

**Cour
Pénale
Internationale**



**International
Criminal
Court**

Original: **English**

No.: ICC-RoR125-01/21

Date: 18 October 2022

Date original: 20 May 2021

THE PRESIDENCY

Before: Judge Piotr Hofmański, President
Judge Luz del Carmen Ibáñez Carranza, First Vice-President
Judge Antoine Kesia-Mbe Mindua, Second Vice-President

Public

Public redacted version of “Decision on the Application to review the decision of the Registrar denying admission [REDACTED] to the list of assistants to counsel” dated 20 May 2021 (ICC-RoR125-01/21-3-Conf)

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

Applicant
[REDACTED]

Counsel for the Defence

Legal Representatives of the Victims

Legal Representatives of the Applicants

Unrepresented Victims

Unrepresented Applicants
(Participation/Reparation)

The Office of Public Counsel for Victims

The Office of Public Counsel for the
Defence

States' Representatives

Amicus Curiae

REGISTRY

Registrar
Mr Peter Lewis

Detention Section

Division of Court Services

The Presidency of the International Criminal Court (the ‘Court’) has before it the application of [REDACTED] (the ‘Applicant’) filed on 30 March 2021 for judicial review pursuant to regulation 125(4) of the Regulations of the Registry (the ‘Regulations’) of a decision of the Registrar issued on 25 March 2021, denying [REDACTED] inclusion in the list of assistants to counsel (the ‘Application’).¹

I. PROCEDURAL HISTORY

1. In November 2020, the Applicant sent to the Court, via post, a request for inclusion in the list of assistants to counsel, dated 2 November 2020 (the ‘Request for Inclusion’).² On 27 November 2020, the Registry acknowledged receipt of the Request for Inclusion,³ together with its supporting documentation.⁴ The Registry further requested the Applicant to submit missing documentation.⁵ In January and February 2021, the Applicant submitted additional information which had been requested by the Registry.⁶
2. On 25 March 2021, the Applicant was notified of the Registrar’s decision to reject the Request for Inclusion in the list of assistants to counsel and was also informed of the 15-day deadline to apply for review before the Presidency (the ‘Impugned Decision’).⁷
3. On 30 March 2021, the Applicant filed the present Application for judicial review.⁸

¹ Applicant, Request for re-examination ex art. 125(4) of the Regulations of the Registry, 26 March 2021 (notified on 30 March 2021), ICC-RoR125-01/21-1-Conf.

² Request for Inclusion, 2 November 2020, ICC-RoR125-01/21-2-Conf-Exp-AnxII *annexed to* Registrar, Registrar’s Observations on “Request for re-examination ex art. 125(4) of the Regulations of the Registry”, 14 April 2021, ICC-RoR125-01/21-2-Conf-Exp (‘Registrar’s Observations’).

³ Email from the Registry to the Applicant on 27 November 2020, ICC-RoR125-01/21-2-Conf-Exp-AnxIV *annexed to* Registrar’s Observations (‘Email to Applicant’), p. 1.

⁴ See [REDACTED] – Curriculum Vitae, ICC-RoR125-01/21-2-Conf-Exp-AnxIII *annexed to* Registrar’s Observations (‘Applicant’s CV’).

⁵ Email to Applicant, ICC-RoR125-01/21-2-Conf-Exp-AnxIV, p. 1.

⁶ Email from the Registry to the Applicant on 8 January 2021, ICC-RoR125-01/21-2-Conf-Exp-AnxV *annexed to* Registrar’s Observation, p. 1; Email from the Registry to the Applicant on 5 February 2021, ICC-RoR125-01/21-2-Conf-Exp-AnxVI *annexed to* Registrar’s Observation, p. 1; Email from the Registry to the Applicant on 19 February 2021, ICC-RoR125-01/21-2-Conf-Exp-AnxVIII *annexed to* Registrar’s Observation, p. 1; Email from the Applicant to the Registry on 5 February 2021, ICC-RoR125-01/21-2-Conf-Exp-AnxVII *annexed to* Registrar’s Observation, p. 1; Email from the Applicant to the Registry on 19 February 2021, additional information on experience, ICC-RoR125-01/21-2-Conf-Exp-AnxIX *annexed to* Registrar’s Observation (‘Email from the Applicant’), pp. 2-3.

