



Before: Judge Agnieszka Klonowiecka-Milart

Registry: Nairobi

Registrar: Abena Kwakye-Berko

DIOP

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

JUDGMENT

Counsel for the Applicant:

Adjovi, Sètonджи Roland

Counsel for the Respondent:

Nicole Wynn, ALS/OHRM

Nusrat Chagtai, ALS/OHRM

Introduction

1. The Applicant is an Information Technology (IT) Officer with the United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) at the P-2 step XIII level.
2. She filed an application on 30 August 2018 challenging the decision not to renew her appointment beyond 14 January 2019.
3. The Respondent filed a reply on 1 October 2018.
4. On 29 October 2018, the Applicant filed a Motion seeking leave to file a Response to the reply. The Applicant attached her proposed Response and supporting annexes to the said Motion and informed the Tribunal that she was of the view that this matter can be adjudicated based on the written submissions without any hearing.
5. The Tribunal concurs that this matter can be adjudicated based on the parties' written submissions.

Facts

6. The Applicant was initially appointed on 15 January 2012 on a one year fixed-term appointment with the United Nations Mission in Liberia (UNMIL). Effective 31 August 2013, the Applicant was reassigned to MINUSMA as an Associate IT Officer.¹ The position required an advanced university degree (Master's degree or equivalent), or a first-level university degree with qualifying experience in lieu of the advanced degree.²
7. On 16 December 2014, the United Nations Reference Verification Unit (RVU) initiated the verification of the Applicant's work and academic qualifications in accordance with Standard Operating Procedure (SOP) on Staff Selection System for

¹ Reply – Annex R1.

² Reply – Annex R2.

Peacekeeping Operations and Special Political Missions.³

8. In her Personal History Profile (PHP),⁴ the Applicant had indicated, under the section titled “Education”, that she had obtained a *Maîtrise* degree from the Institute Pascal in 1995 and a *Brevet d’études Supérieures Spécialisées* from the institution Group IPG/ISTI in 1992, which she indicated as equivalent of a *Licence* degree. On 28 April 2015, the Director General of the Institute Pascal informed the RVU that although the Applicant had been a student at the Institute, it had not awarded her a *Maîtrise* degree. The Director General also informed the RVU that the Institute is not accredited to award the *Maîtrise* degree.⁵

9. On 4 May 2015, the RVU wrote to the Applicant requesting her to update her PHP and asked whether she had obtained any other degrees not listed in her PHP. On 5 May 2015, the Applicant responded that all the “completed degrees are listed.”⁶

10. The RVU turned to the other educational institution listed in the Applicant’s, PHP, that is, Group IPG/ISTI with a query from the RVU to clarify whether the *Brevet d’études Supérieures Spécialisées* awarded in 1992 could be aligned with a Bachelor’s degree. In response, on 9 June 2015, the Director of Communication and Information Technology of the Group IPG/ISTI stated, *inter alia*, that the diploma obtained by the Applicant after two years was the equivalent of a “BTS” (*Brevet de Technicien Supérieur*) whereas a Bachelor’s degree required three years of study to complete, which would result in awarding a *Licence*.⁷

11. Between November 2017 and May 2018, the Office of Internal Oversight Services (OIOS) conducted an audit of the recruitment and selection of international staff in MINUSMA. It discovered three staff members, including the Applicant, whose reference checks had not been positively verified.⁸ On 10 April 2018, the OIOS Resident Auditor provided MINUSMA with a list of staff members with negative

³ Reply – Annex R3.

⁴ Application – Annex 1.

⁵ Reply – Annex R4.

⁶ Reply – Annex R6.

⁷ Reply – Annex R7.

⁸ Reply – Annex R8.

reference checks, which included the Applicant.⁹

12. On 8 June 2018, the RVU informed the Applicant that the educational titles listed in her PHP are not at University degree level and are not accepted as fulfilling the minimum requirement for, or in lieu of, a first-level post-secondary degree (Bachelor's degree) for the purposes of recruitment to the Professional level. The RVU stated that the Applicant did not meet the minimum educational requirements for the position she encumbered.¹⁰ On 27 June 2018, the Applicant wrote to the RVU disputing its findings. On 29 June 2018, the RVU reiterated that her case had been closed as negative.

13. On 6 July 2018, MINUSMA's Director of Mission Support (DMS) issued the impugned decision whereby the Applicant was notified that her appointment would not be renewed because she did not meet the minimum educational requirements for the position.¹¹ The decision stated that the educational title listed in her PHP was not at a university degree level and that the institution from which it was obtained is not accredited to confer degrees.

