ADMINISTRATIVE TRIBUNAL OF THE INTERNATIONAL MONETARY FUND

JUDGMENT No. 2021-1

Ms. "PP", Applicant v. International Monetary Fund, Respondent

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INTRODUCTION

1. On October 5, 8 and 9, 2020, the Administrative Tribunal of the International Monetary Fund, composed for this case, pursuant to Article VII, Section 4 of the Tribunal's Statute, of Judge Catherine M. O'Regan, President, and Judges Andrés Rigo Sureda and Edith Brown Weiss, met to adjudge the Application brought against the International Monetary Fund by Ms. "PP", a staff member of the Fund. Applicant was represented by Mr. Peter C. Hansen and Mr. J. Michael King, Law Offices of Peter C. Hansen, LLC. Respondent was represented on the written pleadings by Ms. Diana Benoit and Mr. Andrew Giddings, both Senior Counsels in the IMF Legal Department. Mr. Giddings, along with Ms. Juliet Johnson, also Senior Counsel in the IMF Legal Department, appeared on behalf of Respondent in the oral proceedings.

2. In light of the COVID-19 pandemic, consequent restrictions on travel, and the Fund's work-from-home directive, the Tribunal decided to hold its session by electronic means, in accordance with recently amended Article XI of the Statute, which provides:

> The Tribunal shall ordinarily hold its sessions at the Fund's headquarters. The Tribunal may decide to hold a session at another location or by electronic means, taking into account the need for fairness and efficiency in the conduct of proceedings. The Tribunal shall fix the dates of its sessions in accordance with its Rules of Procedure. [1]

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[1] Article XI was amended by IMF Board of Governors' Resolution No. 75-2, with effect from July 14, 2020. The Commentary on amended Article XI states:

> While in-person sessions at the Fund's headquarters are the norm, there may be circumstances where such a session is impracticable or not suited to the case. Accordingly, the Tribunal may decide in such cases to hold a session at another location or by electronic means, having regard to efficiency, timeliness, and ensuring that both parties have the opportunity to participate in full and fair proceedings. The Tribunal will determine the frequency and scheduling of these sessions in accordance with its rules. This provision applies to all aspects of the Tribunal's work during a session, including oral hearings, deliberations and decision-making. The provision also enables the Tribunal to conduct hybrid sessions involving both in-person and electronic attendance. Depending on the nature of the work to be conducted, the Tribunal may, consistent with its Rules

(continued)

The session, including the oral arguments of the parties (see below), was held by videoconference coordinated by the Tribunal's Registry.

3. Applicant challenges the decision of the Director of the Human Resources Department (HRD) that Applicant failed to afford "fair and reasonable treatment" to a G-5 household employee (hereinafter the "complainant G-5 employee") and engaged in conduct that "reflected adversely on the Fund," in violation of the Fund's Code of Conduct for the Employment of G5 Employees (Staff Handbook, Ch. 11.01 (Standards of Conduct), Annex 11.01.8 (Requirements for the Employment of G-5 Employees)). As a disciplinary measure, the HRD Director decided that Applicant would receive a formal written reprimand (Staff Handbook, Ch. 11.02 (Misconduct and Disciplinary Procedures), Section 8.1(ii)), to remain in her personnel file for three years. In addition to the "disciplinary" decision, the HRD Director also notified Applicant of another decision, which Respondent has characterized as an "administrative" decision. That decision directed Applicant to end the employment of a different G-5 employee who was then employed in Applicant's household (hereinafter the "then current G-5 employee") and stated that the Fund would not be able to support applications made by Applicant for G-5 visas for future household employees. The decision stated that the HRD Director was "obliged to make the [decision] in the interests of the Fund," due to the "position communicated to [the Fund] by the [U.S.] State Department."

4. Applicant challenges both the "disciplinary" and "administrative" decisions. As to the "disciplinary" decision, Applicant contends that the misconduct finding against her is factually unsubstantiated, the standards invoked unreasonable, and the process applied unfair. As to the "administrative" decision, Applicant asserts that the Fund should protect, as a basic condition of Fund employment, the staff member's privileges and immunities vis-à-vis the host country, including, as a G-4 visa holder, to employ household employees under the G-5 visa program. Furthermore, Applicant submits, the U.S. State Department's directive in the case cannot be found to be fair and enforceable under the terms of the Fund's internal law.

5. Applicant seeks as relief: (a) rescission of HRD's decision and sanctions against Applicant; (b) removal from Applicant's personnel file of all evidence of the misconduct investigation and decisions; (c) restoration of Applicant's eligibility to employ G-5 employees, including to employ the then current G-5 employee[2]; (d) three years' salary as compensatory and moral damages, including for failures of due process in the misconduct investigation and "extreme stress and loss of confidence suffered by [Applicant] and [Applicant's] family over a prolonged period" due to the "improperly investigated case and unfounded findings of misconduct"; and (e) legal fees and costs, which the Tribunal may award, in accordance with

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> of Procedure, set additional rules to enable the efficient organization of hearings to be conducted by electronic means.

Report of the Executive Board to the Board of Governors on an Amendment to Article XI of the Statute of the Administrative Tribunal of the International Monetary Fund, EBAP/20/44, p. 5.

[2] The record shows that, as of January 2020, the then current G-5 employee was no longer employed by Applicant.

Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

6. Respondent, for its part, maintains that the "disciplinary" decision should be sustained on the following grounds: the finding of misconduct was supported by ample evidence; Applicant was afforded due process in the disciplinary proceedings; and the penalty imposed was proportionate to the offence. As to Applicant's challenge to the "administrative" decision barring her utilization of the G-5 visa program, Respondent asks the Tribunal to dismiss that challenge as not falling within the Tribunal's subject matter jurisdiction; Respondent submits that the contested decision was a decision of the U.S. Government rather than of the Fund. Respondent additionally maintains that if the Tribunal finds that the bar on Applicant's utilization of the G-5 visa program resulted from Fund actions that are subject to Tribunal review, then Applicant's challenge should be denied on the merits because the Fund acted reasonably and in keeping with its responsibilities vis-à-vis both the U.S. Government and Applicant.