⁷ Impugned Decision, 25 March 2021, ICC-RoR125-01/21-1-Conf-Anx1 *annexed to* Application, pp. 1-2.

⁸ Application, ICC-RoR125-01/21-1-Conf.

4. On 14 April 2021, the Registrar filed his observations responding to the Application in accordance with regulation 125(5) of the Regulations.⁹

II. IMPUGNED DECISION

5. In the Impugned Decision, the Chief of the Registry's Counsel Support Section informed the Applicant that following a careful review, the Request for Inclusion in the list of assistants to counsel was denied on the basis that he does not fulfil the requisite criteria set forth in regulation 124 of the Regulations.¹⁰
6. The Impugned Decision specifies that the Applicant does not fulfil the criteria of five years of relevant experience or specific competence in international or criminal law and procedure.¹¹ In reaching this conclusion, the Applicant's experience as a trainee lawyer at [REDACTED] law firm [REDACTED], staff lawyer at [REDACTED] law firm [REDACTED] and legal intern [REDACTED] were considered relevant for the purpose of admission to the list of assistants to counsel whereas other experience not related to criminal law and procedure was not considered relevant.¹² Finally, the Impugned Decision indicates that the Applicant's overall experience falls short of the required five years given that unpaid engagements, including internships, are considered as half-time.¹³

III. SUBMISSIONS

A. Application

7. The Applicant seeks judicial review of the Impugned Decision, arguing that he is close to reaching five years of relevant experience in criminal law and has specific competence in international criminal law, as well as more generally in criminal law and public international law.¹⁴ He submits that regulation 124 of the Regulations requires either five

⁹ Registrar's Observations, ICC-RoR125-01/21-2-Conf-Exp.

¹⁰ Impugned Decision, ICC-RoR125-01/21-1-Conf-Anx1, p. 1.

¹¹ Impugned Decision, ICC-RoR125-01/21-1-Conf-Anx1, p. 1.

¹² Impugned Decision, ICC-RoR125-01/21-1-Conf-Anx1, p. 1.

¹³ Impugned Decision, ICC-RoR125-01/21-1-Conf-Anx1, p. 1.

¹⁴ Application, ICC-RoR125-01/21-1-Conf, p. 3.

years of experience *or* specific competence in international criminal law and that the Registry's Guide for applicants to the ICC List of Counsel and Assistants to Counsel (the 'Guide for Applicants')¹⁵ provides that a person with insufficient experience in criminal proceedings can be admitted to the list if the theoretical knowledge of the relevant law and jurisprudence makes the person an invaluable asset to legal teams.¹⁶

8. The Applicant submits that he is [REDACTED] qualified lawyer and worked on prominent ongoing criminal trials as an associate lawyer in the last seven months.¹⁷ Furthermore, he is the President and founder of a non-profit organisation [REDACTED] which started operating in [REDACTED] and is a teaching tutor for a university course in international criminal law and procedure since [REDACTED].¹⁸ In addition, the Applicant points to his previous experience as a staff lawyer [REDACTED] working in international dispute resolution, including a case before the [REDACTED], arbitration cases and international humanitarian and human rights law related cases, as a legal intern [REDACTED], as well as a trainee lawyer in law firms [REDACTED].¹⁹ Finally, as regards specific competence in international criminal law, the Applicant submits that he holds an advanced Master of Laws (the 'LLM') in public international law with a specialisation in international criminal law.²⁰

