

UNDT/2015/043, Cicek

UNAT Held or UNDT Pronouncements

Were the rules followed correctly to assess the relevant professional experience of the Applicant for the advertised JO? The standards and principles in ST/AI/2010/3 governing the selection of international staff, to some extent, apply by reference to the recruitment for NPO posts. Authority to assess candidates' eligibility In her capacity as CCPO of UNFICYP, Ms. Kaddoura was entitled to verify whether the candidates for the Position met the minimum requirements specified in the JO. She was also bound to correct any errors discovered in the process. Application of the JO requirements The Tribunal conducted its examination on the assumption that the Applicant was required to have three years, and not four, of relevant professional experience as set out in the JO. The Tribunal noted that the Organization was obliged to ensure that candidates fully meet the JO requirements. It is also obliged, as a matter of principle, to exclude those who do not fully meet those requirements, even if they are internal candidates and not far from meeting them. Experience acquired in the GS category It was proper not to count the Applicant's work experience at the GS-5 level towards the requirements for the Position, even if the GS-5 was acquired in a relevant field, such as his four months of service with CAS, the section where the Position was. This work did not qualify as "professional" experience, as required by the JO, as it was not at the GS-6 or above level. Relevant field(s) of experience The JO clearly indicated public administration, governance, peace-building, and community relations as the fields in which candidates to the Position were expected to have acquired their experience. Provided it is not done on arbitrary or capricious grounds, excluding the experience gained in different areas is justified. Did the Applicant meet the eligibility requirements of the Job Opening? Educational requirements The Applicant did not have an advanced university degree. Even if he had a first university degree, he did not have a combination of "exceptional professional experience ... in lieu of the advanced degree". Therefore, the Applicant did not meet the education requirement stipulated in the JO. Applicant's relevant professional experience The Administration's assessment of the Applicant's relevant professional experience leading to the contested decision was in

accordance with the applicable rules and guidelines, and was based on a reasonable and plausible approach. As such, this assessment was not irrational or arbitrary.

Improper motives The Administration has a very wide discretion in assessing the experience to be taken into account as relevant, and there are few rules containing detailed instructions on the process or criteria to be used in appraising what constitutes relevant experience for a given post. Also, it is possible that different officials could come to different results in an assessment. There was no evidence to suggest that Ms. Kaddoura's evaluation of the Applicant's work experience was biased. Ms. Kaddoura arrived in Cyprus and UNFICYP only weeks before she notified the Applicant of the contested decision. The fact that the Applicant was re-assessed and declared ineligible at such a late stage of the procedure does not prove that the Administration was motivated by any animosity against him. Also, Ms. Kaddoura's view that the experience standard required by the JO was lower than the one usually applied does not show any ill-motivation because the criteria against which all candidates were actually assessed remained unchanged. Ms. Kaddoura had the obligation to correct errors, and she would have acted unlawfully if she had let the error stand. In conclusion, the determination that the Applicant did not meet the minimum professional relevant experience for the Position was reached after a proper process and an unbiased exercise of discretion. Did the Applicant have a legitimate expectation to be found eligible to participate in the competitive selection exercise? It is for the Applicant to show that his expectation that he would have been found eligible for the advertised JO was justified by a continuous, uniform and general practice. The Applicant has failed to meet this test. The fact that the Applicant took the written test and underwent the interview for the Position did not confer him any legal entitlement or legitimate expectation. The minimum requirements for the Position were unequivocally set out in the JO and, thus, any candidate was from the onset in a position to know that no one lacking those particular requirements could be considered for selection. The Tribunal understood why the Applicant was genuinely disappointed at the reversal of his eligibility determination, and accepted that this had a severe impact on him. Nevertheless, such reversal was lawful and justified in the circumstances of this case, and no acquired rights of the Applicant were breached as a result of that decision.

Decision Contested or Judgment/Order Appealed

The Applicant contested the decision to declare him ineligible for the National Professional Officer (“NPO”) position at the NO-B level in the Civil Affairs Section (“CAS”) of the United Nations Peacekeeping Force in Cyprus (“UNFICYP”), advertised through Job Opening (“JO”) 8/2013 (“the Position”), and, therefore, to exclude him from the recruitment process.

Legal Principle(s)

The Administration has wide discretion in selection/promotion matters. It is not for the Tribunal to conduct anew the assessment of candidates substituting its own judgment to that of the Organization. Candidates for a position must be assessed against the requirements set out in the JO; no additional requirements must be added that were not contained in the JO as published. The paramount consideration in selecting the Organization’s staff be the highest standards of efficiency, competence and integrity. The prerogative to limit through the JO the areas in which experience would be considered relevant is part of the Organization’s broad discretion to determine the necessary requirements for a given post. The burden of proof that a decision was ill-motivated rests with the Applicant who alleges it.

Outcome

Dismissed on merits

Full judgment

[Full judgment](#)

Applicants/Appellants

Cicek

Entity

UNFICYP

Case Number(s)

UNDT/GVA/2014/30

Tribunal

UNDT

Registry

Geneva

Date of Judgement

27 May 2015

Duty Judge

Judge Shaw

Language of Judgment

English

Issuance Type

Judgment

Categories/Subcategories

Discrimination and other improper motives

Staff selection (non-selection/non-promotion)

Eligibility

Full and fair consideration

Applicable Law

Administrative Instructions

- ST/AI/2010/3

Staff Rules

- Rule 104.12(b)(iii)

UN Charter

- Article 101.3

Related Judgments and Orders

UNDT/2013/072

UNDT/2012/123

2012-UNAT-265

2013-UNAT-383

UNDT/2014/036

2010-UNAT-021

2014-UNAT-434

UNDT/2013/157

2011-UNAT-185

2013-UNAT-367

UNDT/2009/085