7. This Judgment will additionally address Respondent's request for "reasonable compensation" from Applicant, pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief.

PROCEDURE

8. On August 12, 2019, Applicant filed an Application with the Administrative Tribunal. The Application was transmitted to Respondent on August 19, 2019. On August 19, 2019, pursuant to Rule IV, para. (f), the Registrar circulated within the Fund a notice summarizing the issues raised in the Application.

9. Also on August 19, 2019, the President of the Administrative Tribunal, pursuant to Rule XXI, paras. 2 and 3, modified the application of the Rules of Procedure to provide for an expedited exchange of preliminary pleadings to facilitate the Tribunal's decision on a request for provisional relief that Applicant had made in her Application. Following that exchange, which included a motion by Respondent to dismiss part of the Application, the Tribunal issued its decision in *Ms. "PP", Applicant v. International Monetary Fund, Respondent (Applicant's Request for Provisional Relief and Respondent's Motion to Dismiss in Part)*, IMFAT Order No. 2019-1 (October 10, 2019).

10. On November 26, 2019, Applicant filed a second request for provisional relief. Following an exchange on this request, which included a request by Respondent for reasonable compensation from Applicant for responding to the request, the Tribunal issued its decision in *Ms. "PP", Applicant v. International Monetary Fund, Respondent (Applicant's Second Request for Provisional Relief)*, IMFAT Order No. 2020-1 (January 13, 2020).

11. On December 2, 2019, Respondent filed its Answer on the merits of the Application. On January 6, 2020, Applicant submitted her Reply. The Fund's Rejoinder was filed on February 6, 2020.

A. Applicant's first request for provisional relief and Respondent's motion to dismiss in part

12. In her Application, Applicant sought provisional relief in the form of an order (1) "prohibiting the Fund from requiring [the then current G-5 employee]'s dismissal from [Applicant]'s home during the pendency of this case" and (2) "requiring the Fund to secure all necessary visa actions by the State Department (*e.g.* an I94 renewal) to permit [the then current G-5 employee]'s continued employment by [Applicant] during the pendency of this case." In *Ms. "PP"*, Order No. 2019-1, the Tribunal denied Applicant's request for provisional relief.

13. In that decision, the Tribunal emphasized that provisional relief is an extraordinary measure that it will order only in limited circumstances. Provisional relief is an exception to the ordinary rule (stated in Statute, Article VI, Section 4) that the filing of an application shall not have the effect of suspending the implementation of the decision contested. The Tribunal denied part of Applicant's request for provisional relief on the ground that it did not seek suspension of a decision contested in the Tribunal. With respect to the part of the request that did seek suspension of a decision contested in the Tribunal, namely, that Applicant terminate the employment of the then current G-5 employee, the Tribunal concluded that Applicant had not met the test of showing that she would suffer "irreparable harm" in the absence of the provisional relief she sought.

14. The Fund responded to Applicant's request for provisional relief with a motion to dismiss that part of the Application challenging the "administrative" decision, that is, the bar on Applicant's eligibility to hire G-5 employees. The Fund maintained that the contested decision was made by the U.S. Government and that the Tribunal therefore lacked jurisdiction over Applicant's challenge.

15. The Fund's "motion to dismiss in part" was novel in the practice before the Tribunal. In *Ms. "PP"*, Order No. 2019-1, the Tribunal decided that although its Statute and Rules of Procedure do not expressly provide for a motion to dismiss *part of* an application before a full exchange of pleadings on the merits of a case, neither do they exclude that possibility. In the unusual context of the expedited exchange of preliminary pleadings on Applicant's request for provisional relief, in which the Fund's arguments opposing provisional relief and its efforts to dismiss part of the Application were closely related, the Tribunal concluded that the "motion to dismiss in part" was admissible. The Tribunal nonetheless dismissed the motion, on the ground that it would better serve the interests of justice to decide all of the issues of the case, including Applicant's challenge to the "administrative" decision, following a full briefing on the merits of the Application. Accordingly, in dismissing the motion, the Tribunal permitted the Fund to raise in its pleadings on the merits its argument that the Tribunal lacked jurisdiction over Applicant's

challenge to the "administrative" decision. The Fund has now reiterated that argument, and the Tribunal will consider the issue later in this Judgment.[3]

B. Applicant's second request for provisional relief and Respondent's request for reasonable compensation

16. Some weeks following the Tribunal's issuance of *Ms. "PP"*, Order No. 2019-1, Applicant filed a second request for provisional relief. In that request, Applicant sought an order that the "Fund transmit the I-94 application to USCIS so that the U.S. Government can decide the issue of [the then current G-5 employee]'s visa." In *Ms. "PP"*, Order No. 2020-1, the Tribunal denied Applicant's second request for provisional relief.

17. In *Ms. "PP"*, Order No. 2020-1, the Tribunal concluded that although the second request for provisional relief emerged from facts arising following the decision in *Ms. "PP"*, Order No. 2019-1, it suffered from the same defects as the first request. The Tribunal noted that Applicant again sought the Tribunal's intervention in her quest to retain the services of the then current G-5 employee during the pendency of the Tribunal proceedings. The Tribunal decided that Applicant had not substantiated her claim that she had met the essential requirement for provisional relief, that is, to show that "irreparable harm" would result to her in the absence of the relief she sought. Nor did Applicant establish a basis for the Tribunal to conclude that she might raise a claim for provisional relief on grounds of alleged "irreparable harm" to the then current G-5 employee. In denying Applicant's second request for provisional relief, the Tribunal additionally observed that the same principles that underlie the finality of the Tribunal's Judgments, namely, promoting judicial economy and certainty among the parties, likewise counseled against the Tribunal's re-opening questions already resolved by its earlier decision in *Ms. "PP"*, Order No. 2019-1.