B. Registrar's Observations

9. In response, the Registrar notes that the Applicant admits that he does not possess five years of relevant experience in criminal law and therefore the Registrar limits his observations to the alternative criterion of specific competence in international or criminal law and procedure.²¹ He submits that since the two criteria listed in regulation 124 of the Regulations are alternative, a candidate's experience in respect of each criterion must be assessed on an exclusive basis.²² The Registrar further notes, by reference to a previous determination of the Presidency, that the specific competence

¹⁵ Registry, Guide for applicants to the ICC List of Counsel and Assistants to Counsel, available at: https://www.icc-cpi.int/iccdocs/PIDS/docs/ICC_GuideForApplicants_ENG.pdf.

¹⁶ Application, ICC-RoR125-01/21-1-Conf, p. 3.

¹⁷ Application, ICC-RoR125-01/21-1-Conf, p. 3.

¹⁸ Application, ICC-RoR125-01/21-1-Conf, p. 4; Applicant's CV, ICC-RoR125-01/21-2-Conf-Exp-AnxIII.

¹⁹ Application, ICC-RoR125-01/21-1-Conf, p. 4.

²⁰ Application, ICC-RoR125-01/21-1-Conf, p. 5.

²¹ Registrar's Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 10 *referring to* Application, ICC-RoR125-01/21-1-Conf, p. 3.

²² Registrar's Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 11.

must bear an approximate equivalence to the first criterion.²³ Moreover, the Registrar recalls that he has consistently required a higher degree than mandatory for admission to practice and that the specific competence be in an area of direct relevance for the work of the Court.²⁴ Referring to both rule 22(1) of the Rules of Procedure and Evidence (the ‘Rules’) and to a prior determination by the Presidency, the Registrar submits that what is sought is expertise.²⁵

10. In relation to the Application, the Registrar notes that to demonstrate specific competence, the Applicant relies, *inter alia*, on four specific roles or positions.²⁶ First, as regards the Applicant’s role in a non-profit organisation, the Registrar submits that the organisation had just been created and its objective ‘to [REDACTED]’ was deemed insufficient to establish specific competence.²⁷ Second, in respect of the Applicant’s experience as a staff lawyer, the Registrar observes that despite the Applicant’s claim that he worked on international humanitarian and human rights law related cases and researched international criminal law matters, the additional information showed that the experience was not strictly in criminal proceedings and hence was not considered relevant.²⁸ Noting a prior statement by the Presidency that certain experiences relevant to one criterion may be equally relevant to the other, the Registrar submits that the limited experience in this law firm does not have approximate equivalency to five years of relevant experience in criminal proceedings.²⁹ Third, in respect of the Applicant’s experience as a tutor, the Registrar notes that this information was not before him when taking his decision and that he lacks sufficient detail to determine whether this establishes specific competence.³⁰ Fourth, as regards the Applicant’s LLM, the Registrar submits that such a degree is not sufficient to attest to specific competence in international or criminal law and procedure on the basis of his academic background.³¹

²³ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 12 *referring to* Presidency, ‘Public redacted version of “Decision on the ‘Request for Review of Decision to Deny the Applicant admission to the List of Assistant to Counsel Pursuant to Regulation 125(4) of the Regulations of the Registry”’, 4 September 2015, ICC-RoR125-01/15-5-Conf-Exp’, 1 October 2015, ICC-RoR125-01/15-5-Red (‘Presidency Decision of 4 September 2015’), para. 31.

²⁴ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 13.

²⁵ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 13.

²⁶ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 14.

²⁷ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 15.

²⁸ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 16 *referring to* Email from the Applicant, ICC-RoR125-01/21-2-Conf-Exp-AnxIX, pp. 2-3.

²⁹ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 16 *referring to* Presidency Decision of 4 September 2015, ICC-RoR125-01/15-5-Red, para. 32.

³⁰ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 17.

³¹ Registrar’s Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 18.