14. On 10 July 2018, the Ministry of Higher Education, Research and Innovation, Republic of Senegal, transmitted to MINUSMA a certificate of authenticity of the "Brevet d'études Supérieures Spécialisées Option: Analyste Programmeur" conferred on the Applicant by Group IPG/ISTI.¹²

15. On 16 July 2018, the Applicant sought management evaluation of the decision not to renew her fixed-term appointment beyond 14 January 2019. The Management Evaluation Unit (MEU) upheld the contested decision in its letter dated 10 September 2018.

16. On 8 October 2018, the Applicant engaged in exchanges of correspondence with the Special Investigations Unit and the MINUSMA Conduct and Discipline Team

⁹ Reply – Annex R9.

¹⁰ Reply – Annex R11.

¹¹ Application – Annex 4.

¹² Application – Annex 6.

in relation to allegations of misconduct against her, namely, the false declaration of degrees listed in her PHP.¹³

Applicant's case

Accreditation of the educational institution

17. The Applicant argues that accreditation is a domestic matter handled by domestic institutions, under the political authority of the Ministry of Education. Internationally, there are institutions and instruments through which States organize the mutual recognition of their accreditation and UNESCO plays a major role in setting common standards. The United Nations Secretariat does not have any authority for accreditation. The rules provide for the Secretariat to rely on the international system in place.

18. Group IPG-ISTI is a higher education institution in Sénégal and the question of its accreditation must therefore be addressed within the domestic mechanism while one must look at its recognition abroad through the international mechanism. In the case at stake, the Ministry of Education of the Member State, Sénégal, has provided evidence as to the accreditation of the school in 1988 and authenticated the degree that the Applicant received from that institution. The only other thing needed was the recognition beyond the domestic framework.

19. To that end, there are two dimensions to consider. First some international instruments are adopted to regulate the recognition while some administrative institutions are established to share information on recognition. In term of instruments, there is a convention among African States for recognition of academic accreditation and degrees and Sénégal is party to that convention since 13 June 1983 while the Convention entered force on 1 January 1983. In addition, for the institutional framework, on one hand UNESCO plays a central role in the coordination, while the IAU (International Association of Universities), a civil society organization associated to UNESCO provides a database on higher education institutions recognized

¹³ Applicant's additional submissions annexed to her Motion dated 29 October 2018.

worldwide (WHED or World Higher Education Database). The United Nations Secretariat refers to the latter. Contrary to the statement by the United Nations Secretariat, there is also evidence that IPG-ISTI Group is well recognized through that database, while the 1981 Convention among the African States is recognized at the UNESCO as legal ground for international recognition.

20. Within the United Nations Secretariat, the RVU is mandated to verify the academic credentials but it cannot exercise its authority outside that framework and contradict those relevant instruments and institutions as stipulated under section 2 of ST/AI/2018/5 (Listing and recognition of academic degrees). The United Nations Secretariat will recognize an academic qualification if it is granted by an institution that has been duly accredited by the competent national authorities, within certain reasonable standards excluding a qualification granted only in exchange of payment.

21. In practice, within the United Nations database for recruitment, “Inspira”, the candidate has to select where (s)he was awarded the academic qualification from a list of institutions within the WHED.

22. In those circumstances, it is difficult to see any ground for the United Nations Secretariat through RVU to state that the granting institution was not accredited leading to the degree not being recognized. This decision is baseless and must be overturned.

The Applicant’s degree

23. In the present case, the Applicant submits that she received a *Licence* from IPG-ISTI Group in June 1992 and she listed it in her PHP, having found the school within Inspira.¹⁴ She was hired on that basis when she first joined in 2012 as a P-2 IT officer. Even though the Applicant could not trace the job vacancy at that time, it is well established that for a P-2 position at least a first degree in higher education is required.

24. The Minister of Education has provided the certificate of authenticity by the Director of the Group IPG/ISTI therefore confirming the academic qualification

¹⁴ Application – para. 16.

awarded to the Applicant.

25. Initially, the Respondent's case was that the Applicant did not hold the *Maîtrise*. The Respondent has slightly shifted the reasons for the decision, stating that the *Brevet* was not a Bachelor and that the Applicant never earned the *Maîtrise*. It is unlawful for the Administration to change the justification made contemporaneously to the decision.

