the ST/AI/2010/3 therefore mandated that the USG/OIOS select that candidate.

45. The Applicant argues that she is entitled to selection for the position as result of her gender. This argument is incorrect. First, ST/AI/1999/9 is not applicable in this matter. There is no requirement in ST/AI/2010/3 that gender be given such overriding importance in deciding on the most suitable candidate

46. Second, even if ST/AI/1999/9 were to apply this matter, the Applicant would not meet the requirements of section 1.8 of ST/AI/1999/9. Her qualifications are not substantially equal to, or superior to those of the competing candidates. As noted above, the selected candidate has substantially more relevant experience, and a desirable language skill that the Applicant does not possess.

47. Contrary to the Applicant's claims, her selection against the contested job opening would have no impact on the gender distribution within OIOS. Had the Applicant been selected for the position, she would have simply transferred laterally to a position at the same level, and there would have been no change in the overall gender distribution within OIOS.

48. The Applicant incorrectly claims that her service at the P-4 level makes her superior candidate to the selected candidate. The Applicant has served at the P-4 level since 12 January 2015, approximately 1.25 years. This experience was fully considered. The USG/OIOS, however, was lawfully entitled to consider other factors, such as the selected candidate's 20.5 years of investigative experience. The selected candidate enjoys the same right as the Applicant to have his experience and qualifications fully and fairly considered for selection to the contested job opening.

*Irreparable harm*

49. The Applicant bears the burden of demonstrating that the decision would cause irreparable harm if it is not suspended. The Applicant claims her career will suffer irreparable harm because of the scarcity of P-4 regular budget posts in OIOS and the likelihood that the selected candidate would remain on the post in Vienna for years to come. This claim has no merit:

a. The Applicant's claim is factually incorrect. The Applicant has enjoyed numerous opportunities to advance her career within OIOS. She was recently promoted to the P-4 level. And, within the past year, OIOS has advertised several positions at the P-4 level, including positions in headquarters locations such as New York. There are presently 12 open P-4 job openings and 13 job openings that have recently closed.

b. The Applicant's terms of appointment do not include a right to a post in any particular duty station, or a post funded by the regular budget. Her terms of appointment are limited to full and fair consideration of her application to job openings.

c. The Applicant's allegation concerning the future availability of the contested position is mere conjecture. It is not possible to predict how long a staff member will remain against any specific position. Incumbency in a position is in part determined by the individual circumstances of the incumbent of a position. This is best demonstrated by the Applicant. The Applicant has only served at her current level for less than two years, and is now seeking opportunities at her level elsewhere. The selected candidate may likewise seek a lateral transfer, or promotion once he is eligible to apply.

*Urgency*

50. The Application is not urgent. The selection decision has been implemented.

51. Furthermore, even if the decision could be suspended, there is no urgency. In light of the numerous opportunities available at the P-4 level within

OIOS, monetary compensation would be sufficient to remedy any harm the Applicant may have suffered, should she prevail on the merits of her claim.

## **Considerations**

### ***Receivability***

52. Applications for suspension of action are governed by arts. 2.2 and 10.2 of the Statute of the Dispute Tribunal and arts. 13 and 14 of the Tribunal's Rules of Procedure.

53. The three statutory prerequisites contained in art. 2.2 of the Statute, that is, *prima facie* unlawfulness, urgency and irreparable damage, must be satisfied for an application for suspension of action to be granted where the contested decision is the subject of a management evaluation.

54. The wording of art. 2.2 of the Tribunal's Statute and art. 13.1 of its Rules of Procedure provide that the Tribunal may not order suspension of action of a decision once that decision has been implemented.

55. The Applicant contends that the contested decision has not yet been implemented as the P-3 candidate has not yet been appointed and, "while initial steps have been taken by the Organization as to his selection, his appointment is not yet complete."

56. The Respondent on the other hand submits that the selection decision was made on 15 April 2016 by the USG/OIOS pursuant to section 9.2 of ST/AI/2013/3. Following this decision, the hiring manager officially notified the selected candidate of his selection by the USG/OIOS and that in accordance with section 10.2 of ST/AI/2013/3, the contested decision has been implemented, and can no longer be suspended.

57. Concerning the date of implementation of the selection decision, the jurisprudence of the Tribunal suggests that a selection decision is implemented once the Administration receives the selected candidate's unconditional

acceptance of the offer of appointment<sup>2</sup>. These cases were decided in relation to the date of implementation of selection decisions taken on the basis of ST/AI/2010/3.

58. Section 10.2 of ST/AI/2010/3 provides as follows:

The decision to select a candidate shall be implemented upon its official communication to the individual concerned. When the selection entails promotion to a higher level, the earliest possible date on which such promotion may become effective shall be the first day of the month following the decision, subject to the availability of the position and the assumption of higher-level functions. However, when an encumbered position has been included in the compendium after upward reclassification and an applicant other than the incumbent is selected, the decision shall be implemented only when a suitable position has been identified for the incumbent.