11. In conclusion, the Registrar notes that he considered the Applicant's experience in criminal proceedings and in international law in its totality, as presented in the Request for Inclusion.³² In his view, the Applicant does not meet the second alternative criterion of specific competence and fails to demonstrate how his professional and academic experience meets the requirements for admission to the list of assistants to counsel.³³

IV. DETERMINATION OF THE PRESIDENCY

12. The Presidency recalls that the judicial review of decisions of the Registrar concerns the propriety of the procedure by which the latter reached a particular decision and the outcome of that decision. It involves a consideration of whether the Registrar has: acted without jurisdiction, committed an error of law, failed to act with procedural fairness, acted in a disproportionate manner, taken into account irrelevant factors, failed to take into account relevant factors or reached a conclusion which no sensible person who has properly applied his or her mind to the issue could have reached.³⁴
13. The Presidency recalls that inclusion in the list of assistants to counsel is governed by regulation 68 of the Regulations of the Court and regulations 124 and 125 of the Regulations. Regulation 124 of the Regulations sets forth two alternative criteria for admission to the list of assistants to counsel, either: (i) five years of relevant experience in criminal proceedings; or (ii) specific competence in international or criminal law and procedure.
14. Turning to the first criterion, the Presidency sees no error in the Registrar's assessment that the Applicant falls short of the minimum requirement of five years of relevant experience in criminal proceedings. The Presidency notes that on the basis of the information provided to it by both the Applicant and the Registrar, the Applicant has not always clearly demonstrated the extent to which his experience is in the field of criminal

³² Registrar's Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 19.

³³ Registrar's Observations, ICC-RoR125-01/21-2-Conf-Exp, para. 19.

³⁴ The standard of judicial review was defined by the Presidency in its decision of 20 December 2005 (Presidency, Decision on the Application to Review the Registrar's Decision Denying the Admission of Mr Ernest Midagu Bahati to the List of Counsel, 20 December 2005, ICC-Pres-RoC72-02-05 ('Presidency Decision of 20 December 2005'), para. 16), and supplemented in its decision of 27 November 2006, ICC-01/04/01/06-731-Conf, para. 24. *See also* Decision on the application to review the decision of the Registrar denying the admission of Ms Magdalena Ayoade to the list of experts, 6 August 2009, ICC-RoR56-01/09-2, para. 11.

proceedings. Further, even assuming that any position listed in the Applicant's CV as a 'lawyer' or 'trainee lawyer'³⁵ which the Applicant has *not* indicated was in another area of law (e.g. civil law, labour law, international dispute resolution, immigration law), was entirely in criminal proceedings, the Applicant would appear to have less than two years of remunerated work experience in criminal proceedings, at maximum.³⁶ The Applicant falls so short of meeting the criterion of five years experience in criminal proceedings that further examination of the first criterion of regulation 124 is not warranted. Accordingly, the Presidency finds no error in the Impugned Decision in respect of this first criterion.

15. As regards the second criterion, the Presidency considers that the reasoning in the Impugned Decision is insufficient to satisfy the requirement under regulation 125(4) of the Regulations to provide reasons for the refusal of an application. The Presidency has previously provided guidance that the reasons given by the Registrar must enable an applicant for inclusion in the list of assistants to counsel to: clearly understand the factual and legal basis upon which the decision has been taken and assess whether he or she has any ground to apply for review of the adverse decision.³⁷ Moreover, the Presidency recalls that it is particularly important to provide a clear reasoning where the statutory criterion leaves the Registrar considerable discretion, as is the case for the specific competence criterion in regulation 124 of the Regulations.³⁸

16. In the present case, the Impugned Decision provides clear reasons as to why the Applicant does not fulfill the first criterion provided for in regulation 124 of the Regulations.³⁹ However, in relation to the second criterion of specific competence in international or criminal law and procedure, the Impugned Decision merely states that it is not fulfilled, without any further elaboration.⁴⁰ The subsequent analysis of the Applicant's work

³⁵ The Presidency notes that the term 'trainee lawyer' has diverse meanings in different legal systems. To favour the Applicant, it will presently assume that trainee lawyer is a paid legal position.