26. The Applicant submits that she did not obtain the *Maîtrise* because she could not finalize her dissertation, having been pregnant with some complications. It was her mistake to have stated in the PHP that she obtained a *Maîtrise*. In addition, it was an oversight not to have corrected that earlier, the focus having been on the *Brevet*.

27. Having, however, established that the Applicant did obtain a *Brevet* from an accredited university in Sénégal, it remains to demonstrate whether this degree constitutes a university first level degree.

28. The Respondent argues that a first level university degree must be obtained after three years, equivalent of a Bachelor. However, it is a well-established practice that a Bachelor in numerous countries is obtained after a standard period of four years. In Francophone countries, the first degree that one would receive at the University is not a Bachelor. For instance, for technical studies such as computer sciences, that degree is called *Brevet de Technicien Supérieur*. It is a professional degree granted by Universities which often leads to a professional career without any need to secure any higher academic credential. For other studies, it would be a *Licence* obtained after three years. In addition, and still for technical studies, one could also obtain a *Licence Professionnelle* one year after the *Brevet*.

29. The argument that the first level university degree must be obtained after three years is imposition of a standard which does not match the national programme of all Member States of the Organization, hence creating a discrimination between their nationals, with an advantage for those in mainly English-speaking countries where a Bachelor's degree is awarded.

Unfairness and eligibility for “amnesty”

30. Even if the academic qualification does not meet those requirements, the United Nations Secretariat still has a discretion to recognize it as provided in section 6.4 of ST/AI/2018/5 which must be read in conjunction with section 6.5. It should lead to the one-time amnesty available where staff member has already been in the position/job for certain time.

31. The entire process was not conducted diligently. The Applicant was first recruited in the Department of Peacekeeping Operations (DPKO) in January 2012. It took more than six years for the Administration to conduct such a verification leading to this decision. Moreover, the verification started in December 2014 and it took more than two years for the Administration to reach this decision. As she has submitted, her 15+ years of experience within the United Nations and in the same field of information technology associated with the *Brevet* qualify her for the position.

32. Once the verification is done, there is an obligation for the Administration to consult with the Field Personnel Operations Service (FPOS) before making the decision as per section 6.3.4 of the DPKO, SOP on Staff Selection System for Peacekeeping Operations and Special Political Missions. The Applicant is not aware that such consultation took place because in the latest email related to this matter after the application was filed, the Administration stated that it was going to consult for the way forward. If such consultation was not done before, this adds another level of irregularity.

Relief sought

33. The Applicant submits that “this baseless decision” has led to months of stress for her unnecessary legal fees to sustain her rights while in a few months it could lead to her being out of job. In view of this, the Applicant prays the Tribunal to rescind the decision and to order the Respondent to recognize the licence obtained from IPG-ISTI Group, and to grant her 12-month’s net salary in compensation for both the moral and financial harm suffered.

Respondent's case

Accreditation

34. Section 2.1 of ST/AI/2018/5 provides, in part, that academic qualifications and equivalent degrees presented by candidates are recognized by the Organization only where the qualification is obtained from, and the equivalent confirmed by, an educational institution that is recognized, accredited or otherwise sanctioned by competent national authorities of the country in which the institution is based or the qualification was awarded. Section 2.2 of ST/AI/2018/5 further provides that a recognized degree is a degree that was accredited, at the time of its issuance, by the competent authority in the country in which the issuing authority is based. Section 3.1(c) of ST/AI/2018/5 also provides, in part, that staff members cannot list or rely upon a degree that was not awarded.

The Applicant's degree

35. For positions at the P-2 level, the minimum academic requirements are an advanced university degree (Masters degree or equivalent). Applicants with a first-level university degree and two additional qualifying years of experience may be considered to have met the educational requirements equivalent to a Masters.

36. The Applicant does not meet the minimum educational requirements for the position. She does not hold either the first-level *Licence* (Bachelors) degree or the *Maîtrise* (Masters) degree that she listed in her PHP. The Applicant holds a *Brevet*, which is a two-year diploma. It is not a degree. The Applicant has confirmed that she has no other degrees

37. Staff members have an obligation to ensure that degrees listed in their job application are recognized degrees. Pursuant to section 4.2 of ST/AI/2018/5, staff members who were unsure as to whether their degree met the requirements of a recognized degree, had six months from the date of issuance of ST/AI/2018/5 to initiate an accreditation review process. Section 6.5 further provides that listing a degree that

is not recognized may result in administrative and/or disciplinary measures, including dismissal, pursuant to staff rule 10.1.

The question of fairness and amnesty

38. Pursuant to section 6.3.1 of the SOP, reference checks must be performed for all external candidates, as well as serving staff members for whom a reference check has not yet been conducted. This will consist of verification of the candidate's educational qualifications and employment record as indicated in their application. Under section 6.3.4, where a serving staff member receives a negative reference check in relation to their educational qualifications, the Field Personnel Operations Service Desk Officer (FPOS/DO) should be consulted to determine the best course of action based on the facts of the case.

39. Contrary to the Applicant's claim, she is not eligible to be considered for the one-time amnesty for staff members under section 6 of the AI. Section 6 of ST/AI/2018/5 applies to staff members who requested a review of their degrees under section 4 of ST/AI/2018/5. The Applicant has presented no evidence of having made such a request at all. Besides, she has no degree for the Administration to review; at best, the Applicant possesses a *Brevet*, which the issuing authority has confirmed to be a two-year diploma, not a degree. The Applicant cannot rely on a degree that was not awarded.

40. The Applicant is not eligible for the position. The Applicant had no right to a renewal of her appointment. She has presented no evidence to support a legitimate expectation of renewal. Prior performance appraisals and contract renewals are not sufficient to amount to an express promise by the Organization to renew the Applicant's appointment. Accordingly, the application should be denied.

Considerations

41 It is undisputed that the job opening which the Applicant applied for and for which she was selected required, *inter alia*, a first level university degree with qualifying experience accepted in lieu of an advanced university degree.

42. In this regard, Section 3.3.4 of the United Nations 2015 Applicant's Manual, Instructional Manual for the Applicant on the Staff Selection System (Inspira) states that the "educational requirements indicated in job openings reflect the minimum organizational standard requirements for a given job and title" and that an

Applicant for positions in the Professional and higher level positions is normally required to have an advanced university degree (Masters degree or equivalent). Applicants with a first level university degree combined with additional qualifying experience (earned after receipt of degree) are also considered to have met the educational requirements equivalent to a Masters. A first level university degree may not be substituted by relevant experience.

43. Section 2.2 of ST/AI/2018/5 stipulates that a "recognized degree" is one that that was accredited at the time of its issuance by the competent authority in the country in the issuing institution is based. Sections 3.2 and 3.3 stipulate that

3.2 To confirm whether an institution or a degree is accredited, staff members may refer to the World Higher Education Database compiled by the International Association of Universities ("IAU list"). Since the list reflects institution and degree accreditation at the time of publication, a degree and/or institution may not be listed in the most recent publication of the IAU list. In this case, staff members may also refer to prior publications of the IAU list.

3.3 Listing a degree as defined in section 3.1 (a) to (d) or misrepresentation of receipt of a degree may result in administrative and/or disciplinary measures, including dismissal, pursuant to staff rule 10.1.

44. In the present case, the decision not to renew the Applicant's fixed-term appointment, as conveyed to her in the 6 July 2018 memorandum from the MINUSMA/DMS, is premised on the fact that the educational title listed in her PHP is

not at a University degree level and that the institution it was obtained from is not accredited to confer degrees.

45. There appear to have been miscommunication to the Applicant from the RVU regarding the issue of whether the Group IPG-ISTI is an accredited institution. This miscommunication can be traced to an email the Applicant received on 29 June 2018 from the RVU informing her that the qualification she attained was not at a University level and that the institution she obtained it from is not accredited to confer the degree.¹⁵ This email appears to have mixed up the issues since it was referring to a different institution, Institute Pascal, where the Applicant had indicated in her PHP that she had obtained a Master's degree in Computer Science. As stated at paragraph 8 above, it was in this connection that the Director General of the Institute Pascal informed the RVU in 2015 that although the Applicant had been a student at the Institute, it had not awarded her a *Maîtrise* degree and that the Institute is not even accredited to award the *Maîtrise* degree. The issue of the *Maîtrise* degree and whether the Institute Pascal is accredited does not arise here as the Applicant has conceded that she did not attain the said degree.

