

# **2020-UNAT-985, Mohamed**

## UNAT Held or UNDT Pronouncements

UNAT held that the Appellant did not demonstrate that the UNDT judgment was defective or that the UNDT erred in considering that the selected candidate met the minimum educational requirements and the work experience required for the job. Emphasizing the broad discretion of the Secretary-General and that it was not the role of UNDT to substitute its own decision for that of the Secretary-General, UNAT held that UNDT was not manifestly unreasonable in deciding that the recommendation approved by the Secretary-General was based on an entire process and the experience of the candidates. UNAT held that it was not established by clear and convincing evidence that the Appellant was deprived of a fair process and a fair chance of promotion. UNAT dismissed the appeal and affirmed the UNDT judgment.

## Decision Contested or Judgment/Order Appealed

The Applicant contested her non-selection to a position with the ICSC. UNDT dismissed her application on grounds that the Secretary-General had discretion in interpreting the meaning of “extensive experience” and he was, therefore, reasonable in his determination that the selected candidate met the work and education requirements. UNDT also held that any procedural insufficiencies in the recruitment process had not impacted the Applicant’s chances of promotion and that she did not demonstrate that the interview panel had inappropriately favoured the selected candidate.

## Legal Principle(s)

When judging the validity of the Secretary-General’s exercise of discretion in administrative matters, UNDT determines if the decision is legal, rational, procedurally correct, and proportionate. An irregularity in the promotion will only result in the rescission of the decision not to promote a staff member when he or

she would have had a significant chance for promotion. The starting point for judicial review is a presumption that official acts have been performed regularly, although this presumption is a rebuttable one. If a manager can show that a candidate was given full and fair consideration in a staff selection decision, then the presumption of law stands satisfied and the burden of proof shifts to the staff member, who must show through clear and convincing evidence that he or she was denied a fair chance of promotion.

## Outcome

Appeal dismissed on merits

## Full judgment

[Full judgment](#)

## Applicants/Appellants

Mohamed

## Entity

ICSC

## Case Number(s)

2019-1287

## Tribunal

UNAT

## Registry

New York

## Date of Judgement

27 Mar 2020

## President Judge

Judge Neven

## Language of Judgment

English

## Issuance Type

Judgment

## Categories/Subcategories

Staff selection (non-selection/non-promotion)

## Applicable Law

Other UN issuances (guidelines, policies etc.)

- UNAT Practice Directions

UN Charter

- Article 101

UNAT Statute

- Article 2.1(e)

## Related Judgments and Orders

UNDT/2019/088

2011-UNAT-122

2015-UNAT-547

2017-UNAT-747

2017-UNAT-762

2011-UNAT-110

2011-UNAT-174

2011-UNAT-175

2011-UNAT-172

2015-UNAT-510

2010-UNAT-084

2010-UNAT-044

2010-UNAT-035