59. In *Nwuke*<sup>3</sup> Judge Boolell held,

When the ST/AI uses the word ‘effective’, this has no relevance to the substantive issue of implementation. It is the view of this Tribunal that the use of the word ‘effective’ is just an administrative mechanism intended for the chosen candidate and management to work out the modalities for entry into service. As rightly submitted by counsel for the Respondent, the implementation and execution of a decision are two distinct concepts. Nowhere in the ST/AI is it provided that implementation is dependent on the effective time at which the selected candidate assumes duty.

60. The Tribunal agrees with the reasoning in *Nwuke*. It follows from the above that the contested decision has not been implemented as there is nothing on the record to show that the selected candidate has expressed his unconditional acceptance of the offer of employment. The Application is therefore receivable.

### ***Prima facie unlawfulness***

61. The Tribunal will focus on two of the Applicant submissions on unlawfulness which are critical to the outcome of this Application:

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<sup>2</sup> See for example *Tiwathia* UNDT/2012/109 at para. 35 and *Murnane* UNDT/2012/128 at para. 15.

<sup>3</sup> UNDT/2012/116, para. 41.



a. Were there any breaches of the provisions of ST/AI/1999/9 in the recruitment for the contested decision as she was the superior female candidate?

b. Did the Administration breach any of the sections concerning the involvement of the hiring manager in this process?

*Was the Applicant the superior female candidate?*

62. Section 1.8(a)(ii) of ST/AI/1999/9 stipulates,

1.8 (a) Vacancies in the Professional category and above shall be filled, when there are one or more women candidates, by one of those candidates provided that:

(i) Her qualifications meet the requirements for the vacant post;

(ii) Her qualifications are substantially equal or superior to those of competing male candidates;

63. Section 1.8(d) of ST/AI/1999/9 further stipulates,

When the qualifications of one or more women candidates match the requirements for the vacant post and the department or office recommends a male candidate, *the department or office shall submit to the appointment and promotion bodies a written analysis, with appropriate supporting documentation*, indicating how the qualifications and experience of the recommended candidate, when compared to the core requirements of the post, are clearly superior to those of the female candidates who were not recommended (emphasis added).

64. The Tribunal has examined the Reply and supporting documents filed by the Respondent and notes as follows:

a. The Respondent submits that a panel of three senior (P-5) officials undertook a comprehensive review of the personal history profiles of the roster candidates who had applied for the contested position and produced a matrix comparing the experience and qualifications of the roster candidates. With respect to the requirement of “supporting documentation”, there is no evidence to indicate that the said PHPs were submitted to the USG/OIOS.

b. The comparative “matrix” is sadly lacking in detail and does not explain how the recommended candidate was superior to the non-recommended other three candidates including the Applicant, the only other female candidate.

c. The “matrix”, contrary to section 1.8(a)(ii) of ST/AI/1999/9, fails to indicate how the qualifications and experience of the recommended candidate, when compared to the core requirements of the post, are clearly superior to those of the female candidate who was not recommended.

65. It is evident that the minimum standards of a written analysis “with appropriate supporting documentation” as required by section 1.8(d) have not been met. In light of these failures, it is difficult to see how the USG/OIOS could have concluded that the Applicant was not the superior female candidate when making his selection decision.

*Did the Administration breach any of the sections concerning the involvement of the hiring manager in this process?*

66. The Applicant made several submissions regarding the Administration’s breach of several sections of ST/AI/2010/3 concerning the involvement of the hiring manager in this process.

a. A panel of three P-5 investigators reviewed the application for consideration by the Head of Department. The Applicant submits that this practice is highly irregular as the panel was not created by the hiring manager nor was the hiring manager involved in the recruitment process.

b. The panel was appointed by the Officer in Charge of Investigations Division, also a Deputy Director (D-1) in OIOS.

c. The Deputy Director (D-1) for the Vienna office is the job opening’s hiring manager, however, the Officer in Charge of Investigations Division formed a panel allowing the hiring manager to have no ability to select a candidate from the roster for recommendation to the USG/OIOS.

d. The formation of the selection panel, none of which the P-5s represented the field personnel, violated the process set for the selection of a candidate from the roster.

67. The Respondent failed to submit any response to these submissions. The Tribunal's documentary record makes it impossible for it to reach a conclusion on this issue and this is no doubt a matter that may be more fully canvassed at a hearing of the case on the merits. That having been said, the Tribunal has no reason to discount the Applicant's contentions especially when viewed in the light of the Respondent's failure to join issues.

68. The Applicant has satisfied the first limb of the test for the grant of a suspension of action.

*Urgency and irreparable harm*

69. The Tribunal also considers the limbs of urgency and irreparable harm to have been satisfied. That the Application is urgent is obvious. In terms of irreparable harm, the Tribunal concurs with the Applicant's submission that a loss of a career opportunity with the United Nations is considered irreparable harm for the involved individual<sup>4</sup>.

**Conclusion**

70. In view of the foregoing, the application for suspension of action is granted.

*(Signed)*

Judge Nkemdilim Izuako

Dated this 6<sup>th</sup> day of May 2016

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<sup>4</sup> See for example, *Saffir* Order No. 49 (NY/2013), para. 24.

Entered in the Register on this 6<sup>th</sup> day of May 2016

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi