



Before: Judge Sun Xiangzhuang

Registry: Geneva

Registrar: René M. Vargas M.

KAVOSH

v.

SECRETARY-GENERAL
OF THE UNITED NATIONS

**ORDER
ON CASE MANAGEMENT**

Counsel for Applicant:

Wangei Wahome Akedi

Counsel for Respondent:

Rebeca Britnell, UNHCR

Francisco Navarro, UNHCR

Introduction

1. The Applicant, a former staff member of the Office of the United Nations High Commissioner for Refugees (“UNHCR”), contests the decision to impose on him the disciplinary measure of dismissal.

2. By Order No 162 (GVA/2023) of 24 November 2023, the Tribunal decided, *inter alia*, to hold a hearing, *in camera*, in the present case. It also summoned seven witnesses to give testimony during the hearing and informed the parties that interpretation from Farsi to English and vice versa would be only provided for the complainant’s testimony.

3. Following the above-mentioned Order, the Registry contacted the parties to check their availability as well as the availability of the relevant witnesses for the hearing to be conducted between 22 and 26 January 2024.

4. On 11 December 2023, the Respondent filed a motion to submit additional evidence.

5. On 12 December 2023, the Applicant informed the Tribunal, *inter alia*, that the Applicant had not been able to confirm the attendance of Ms. I. K. as a witness and requested, in the alternative, to be allowed to call Dr. S. A. K. as a witness as per his submission of 28 September 2023.

6. Having considered the parties’ availabilities and those of the relevant witnesses and the interpreter, the Tribunal informed the parties on 21 December 2023 that the hearing would take place on 23 and 24 January 2024.

Consideration

The Respondent’s pending motion

7. In his motion, the Respondent requests the Tribunal to admit into evidence an email sent by the Applicant on 2 March 2020 to the then Head of Sub-office Shiraz and other staff members in the Protection Unit. He notes that an Excel document attached to this email contained a list of “refugee leaders in four areas under Shiraz

[area of responsibility]” and that the Complainant was identified thereby as a “Refugee Volunteer (former DAFI scholar)”.

8. The Respondent asserts that the evidence is highly relevant to the case because it demonstrates that, contrary to the Applicant’s submissions, the UNHCR Sub-Office in Shiraz recognized the complainant as a refugee leader at the material time and the Applicant was fully aware of this fact.

9. According to the Respondent, his submission of the motion at this late stage of the proceedings is because the evidence was only discovered on Saturday, 9 December 2023. It was provided by Mr. J. M. one of the recipients of the Applicant’s email, who recently re-joined UNHCR and regained access to his UNHCR email account.

10. The Tribunal notes that Mr. J. M. is among the witnesses who will testify at the hearing. The Applicant, therefore, will have the opportunity to challenge this new evidence during the hearing and, as such, his due process rights will not be breached by the admission of said evidence into the case record at this stage of the proceedings. Consequently, the Tribunal decides to grant the Respondent’s motion.

The Applicant’s motion to admit a witness

11. The Applicant informed the Tribunal that he had not been able to confirm the attendance of Ms. I. K. as a witness despite her being initially agreeable to provide testimony. He thus requested authorization to call instead Dr. S. A. K. as a witness as per his submission of 28 September 2023.

12. However, the Applicant’s submission of 28 September 2023 was struck from the case record by Order No. 137 (GVA/2023). If the Applicant refers to his submission of 16 October 2023, the Tribunal notes that it has already decided in Order No. 162 (GVA/2023) that the testimony of Dr. S. A. K. was not relevant for the hearing. Therefore, the Applicant’s request is denied.

13. Having said the above, the Tribunal will keep a slot in the tentative schedule for the hearing in case Ms. I. K. becomes available.

The Applicant's motion concerning the hearing

14. The Applicant confirmed that he and his Counsel are available to travel to Geneva for a physical hearing. However, other witnesses will attend the hearing virtually. He noted that his travel and that of his Counsel are subject to a successful visa application and requested the Tribunal's assistance in procuring the necessary documents for it.

15. In this respect, the Registry will contact the Applicant shortly and procure him a standard invitation letter for the hearing.

16. The Tribunal takes note of the Applicant's concerns about the alleged harassment and intimidation of his witnesses at their place of work. While this is an issue that may be brought up by the Applicant during the hearing, the Tribunal recalls that any form of retaliation against a witness is strictly prohibited. The Tribunal further notes that the hearing will be closed and that the testimony of the witnesses is only for the benefit of the present proceedings.

Tentative schedule for the hearing

17. The schedule of the hearing, which may be subject to change depending on the parties' and witnesses' availability, is tentatively set as follows (all times are Geneva times):

Tuesday, 23 January 2024

10 a.m.	Opening statement by the parties (Applicant and Respondent)	In-person and/or hybrid
10.30 a.m.	Applicant's testimony	In-person and/or hybrid
11.30 a.m.	Applicant's cross-examination	In-person and/or hybrid
12.30 p.m. to 2 p.m.	Lunch break	
2 p.m.	Complainant's testimony	In-person and/or hybrid
3 p.m.	Complainant's cross-examination	In-person and/or hybrid

Wednesday, 24 January 2024

10 a.m.	Testimony of Mr. D. M. and cross-examination	Hybrid
11 a.m.	Testimony of Mr. J. M., former UNHCR Resettlement Expert, and cross-examination.	In-person in principle
Noon	Testimony of Ms. E. C. R., Chief of the Refugee Status Determination Section in the Division of International Protection, and cross-examination.	In-person in principle
1 p.m. to 2 p.m.	Lunch break	
2 p.m.	Testimony of Ms. E. R., Senior Investigation Specialist, IGO, UNHCR, and cross-examination.	In-person in principle
3 p.m.	Testimony of Ms. I. K. and cross-examination, if available.	To be confirmed
4 p.m.	Closing submissions by parties	In-person and/or hybrid

Hearing bundle

18. For the purpose of the hearing, the parties shall prepare an agreed bundle of documents that shall include any document to which they may refer at the hearing.

Conclusion

19. In view of the foregoing, it is ORDERED THAT:

- a. The Respondent's motion of 11 December 2023 is granted;
- b. The Applicant's motion of 12 December 2023 to admit a witness is denied;
- c. The Tribunal will hold a hearing, *in camera*, in the present case from Tuesday, 23 to Wednesday, 24 January 2024;
- d. The tentative schedule of the hearing is indicated in para. 17 above;

e. The Registry will procure the Applicant and his Counsel a standard invitation letter for the hearing;

f. The parties shall prepare an agreed bundle of documents as indicated in para. 18 above and transmit it to the Tribunal by **Thursday, 18 January 2024**; and

g. Other practicalities regarding the hearing, as directed by the Tribunal, will be handled in due course by the Geneva Registry in communication with the parties.

(Signed)

Judge Sun Xiangzhuang

Dated this 2nd day of January 2024

Entered in the Register on this 2nd day of January 2024

(Signed)

René M. Vargas M., Registrar, Geneva