18. Additionally, in *Ms. "PP"*, Order No. 2020-1, the Tribunal deferred a decision on a request by the Fund, pursuant to Article XV of the Tribunal's Statute, that Applicant bear the cost of the Fund's responding to her second request for provisional relief. That question is considered later in this Judgment.[4]

C. Applicant's request for anonymity

19. Pursuant to Rule XXII of the Tribunal's Rules of Procedure, in her Application, Applicant requested that her name not be made public in the Tribunal's decisions. In *Ms. "PP"*, Order No. 2019-1, paras. 5-6, the Tribunal granted Applicant's request for anonymity on the ground that the case involves a challenge to a misconduct decision and the evidence to be brought out in it has implications for the personal privacy of Applicant and other persons. The Tribunal noted that "[s]hielding the identities of persons involved in disputes concerning 'alleged

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[3] *See infra* Does Applicant have recourse to the Tribunal in relation to her challenge to the decision to bar her utilization of the G-5 visa program and, if so, has she prevailed on that challenge?

[4] *See infra* Shall the Tribunal grant Respondent's request for "reasonable compensation" from Applicant, pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief?

misconduct . . . or matters of personal privacy such as health . . . or family relations' is a core ground for granting anonymity to applicants pursuant to Rule XXII." *Id.*, para. 5, quoting *Ms. "AA", Applicant v. International Monetary Fund, Respondent (Admissibility of the Application)*, IMFAT Judgment No. 2006-5 (November 27, 2006), para. 14. *See also Ms. "EE", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-4 (December 3, 2010), para. 11 (challenge to fairness of misconduct proceedings); *Ms. "BB", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-4 (May 23, 2007), para. 20 (challenge to misconduct decision).

D. Applicant's requests for production of documents

20. Pursuant to Rule XVII of the Tribunal's Rules of Procedure, in her Application, Applicant requested that the Fund produce the following documents: (1) the Office of Internal Investigations (OII)'s Report of Investigation (ROI); (2) "all written communications, notes of conversation, and all other materials relating to the Fund's communications with any and all parts of the U.S. Government, including specifically the State Department, with regard to the situations of [Applicant] and [her then current G-5 employee]"; and (3) a "written report on the history and scope of the Fund's G5 program, including all controversies, revocations of privileges, and any other noteworthy events, involving the Fund's G5 program."

21. As part of the expedited exchange of preliminary pleadings, the Tribunal asked the Fund to respond to Document Requests Nos. 2 and 3, so as to facilitate decision on Applicant's then pending request for provisional relief. In *Ms. "PP"*, Order No. 2019-1, paras. 11-13, the Tribunal noted that the Fund had produced documents responsive to Document Request No. 2, and it placed the Fund under a continuing obligation to produce any further responsive documents, given that the proceedings on the merits were to continue. In accordance with that continuing obligation, Respondent attached to its Answer and Rejoinder additional documentation responsive to Applicant's Document Request No. 2. As to Document Request No. 3, the Tribunal denied that request in *Ms. "PP"*, Order No. 2019-1, para. 18, concluding that it was "unduly burdensome" in terms of Rule XVII and overbroad in seeking documentation beyond the scope of the controversy in the case.

22. In its Answer on the merits, the Fund responded to Document Request No. 1 by explaining that Applicant had previously been provided with the ROI. For the Tribunal's benefit, the Fund annexed the ROI to its Answer.

E. Applicant's request for oral proceedings

23. Article XII of the Tribunal's Statute provides that the Tribunal shall ". . . decide in each case whether oral proceedings are warranted." Rule XIII, para. 1, of the Rules of Procedure provides that such proceedings shall be held ". . . if . . . the Tribunal deems such proceedings useful."

24. Applicant requested oral proceedings limited to oral arguments by the parties' counsel. *See* Rule XIII, para. 6 ("The Tribunal may limit oral proceedings to the oral arguments of the parties and their counsel or representatives where it considers the written evidentiary record to be

adequate."). The Fund responded that it did not view oral proceedings as necessary, given the extensive record of the case, but that it did not object to the holding of oral arguments of counsel if the Tribunal decided they would be useful.

25. The Tribunal's recent practice has been to hold oral proceedings where they have been expressly requested by applicants, limiting such proceedings to the oral arguments of counsel. The Tribunal has recognized the benefit of such proceedings, even when the evidentiary record is complete, for the purposes of clarifying legal issues and providing an opportunity to probe disputes of fact so as to enhance the legal appreciation of the record. *Mr. "LL", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2019-1 (April 5, 2019), para. 27; *Ms. "NN", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2017-2 (December 11, 2017), para. 23; *Mr. "KK", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2016-2 (September 21, 2016), paras. 43-44.

26. On March 4, 2020, the Tribunal notified the parties that it had granted Applicant's request for oral proceedings limited to the oral arguments of parties' counsel. The Tribunal also decided that the oral proceedings would be "held in private," per Article XII of the Statute and Rule XIII, para. 1, given the decision to grant Applicant's request for anonymity in the Tribunal's Judgment.[5] *See Mr. "LL"*, para. 28; *Ms. "NN"*, para. 22; *Mr. "KK"*, para. 43.

27. The oral proceedings, initially scheduled for April 2020, were postponed as a result of the disruptions to travel and public gatherings occasioned by the COVID-19 pandemic and in order for the IMF Board of Governors to amend Article XI of the Tribunal's Statute, allowing for the holding of sessions by electronic means.[6] Oral proceedings in the case were held by videoconference on October 8, 2020.

FACTUAL BACKGROUND

28. The key facts, some of which are disputed between the parties, may be summarized as follows.

A. Background

29. Applicant is a staff member of the Fund, serving at its Washington, D.C., headquarters. Applicant is a non-U.S. national and holds a G-4 visa, the type of visa granted by the U.S. Government specifically to employees of international intergovernmental organizations. As a G-4 visa holder, Applicant availed herself of the opportunity to utilize the G-5 visa program, by which the U.S. Government provides a mechanism for G-4 visa holders to hire non-immigrant, foreign workers as household employees in the United States.

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[5] *See supra* Applicant's request for anonymity.

[6] *See supra* note 1.

30. In July 2017, while employing one G-5 employee (the "then current G-5 employee"), Applicant briefly employed a second G-5 employee (the "complainant G-5 employee"). The complainant G-5 employee departed Applicant's household and returned to her home country within days of arrival. The facts surrounding the complainant G-5 employee's time within the household, and the termination of the employment relationship between her and Applicant, form the basis for the misconduct decision challenged in this case. Many of the pertinent details of those events constitute enduring disputes of fact on the record of the case.

31. Upon return to her home country, the complainant G-5 employee filed identical complaints with the U.S. Department of State ("State Department") via the U.S. Embassy in her country, and with the Fund, alleging unfair treatment by Applicant. The investigation and disposition of those complaints took two paths. The question of how those paths may have intersected, and the appropriateness of communications between the State Department and the Fund relating to the complaints, are also matters of contention between the parties.

B. Complaint filed with the State Department

32. The record before the Tribunal provides limited information about the investigation of the complaint filed with the State Department, the disposition of which is said to have formed the basis for what the HRD Director termed the "administrative" decision in Applicant's case, barring her utilization of the G-5 visa program.

33. The record shows that the State Department sent investigators to Applicant's home and that Applicant's spouse and the then current G-5 employee were interviewed. It is not disputed that Applicant herself was not interviewed as part of the State Department's investigation.

(1) 2017 communications between the Fund and the State Department

34. The record shows that communications between the Fund and the State Department soon established that the complainant G-5 employee had filed the same complaint with both entities. Furthermore, according to the Fund's Office of Internal Investigations (OII)'s case activity log, in a phone call of September 19, 2017, a representative of the State Department advised Fund representatives that it ". . . consider[ed] the allegations against [Applicant] very serious and that even though their diplomatic security unit has decided not to prosecute the case, [the State Department] is still considering to revoke [Applicant]'s privilege to hire G5 employees."

C. Complaint filed with the Fund

35. The complaint submitted to the Fund by the complainant G-5 employee was first subject to a Preliminary Inquiry by the Office of Internal Investigations (OII). The purpose of a Preliminary Inquiry is "solely to determine whether a matter warrants further investigation." (Staff Handbook, Ch. 11.02, Section 4.1.) Thereafter, the HRD Director authorized OII to open an Investigation. (Staff Handbook, Ch. 11.02, Section 5).

(a) OII Investigation

36. As provided in the governing staff rules, an OII Investigation is to ". . . establish the facts and circumstances concerning alleged misconduct so that the responsible Fund official may determine whether misconduct has been committed and, if so, what, if any, disciplinary action is appropriate." (Staff Handbook, Ch. 11.02, Section 5.1.) In this case, involving a staff member below the managerial level, the responsible Fund official was the HRD Director. (Staff Handbook, Ch. 11.02, Section 3.1.) As envisaged by the Fund's rules, the OII Investigation culminated in a Report of Investigation (ROI) to the HRD Director, who then took the disciplinary decision that Applicant challenges before the Tribunal.

(i) Notice of Investigation and Applicant's responses

37. On August 30, 2017, OII issued a Notice of Investigation to Applicant concerning the complainant G-5 employee's "termination of employment and treatment under the G5 Employment Contract." The Notice of Investigation identified the following allegations for investigation: that Applicant (i) "[f]orced [the complainant G-5 employee] to resign and coerced her to write and sign a termination letter claiming that she was resigning voluntarily," while threatening to call the police and immigration officials to have her deported; (ii) "[d]emanded that [the complainant G-5 employee] pay the cost of her return airplane ticket to [her home country]"; (iii) "[s]ubjected her to verbal abuse, deprived her of meals for one day and left her in the airport" nearly 24 hours before her return flight of the following evening; (iv) "[d]emanded that [the complainant G-5 employee] pay [Applicant] the equivalent of one-month salary, for terminating the contract"; (v) "[d]emanded that [the complainant G-5 employee] reimburse [Applicant]" for fees paid for training courses for the employee; (vi) failed to pay the complainant G-5 employee wages for the period she was employed by Applicant; (vii) demanded that the complainant G-5 employee work longer hours; and (viii) failed to pay overtime pay for work in excess of the hours stipulated in the G-5 Employment Contract.

38. The Notice of Investigation advised Applicant that she would have the opportunity to explain her position and to present evidence, both orally and through written submissions, and to be assisted by counsel. It also appended excerpts of applicable rules, regulations, and standards of conduct.

39. On September 18, 2017, Applicant provided, through counsel, a written response to the Notice of Investigation, denying the allegations in their entirety. A supplementary memorandum of September 25, 2017, followed Applicant's interview by OII, at which she was accompanied by counsel.

40. In her written responses to the Notice of Investigation, Applicant maintained that it was the complainant G-5 employee who had breached the employment contract. According to Applicant, the employee had experienced an emotional breakdown and insisted on returning to her home country soon after arrival. The situation had become further complicated, said Applicant, by the interventions of a number of other individuals, including a relative of the complainant G-5 employee and members of the family for whom that relative herself worked.

41. Applicant provided to OII a detailed account of the disputed events from her perspective, including the following assertions: On the day of the complainant G-5 employee's departure, Applicant sought advice from the law firm engaged by the Fund to handle G-5 employment matters. According to Applicant, the law firm's representative "confirmed that [Applicant] was responsible for the air ticket, and that [the complainant G-5 employee] would be required to depart the country immediately once the employment relationship was formally terminated."[7]

42. Applicant additionally maintained that the complainant G-5 employee offered to pay for the return air ticket, with the assistance of her relative. Applicant stated that she told the complainant G-5 employee that she "appreciated [her] gesture, and suggested that this arrangement be included in the termination letter" and that the complainant G-5 employee, for her part, "agreed and added the term to her hand-copy of the termination letter."

43. In her written responses to OII, Applicant additionally stated that her spouse had "called Immigration and Customs Enforcement (ICE) for advice to ensure [the complainant G-5 employee's] proper departure, but no one answered the call" and that he later called local police "to ask their advice." After a further call, "an officer was dispatched to the house." According to Applicant's account, the police officer "advised [Applicant] . . . to buy [the complainant G-5 employee] a return-trip ticket, and to help [her] get to the airport." Thereafter, Applicant and her spouse purchased the air ticket for the complainant G-5 employee and "asked [her] to write a statement affirming that she was leaving the house voluntarily," which she did. At "roughly 10:00 pm," stated Applicant, her spouse dropped off the complainant G-5 employee at the airport for a "flight [that] was to leave at around 7:30 pm the next day." Applicant further asserted that her spouse gave the complainant G-5 employee a cash payment "as salary for her brief service, and also to ensure that she had money for her trip."

(ii) Report of Investigation (ROI)

44. On November 14, 2017, OII issued its Report of Investigation (ROI) to the HRD Director for decision. The ROI, which forms part of the record before the Tribunal, includes transcripts of OII's interviews of the following witnesses: the complainant G-5 employee; the complainant G-5 employee's relative; the relative's employers; Applicant; Applicant's spouse; the police officer who had been called to Applicant's home; and Applicant's then current G-5 employee.

45. The documentary evidence included with the ROI includes the contract of employment signed by Applicant and the complainant G-5 employee, as well as the exchange between Applicant and a paralegal employee of the law firm engaged by the Fund to handle G-5 matters. The paralegal wrote to Applicant: "Because the G-5 has terminated their own employment, you will only be required to provide payment for the return trip back to the G-5's home country. The G-5 will be required to depart the country immediately once the employment relationship is officially terminated." Additionally, in response to Applicant's question, she was advised that the

[7] The exchange between Applicant and a paralegal employee of the law firm is recounted in the following section of the Judgment.

"G-5 will not be required to pay any monetary penalty, as the payment of one month's wages in the absence of notice of termination is an obligation of the employer but not of the G-5."

46. Applying a "preponderance of the evidence" standard to the investigatory record, OII concluded that Applicant had "engaged in abusive behavior and failed to provide [the complainant G-5 employee] with fair treatment" in violation of staff rules. The ROI set out the following findings: that Applicant: (i) "forced [the complainant G-5 employee] to resign and coerced her to write and sign a termination letter claiming that she was resigning voluntarily"; (ii) "demanded that [the complainant G-5 employee] pay for the cost of her return airplane ticket to [her home country]"; (iii) "demanded that [the complainant G-5 employee] pay her damages, for terminating the contract and returning to [her home country]"; and (iv) "failed to pay the salary for [the complainant G-5 employee]." At the same time, OII found the following allegations not to be substantiated by the record: that Applicant had subjected the complainant G-5 employee to verbal abuse; deprived her of meals for one day; demanded that she work longer hours; or failed to pay her overtime.

(iii) Applicant's response to ROI

47. On November 27, 2017, the HRD Director provided Applicant with the ROI and its attachments, inviting her written comments. Applicant filed her response through counsel on January 5, 2018. In her written Comments, Applicant asserted that the complainant G-5 employee had chosen to resign, ending the employment relationship. Applicant maintained that the termination letter recorded the resignation and did not effect a new termination; nor was the complainant G-5 employee coerced into signing the letter. Applicant also asserted that she did not commit misconduct: (i) in relation to payment for the return air ticket, which Applicant ultimately did pay for; (ii) by allegedly demanding that the complainant G-5 employee pay her damages for terminating the contract and reimburse her for training fees that Applicant previously had paid; or (iii) by failing to pay the complainant G-5 employee for work performed. Applicant supplied with her Comments a detailed chronology of events.

48. Following submission of the written Comments, the HRD Director interviewed Applicant on April 18, 2018, in the presence of Applicant's counsel.

(b) 2018 communications between the Fund and the State Department

49. Prior to the HRD Director's notifying Applicant of a decision in the misconduct case, the HRD Director consulted with the State Department about that decision, as appears from the decision in the misconduct case (set out below). As a result of her consultation with the State Department, the HRD Director, as will appear more fully below, concluded that she was "obliged" to make an administrative decision that Applicant should terminate the employment of the then current G-5 employee by September 10, 2018 and that the Fund would no longer support applications for Applicant to employ a G-5 in future.

50. At the Grievance Committee pre-hearing conference, a senior HRD official stated[8] as follows:

> [T]here had been a lot of follow up from the State Department about this case. They had been chasing us to say what have you done about this, what decision have you made. When the HR director came to her view as to what the decision should be, we consulted with the State Department and said what would your reaction be to this decision, and they said – because we said the investigation has revealed no mistreatment to [the then current G-5 employee]; so the HR director proposes to operate – actually proposes to allow her to remain in [Applicant]'s employment, and that's when they said if a G5 remains in [Applicant]'s employment, we would consider that to adversely reflect on the Fund's reputation.

(c) HRD Director's Decision

51. On June 11, 2018, the HRD Director rendered her Decision, concluding that Applicant "failed to afford [the complainant G-5 employee] fair and reasonable treatment, and engaged in conduct that reflected adversely on the Fund," citing Staff Handbook, Annex 11.01.8 (Requirements for the Employment of G5 Domestic Employees), Section 2.8 (Fair Treatment of G5 Employee). This conclusion was accompanied by the following factual findings: (i) Applicant "ended [the complainant G-5 employee]'s employment" and did so for reasons other than "any conduct on [the complainant G-5 employee]'s part," while failing to provide at least one month's notice or make payment in lieu, as required by Section 14 of the G-5 Contract; (ii) Applicant "directed [the complainant G-5 employee] to write and sign a letter indicating that she had resigned voluntarily"; (iii) rather than waiting until the next day to seek guidance from the Fund regarding legal rights and responsibilities in the circumstances, Applicant called a local police officer to the home "in [the complainant G-5 employee]'s presence and in a way which was upsetting to her"; (iv) Applicant's spouse left the complainant G-5 employee at the airport later that evening, knowing that her flight was not to depart until the evening of the following day; and (v) Applicant failed to pay wages due for work performed by the complainant G-5 employee during the period of her employment. These findings, determined the HRD Director, "warrant a disciplinary measure."

52. With regard to that disciplinary measure, the HRD Director's Decision stated: "I have concluded that you owe an additional payment to [the complainant G-5 employee] under her contract . . . . This amount represents payment for hours worked for you . . . and for the one-month notice period due on termination . . . ." The HRD Director continued: "My decision on

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[8] The Grievance Committee Chair noted that the HRD official did not testify as a witness under oath but "gave a summary of his recollection."

disciplinary action, set out below, is contingent on my receiving proof, within 14 days of this memorandum . . . , that you have made the contractually required payment. . . . "

53. The operative parts of the HRD Director's Decision of June 11, 2018, provided as follows:

> ***Decision on Disciplinary Action***
>
> Assuming you provide me with proof of payment of the above amount to [the complainant G-5 employee] by June 25, 2018, the disciplinary measure I consider appropriate in the circumstances will be a formal written reprimand to remain on your personnel file for three years. I will notify you of my final decision on disciplinary action after June 25.
>
> I had also decided to impose, as a second disciplinary measure, forfeiture of Fund support for any new G-5 employee for four years from July 24, 2017 and until you have completed management training, approved by my office, including training in how to hold difficult conversations and resolve stressful situations with employees. However, I have received information from the State Department, as described below, which requires administrative action by the Fund that makes this second disciplinary measure redundant.
>
> ***Impact of U.S. State Department Action***
>
> As you know, [the complainant G-5 employee] also filed a complaint with the United States Department of State. The Department has advised me that, based on their appreciation of the facts, they have lost confidence in your ability to maintain a proper relationship with a G-5 domestic worker and that this will impact your ability to obtain a G-5 visa in future. HRD explained to the Department that the Fund's investigation found no evidence suggesting unfair treatment of your current G-5 employee . . . . The Department in turn explained that their practice is not to authorize a G-5 visa in future where there is any evidence of non-compliance with any G-5 program requirements. They also indicated that they consider it would adversely affect the Fund's reputation for a Fund-supported G-5 employee to remain in your employment.
>
> Due to the position communicated to us by the State Department, I am obliged to make the following decisions in the interests of the Fund:
>
> i. I must direct you to end [the then current G-5 employee]'s

> employment in your household no later than September 10, 2018.
>
> ii. The Fund will not be able to support applications made by you for a G-5 visa in future.
>
> It is important to understand that the two decisions immediately above are administrative, and not disciplinary, in nature.
>
> [The then current G-5 employee] remains free to seek work as a G-5 employee in another household. The Fund is ready to assist her in advertising her services on the World Bank Bulletin Board and should she wish to do so, she should contact . . . .

54. On July 24, 2018, the HRD Director, on the basis of Applicant's having paid the complainant G-5 employee the "contractually required payment" described above, inserted the written reprimand in Applicant's personnel file for a period of three years as the "final decision" on the "disciplinary" measure. In a Memorandum of the same date, the HRD Director stated: "Accordingly, my final decision on the appropriate disciplinary measure is the reprimand described above. This memorandum, together with my June 11 memorandum, constitutes that reprimand. I now consider this matter closed."

(d) Developments following HRD Director's Decision and further communications between the Fund and the State Department

55. On October 2, 2018, Applicant sought reconsideration by the HRD Director of the misconduct decision, based on what she contended was material new evidence. That request was denied on October 19, 2018.

56. The Fund submitted to the State Department the additional documentary material that Applicant asserted cast doubt on the credibility of the complainant G-5 employee. The senior HRD official consulted further with the State Department by email to see if their position might have changed in light of that additional information. That HRD official stated to the Grievance Committee: "[S]o we pressed them in writing as to whether or not their view had changed, and, initially, they did not respond, and then in this meeting on an unrelated matter, they said we've got no further comment to make except to remind you that we can withdraw the G5 benefits for the organization at any time." On November 6, 2018, in an email message to Applicant's counsel, the HRD official communicated that the State Department had stated that it has "consistently withdrawn G-5 benefits where there have been even minor infractions of program requirements and this was their final comment."

CHANNELS OF ADMINISTRATIVE REVIEW

57. On November 27, 2018, Applicant filed a Grievance with the Fund's Grievance Committee, challenging the finding of misconduct against her and the "disciplinary" and "administrative" decisions. Applicant's Grievance sought, as provisional relief, suspension of the

decision that Applicant terminate the employment of her then current G-5 employee during the pendency of the Grievance Committee proceedings. The Grievance Committee held a pre-hearing conference in which it considered Applicant's request for provisional relief and the Fund's motion to dismiss that part of the Grievance challenging the bar on Applicant's utilization of the G-5 visa program, including that she terminate the employment of her then current G-5 employee.