³⁶ Approximately 8 months [REDACTED] as an 'Associate-Lawyer', 3 months as 'Trainee Lawyer' [REDACTED] and perhaps 10 months experience as a 'Staff Lawyer', although this is unclear because the Applicant's CV indicates that this experience occurred from [REDACTED]. See Applicant's CV, ICC-RoR125-01/21-2-Conf-Exp-AnxIII, p. 1. On the assumption that the latter-mentioned role contains a typographic error and the Applicant actually commenced this role in [REDACTED], it would constitute up to 10 months experience. This demonstrative exercise also includes the Applicant's most recent work experience and counts up to the present day, rather than the date of application for inclusion in the list of assistants to counsel.

³⁷ Presidency Decision of 4 September 2015, ICC-RoR125-01/15-5-Red, para. 28. See also Decision of 6 August 2009, ICC-RoR56-01/09-2, para. 13; Decision of 20 December 2005, ICC-Pres-RoC72-02-05, paras 18-19.

³⁸ Presidency Decision of 4 September 2015, ICC-RoR125-01/15-5-Red, paras 28, 30.

³⁹ See Impugned Decision, ICC-RoR125-01/21-1-Conf-Anx1, p. 1.

⁴⁰ Impugned Decision, ICC-RoR125-01/21-1-Conf-Anx1, p. 1.

experience seems to focus exclusively on the first criterion of relevant experience in criminal proceedings and, in this regard, explicitly states that the Registrar considered that any experience not related to criminal law and procedure was of no relevance for the purpose of admission to the list of assistants to counsel.⁴¹ Such reasoning can obviously not justify a refusal of the Application based on a failure to fulfill the specific competence criterion, given that regulation 124 also refers to specific competence in *international* law and procedure.⁴² The Presidency therefore finds that the Impugned Decision fails to provide reasons allowing the Applicant to understand the factual or legal basis for refusing him admission to the list based on the second criterion.

17. Nonetheless, despite this error, the Presidency considers that there is limited practical value in remitting the matter to the Registrar for a new decision-making process on this occasion because the Applicant rather evidently fails to satisfy the specific competence criterion.
18. The Presidency recalls that when regulation 124 of the Regulations is read in conjunction with rule 22(1) of the Rules, it is apparent that the second criterion of specific competence in international or criminal law and procedure has to be understood as seeking individuals with a certain level of expertise.⁴³ As an example of persons with specific expertise assisting counsel, rule 22(1) lists ‘professors of law’. This emphasis on expertise is also reflected in the Guide for Applicants which, in addition to professors, refers to other academic experts who have relevant expertise in international or criminal law.⁴⁴ The Presidency further recalls that it has previously held that although the second criterion may not be quantifiably measurable, the nature of such specific competence must bear an approximate equivalence to the first criterion, relevant factors should be considered as a whole and further elucidation of this criterion shall occur on a case-by-case basis.⁴⁵ Noting the above, the Presidency considers accurate the general tenor of the Registrar’s Observations that the specific competence criterion does not function as a ‘catch all’ category for persons who do not meet the five-year experience criterion.

⁴¹ Impugned Decision, ICC-RoR125-01/21-1-Conf-Anx1, p. 1.

⁴² See also Presidency Decision of 4 September 2015, ICC-RoR125-01/15-5-Red, para. 35.

⁴³ See Presidency Decision of 4 September 2015, ICC-RoR125-01/15-5-Red, para. 34.

⁴⁴ Guide for Applicants, p. 6 (**‘Specific competence in international or criminal law and procedure:** The Court also seeks to allow counsel to receive the assistance of professors and other academic experts who have relevant expertise in international or criminal law. Even where these persons may have insufficient or no experience in criminal proceedings, their theoretical knowledge of the relevant law and jurisprudence makes them an invaluable asset to legal teams.’).

⁴⁵ Presidency Decision of 4 September 2015, ICC-RoR125-01/15-5-Red, paras 30-31.

19. In his Request for Inclusion, the Applicant indicated that his field of expertise is ‘Criminal Law and Public International Law (International Criminal Law, International Human Rights Law and International Humanitarian Law)’.⁴⁶ In describing his knowledge of international law and procedure, the Applicant referred to his LLM, his three-months internship [REDACTED], and six months of experience as a staff lawyer at ‘a Public International Law Firm’.⁴⁷ To substantiate his knowledge of criminal law and procedure, the Applicant referred to his [REDACTED] law degree and his current work as a criminal lawyer [REDACTED] since September 2020.⁴⁸ In his Application, he also points to his role in a non-profit organisation [REDACTED] which started operating in [REDACTED] and his occupation as a teaching tutor for a university course in international criminal law and procedure since March 2021.⁴⁹
20. Having analysed the supporting documents provided, the Presidency notes that the Applicant has some experience in national criminal proceedings, some competence and experience in international criminal law, some experience in other areas of international law and some limited academic experience.⁵⁰ These diverse and limited experiences, even when taken together, do neither quantitatively nor qualitatively establish any specific competence or expertise of the Applicant in international or criminal law and procedure, which would be approximately equivalent to five years of relevant experience in criminal proceedings.⁵¹ In light of this, the Presidency finds that the Registrar has not erred in his overall conclusion that the Applicant does not fulfill the requisite criteria set forth in regulation 124 of the Regulations.
21. In view of the above, the Presidency confirms the Registrar’s decision to not include the Applicant in the list of assistants to counsel. The Presidency notes, however, that this is without prejudice to the Applicant submitting a new request for inclusion in the list of assistants to counsel once he fulfills the necessary requirements.

⁴⁶ Request for Inclusion, ICC-RoR125-01/21-2-Conf-Exp-AnxII, p. 10.

⁴⁷ Request for Inclusion, ICC-RoR125-01/21-2-Conf-Exp-AnxII, pp. 5-6.

⁴⁸ Request for Inclusion, ICC-RoR125-01/21-2-Conf-Exp-AnxII, pp. 6-7.

⁴⁹ Application, ICC-RoR125-01/21-1-Conf, p. 4; Applicant’s CV, ICC-RoR125-01/21-2-Conf-Exp-AnxIII.

⁵⁰ See Applicant’s CV, ICC-RoR125-01/21-2-Conf-Exp-AnxIII; Email from the Applicant, ICC-RoR125-01/21-2-Conf-Exp-AnxIX. See also Application, ICC-RoR125-01/21-1-Conf.

⁵¹ The Presidency notes that the establishment of a professional legal network [REDACTED], while entirely laudable, does not demonstrate substantive or procedural competence in international or criminal law and procedure.

V. CLASSIFICATION

22. In view of the confidential classification of the Application, the present decision is classified as confidential. The Presidency takes the view, however, that nothing stated in this decision *prima facie* qualifies it as confidential and that this decision could be of relevance more broadly to future applicants for inclusion in the list of assistants to counsel. As such the Presidency hereby indicates its intention to reclassify the present decision as public. If there is any factual or legal basis for retaining the confidential classification of this decision or if there is any information requiring redaction prior to publication, the Applicant may inform the Presidency thereof no later than two weeks from notification of the present decision, by way of a filing communicated through the Court Management Section (judoc@icc-cpi.int).

THE PRESIDENCY HEREBY

CONFIRMS the Impugned Decision in its operative part.

Done in both English and French, the English version being authoritative.



Judge Piotr Hofmański
President



Judge Luz del Carmen Ibáñez Carranza
First Vice-President



Judge Antoine Kesia-Mbe Mindua
Second Vice-President

Dated this 20 May 2021

At The Hague