46. At present, however, in light of the certification by the Minister of Education of the Government of Sénégal, there is no dispute that Group IPG/ISTI is an accredited educational institution in the sense of ST/AI/2018/5. The impugned decision was in this aspect misguided, as correctly and eloquently argued in the application. In the reply, the Respondent maintains, nevertheless, that the impugned decision was rightly based on the fact that the Applicant does not meet the minimum educational requirements for positions at the P-2 level, i.e., a first-level university degree,

47. The principal legal issue arising for consideration in this case remains whether the Applicant's qualifications meet the requirement of a recognized first level university degree as required by the job opening. The other issue raised by the Applicant regarding the allegations of making false declarations of the degrees listed

¹⁵ Reply – Annex 12 at page 3.

in her PHP is not properly before the Tribunal.

48. The established fact is that the Applicant obtained a *Brevet de Technicien Supérieur en Informatique de Gestion* from an accredited university in Sénégal, the Group IPG/ISTI after two years of studies from 1 October 1990 to 30 June 1992. The Respondent's position is that the *Brevet* is a diploma and not a degree. The Respondent submits that the Applicant is accordingly not eligible for the position of Associate Systems Officer.

49. The Tribunal recalls that the certification provided by the Minister of Education of the Government of Sénégal as submitted by the Applicant, while evidencing that the Group IPG-ISTI is an accredited institute, does not evidence that the *Brevet*, which she attained there, is the equivalent of a first level university degree. On the other hand, it is generally known that *Brevet* denotes vocational studies and not a university degree. The RVU in determining that the Applicant's *Brevet* qualification was not the equivalent of a first level university degree, in accordance with section 3.2 of ST/AI/2018/5, relied moreover on information supplied by the Director of Communication and Information Technology of the Group IPG/ISTI who stated that the qualification attained by the Applicant was a diploma which was not conterminous with a Bachelor's degree, the latter requiring three years of study at the Institute to complete and resulting in a *Licence*. This information, obtained at the source, is dispositive of the issue. As such, contrary to the Applicant's argument, it is primarily the national regulation which determines that the Applicant does not possess a degree, and not the United Nations Administration.

50. As concerns the requirement for a first level university degree for professional positions at the United Nations, the Tribunal finds nothing inappropriate about it and the Applicant's implied argument that any higher education in an accredited institution should suffice is merely polemical. The requirement does not have a discriminatory effect against the Senegalese educational system given that there is availability of studying for the *Licence* degree. This the Applicant did not accomplish, even though she had incorrectly listed it in her PHP as equivalent to *Brevet*.

51. In conclusion, the Applicant does not meet the minimum educational requirements for positions at the P-2 level. Further, for the reasons stated by the Respondent, the Applicant is not eligible to be considered for the one-time amnesty for staff members under section 6 of ST/AI/2018/5.

52. It is a well-established principle that fixed-term appointments or appointments of limited duration carry no expectation of renewal or conversion to another type of appointment.

Even the renewal of the appointment of a staff member on successive appointments does not, in and of itself, give grounds for an expectancy of renewal, unless the Administration has made an express promise that gives the staff member an expectancy that his or her appointment will be extended. The jurisprudence requires this promise at least to be in writing.

An administrative decision not to renew a fixed-term appointment can be challenged on the grounds that the Administration has not acted fairly, justly or transparently with the staff member or was motivated by bias, prejudice or improper motive. The staff member has the burden of proving such factors played a role in the administrative decision motive.¹⁶

53. In the present case the Applicant did not show unfairness, unjustness, lack of transparency or inappropriate motive. On the other hand, the Administration is under an obligation to put an end to illegal situations as soon as it becomes aware of them.¹⁷ The Appeals Tribunal confirmed that a non-extension on the mark of expiry of a fixed-term appointment is a correct manner of correcting irregularity consisting in a staff member's ineligibility for a post.¹⁸ Notwithstanding an error regarding the accreditation of the educational institution, the Administration otherwise correctly established that Applicant does not meet the minimum educational requirements. The impugned decision, therefore, is lawful.

¹⁶ *He* 2018-UNAT-825.

¹⁷ *Cranfield* 2013-UNAT-367 at para. 36; *Das* 2014-UNAT-421, at para. 15 and *Husseini* 2016-UNAT-701, paras. 22-23.

¹⁸ *Kule Kongba* 2018-UNAT-849.

Judgment

54. The application is accordingly dismissed.

(Signed)

Judge Agnieszka Klonowiecka-Milart

Dated this 5th day of February 2019

Entered in the Register on this this 5th day of February 2019

(Signed)

Abena Kwakye-Berko, Registrar, Nairobi