58. In addition to considering Applicant's request for provisional relief and the Fund's motion to dismiss in part, the Grievance Committee pre-hearing conference proceeded in the usual manner, including discussion of which witnesses might be called for a hearing on the merits of the misconduct decision: The Grievance Committee Chair referred to the role of the Committee to make an assessment of witness credibility independent of OII's assessment. Applicant's counsel likewise asserted that Applicant would want to have the opportunity to confront her accusers in the context of the witness testimony before the Grievance Committee.

59. On June 8, 2019, the Grievance Committee rendered a decision granting the Fund's motion to dismiss, for lack of jurisdiction, that portion of the Grievance challenging the decision to bar Applicant from employing G-5 employees, including the then current G-5 employee. The Grievance Committee concluded that it followed that Applicant's request for provisional relief, which was to suspend that decision during the pendency of the Grievance Committee proceedings, must also be denied. The Grievance Committee did not address the merits of Applicant's challenge to the misconduct case against her.

60. On June 25, 2019, the parties agreed, pursuant to Article V, Section 4,[9] of the Tribunal's Statute, to bring the case *in toto* directly to the Tribunal, and the case was formally removed from the Grievance Committee's docket. Accordingly, the Tribunal in this case does not have the benefit of a record of adversary evidentiary proceedings on the merits of the misconduct case, in which Applicant's challenges and the Fund's defenses ordinarily would be tested in the first instance before being raised for consideration by the Tribunal. Nor did Fund Management have an opportunity to sustain, or not, any recommendation of the Grievance Committee based on such record.

61. On August 12, 2019, Applicant filed her Application with the Administrative Tribunal.

SUMMARY OF PARTIES' PRINCIPAL CONTENTIONS

A. Applicant's principal contentions

62. The principal arguments presented by Applicant in her Application and Reply, and in additional pleadings, may be summarized as follows:

---

[9] Article V, Section 4, of the Statute provides: "For purposes of this Statute, all channels of administrative review shall be deemed to have been exhausted when the Managing Director and the applicant have agreed to submit the dispute directly to the Tribunal."

1. The Fund failed to substantiate the misconduct decision against Applicant on the facts of the case.

2. The Fund sought to hold Applicant to vague and unfair standards of conduct.

3. The Fund did not afford Applicant due process in the misconduct proceedings.

4. The Tribunal has jurisdiction to consider Applicant's challenge to the decision barring her utilization of the G-5 visa program.

5. The Fund failed in its responsibilities to Applicant vis-à-vis the privilege of utilizing the G-5 visa program.

6. The Fund's request for "reasonable compensation" from Applicant, pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief should be denied.

7. Applicant seeks as relief:

    a. rescission of HRD's decision and sanctions against Applicant;

    b. removal from Applicant's personnel file of all evidence of the misconduct investigation and decisions;

    c. restoration of Applicant's eligibility to employ G-5 employees, including to employ the then current G-5 employee[10];

    d. three years' salary as compensatory and moral damages, including for failures of due process in the misconduct investigation and "extreme stress and loss of confidence suffered by [Applicant] and [Applicant's] family over a prolonged period" due to the "improperly investigated case and unfounded findings of misconduct"; and an additional one year's salary for "appalling stress" and damage to Applicant's reputation and family; and

    e. legal fees and costs, which the Tribunal may award, in accordance with Article XIV, Section 4 of the Statute, if it concludes that the Application is well-founded in whole or in part.

[10] The record shows that, as of January 2020, the then current G-5 employee was no longer employed by Applicant.

B. Respondent's principal contentions

63. The principal arguments presented by Respondent in its Answer and Rejoinder, and in additional pleadings, may be summarized as follows:

1. The finding of misconduct against Applicant should be sustained because it was supported by ample evidence.

2. Applicant was afforded due process in the disciplinary proceedings.

3. The disciplinary measure imposed, namely, a formal written reprimand to remain in Applicant's personnel file for three years, was proportionate to the offence.

4. Applicant's challenge to the decision barring her utilization of the G-5 visa program is a challenge to a decision of the U.S. Government and therefore not within the jurisdiction of the Tribunal to decide.

5. If the Tribunal concludes that the bar on Applicant's utilization of the G-5 visa program resulted from Fund actions that are subject to Tribunal review, then Applicant's challenge should be denied on the merits because the Fund acted reasonably and in keeping with its responsibilities vis-à-vis both the U.S. Government and Applicant.

6. Respondent should be awarded "reasonable compensation" from Applicant, pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief.

RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW

64. For ease of reference, the principal provisions of the Fund's internal law relevant to the consideration of the issues of the case are set out below.[11]

A. Rule N-4

65. Rule N-4 of the N Rules (Staff Regulations) of the Rules and Regulations of the International Monetary Fund provides:

> Persons on the staff of the Fund shall maintain standards of conduct compatible with their position as international civil servants and shall avoid any action or pronouncement, either in their own country or

[11] The Tribunal's practice is to reproduce the relevant provisions of the Fund's internal law that governed the issues of the case. The Fund's internal law changes over time and the provisions reproduced herein are not necessarily those in force as of the time of this Judgment.

> elsewhere, that would not be in keeping with their position as international civil servants. They shall always bear in mind the reserve and tact incumbent upon them by reason of their international functions, and they shall exercise the utmost discretion in matters of official business.

