



UNITED NATIONS DISPUTE TRIBUNAL

Case No.: UNDT/NBI/2018/025

Order No.: 219 (NBI/2019)

Date: 16 December 2019

Original: English

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**Before:** Judge Rachel Sophie Sikwese

**Registry:** Nairobi

**Registrar:** Abena Kwakye-Berko

ARANGO

v.

SECRETARY-GENERAL  
OF THE UNITED NATIONS

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**ORDER ON CASE MANAGEMENT**

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**Counsel for the Applicant:**

Evelyn Kamau, OSLA

**Counsel for the Respondent:**

Elizabeth Brown, UNHCR

Francisco Navarro, UNHCR

## **Background**

1. On 19 February 2018, the Applicant filed an application challenging his non-selection for a United Nations High Commissioner for Refugees (UNHCR) P-3 Resettlement Officer position in Brasilia, Brazil.

2. The Respondent filed a reply limited to the issue of receivability on 23 March 2018 and on the merits on 7 November 2019 pursuant to Order No. 154 (NBI/2019) which found the application receivable. In his reply on the merits, the Respondent still argues that the application is not receivable.

### *Case Management Discussion (CMD)*

3. The Tribunal held a CMD on 10 December 2019. The CMD discussion is summarized below:

a. The Applicant maintains the same issues and claims despite the Respondent's latest filings of 7 November 2019 which included a UNHCR policy document.

b. The Applicant is opposed to the Respondent's reply on the merits which still argues receivability despite the Tribunal's ruling on the issue contained in Order No. 154. The Respondent argues that the Tribunal did not spell out the exact grounds on why the application is receivable and that receivability issues are linked to his arguments on the merits of the case.

c. Counsel for the Applicant moved the Tribunal to order the following information from the Respondent:

i. clarification on when Ms. Alfaro was first identified as a possible candidate and her profile shared with the UNHCR Representative;

- ii. the exact dates when Ms. Alfaro served on the temporary appointment (TA);
  - iii. the current status of the Brasilia P-3 TA;
  - iv. clarification regarding whether Ms. Alfaro was away on unpaid leave from 1 February 2014 to 11 September 2017; and
  - v. clarification of Ms. Noelle Diaz's title and section since she was copied in all emails relating to the Applicant's selection as a suitable candidate.
- d. Counsel for the Applicant sought disclosure of the following documents:
- i. the document referred to at para. 19 of the reply, dated 7 June 2017, where the Representative asked the UNHCR Division of Human Resources Management (DHRM) to provide her with a list of suitable candidates for the Brasilia P-3 TA;
  - ii. the list of suitable candidates shared by the DHRM;
  - iii. the document referred to at para. 21 of the reply, dated 20 July 2017, in which the Representative sent a request to DHRM and identified the Applicant as a suitable candidate for the TA;
  - iv. the document referred to at para. 22 of the reply, dated 26 July 2017, in which DHRM informed the Representative that the Applicant could not be rehired; and
  - v. the document reflecting when Ms. Alfaro was first identified as a possible candidate by DHRM, her profile shared with the Representative and the subsequent exchanges of emails on her candidature and selection.

e. Counsel for the Applicant sought leave to file a written submission upon receipt of the information and documents sought.

f. Counsel for the Respondent did not oppose the disclosure of the information and documents sought by the Applicant and sought leave to file a response to the Applicant's written submissions at 3(e) above.

g. The Applicant considers that the case can be decided on the basis of the documents on record if the requested documents are disclosed and an opportunity provided to him to file closing submissions. The Respondent agreed to also be provided an opportunity to file closing submissions.

### **Deliberations**

4. Pursuant to art. 19 of the UNDT Rules of Procedure, the UNDT "may at any time, either on an application of a party or on its own initiative, issue any order or give any direction which appears to a judge to be appropriate for the fair and expeditious disposal of the case and to do justice to the parties". To move this case forward, the Tribunal will first resolve the issue of receivability as raised in the reply of 7 November 2019.

5. In order to make that determination, the Applicant is given an opportunity to respond and file submissions solely on the question of receivability as revisited by the Respondent in his reply on the merits of 7 November 2019.

6. Should the Tribunal find that the application is receivable, the parties shall immediately, as from the date of the order on receivability, comply with the directions in paragraphs 3 (c) to (g) agreeing amongst themselves on time limits within which to file and exchange submissions including final submissions bearing in mind that the judge seized of this case's deployment expires on 31 March and that she is desirous of disposing of this case before then.

**IT IS ACCORDINGLY ORDERED**

7. The Applicant shall file a response to the Respondent's 7 November 2019 submissions on receivability by 31 December 2019.

*(Signed)*

Judge Rachel Sophie Sikwese

Dated this 16<sup>th</sup> day December 2019

Entered in the Register on this 16<sup>th</sup> day December 2019

*(Signed)*

Abena Kwakye-Berko, Registrar, Nairobi