Adopted September 25, 1946, amended June 22, 1979

B. Staff Handbook, Ch. 11.01, Section 12.1

66. Staff Handbook, Ch. 11.01 (Standards of Conduct), Section 12.1, governs staff obligations in a personal capacity:

> **12.1 Staff Obligations in Personal Capacity**
>
> Staff members shall *refrain from unlawful acts or other actions taken in their personal capacities that may reflect adversely on the integrity or reputation of the Fund and/or its staff, including,* notoriously disgraceful conduct (e.g., domestic violence or abuse of family members), *failure to comply with their legal obligations with respect to a G5 domestic employee ("Annex 11.01.8: Requirements for the Employment of G5 Domestic Employees")* or failure to comply with a lawful order from a court or other governmental authority (e.g., payments to satisfy tax obligations or family law obligations, including spouse [footnote omitted] and child [footnote omitted] support.
>
> (Emphasis added.)

C. Staff Handbook, Annex 11.01.8 (Requirements for the Employment of G5 Domestic Employees)

67. Staff Handbook, Annex 11.01.8 governs the requirements for the employment of G-5 employees by Fund G-4 staff members. It includes a Code of Conduct for such employment, which incorporates *inter alia* required elements for the G-5 employee's contract, a complaints procedure and record-keeping requirements:

> **Section 1: Introduction**
>
> **1.1 Introduction**
> The Fund's Code of Conduct for the Employment of G5 Employees ("Code") establishes minimum standards for staff members [Footnote 1 – *The Code of Conduct for the Employment of G5 Employees applies to any Fund employee employing a G5 employee.*] employing G5 employees. It aims to ensure the fair treatment of G5 employees, consistent with applicable federal and state laws and the staff rules of the Fund. Compliance with the Code's requirements is mandatory and subject to audit. Staff members must certify acceptance of their obligations

hereunder upon requesting Fund sponsorship for a G5 visa application, the renewal of a G5 visa, or the extension of an I-94 form. Violations of obligations hereunder are a serious matter and may reflect adversely on the staff member and the Fund. They may result in disciplinary action against the staff member, up to and including termination of employment.

Section 2: Code of Conduct for the Employment of G5 Employees

2.1 Compliance with U.S. Law
The staff member must comply with all Federal, State, and local laws in the United States. The staff member is responsible for ensuring he or she is aware of, and complies with all legal obligations, including Federal, State and local laws, applicable to the employment of a G5 employee.

2.2 Contract of Employment ("Contract")
The staff member must use the standard contract template available from HRD's Visa Services Office (the "contract") and provide a copy, in writing and signed by the staff member, to the prospective G5 employee. The contract shall be in English and, if the G5 employee does not understand English, also in another language that he or she understands. The staff member must ensure that the prospective G5 employee understands the provisions of the contract. Failure to do so may result in denial of a visa at the consular office.

Before the G5 employee arrives in the United States, begins employment, or joins the staff member's household, two original copies of the contract shall be signed by the parties, one for the staff member and one for the G5 employee, and a photocopy of the signed contract shall be filed with the Fund's Human Resources Department (HRD). The contract must specifically address the following subjects and, where indicated, provide certain minimum terms of employment. Failure by the staff member to address such subjects, to provide such minimum terms, or to comply with the provisions of the contract may be considered a violation of this Code.

2.2.1 Parties to Contract
A bona fide employer-employee relationship must be established through the contract, which must include the names, addresses, countries of citizenship and U.S. visa status of the staff member and the G5 employee. The consular office may require proof that the staff member has the means to employ a G5 employee.

Applications for G5 visas for relatives of a prospective employer are carefully scrutinized by consular officers and such visas will be denied if the officer is not satisfied that there is a bona fide employer-employee

relationship. Annual surveys of G5 employees, particularly those who are family members, will be reviewed to monitor the maintenance of the employer-employee relationship and compliance with all U.S. laws and Fund rules.

2.2.2 Description of Duties
The contract shall state the position of the G5 employee (e.g., housekeeper, handyman, cook, gardener, babysitter, caretaker, etc) and describe all the duties the employee will be performing. The contract shall also state that he or she may work only for the staff member while in the United States and will not accept any other employment while working for the employer.

2.2.3 Hours of Work
The contract shall define the normal working hours and number of hours per week the G5 employee will work and specify that a minimum of 35 hours per week of paid employment will be provided. It shall also state that hours in which the G5 employee is "on call" will count as paid work hours. In addition, the contract shall state that daily time records will be signed by the staff member and the G5 employee, and a copy will be kept by both parties.

2.2.4 Time-off from Work
The contract shall state that the G5 employee will be given a minimum of one full day off each week. The contract shall also specify the number of paid holidays, sick days, and vacation days the staff member will provide. It is customary in the United States for employers to provide paid time-off from work for holidays, vacation days, and sick leave.

2.2.5 Minimum Wage
The contract shall state the hourly wage to be paid to the G5 employee, which should be set at or above the minimum wage under U.S. federal, state, and county law, whichever is higher. Wages shall be paid on a weekly or biweekly basis by check or electronic fund transfer to the G5 employee's bank account. Pay records shall be provided without charge to the G5 employee. In addition, to facilitate the G5 employee's access to and use of wages earned, the bank account must be based in the United States and be opened within 30 days of the G5 employee's arrival in the United States.

The staff member, and his or her family and household members, must not have access to the G5 employee's bank account(s). This must be stated in the contract. Proof of payment of wages must be available to the Fund upon request.

2.2.6 Overtime Pay
The contract shall provide that work in excess of 40 hours per week must be paid at a rate that is at least the minimum rate provided for by Federal, State, local or other applicable law. In many jurisdictions, this is one and one half times the base hourly wage.

2.2.7 Workers' Compensation
The contract shall state that staff members residing in the District of Columbia or Maryland will obtain and maintain worker's compensation insurance during the entire employment period of their G5 employee to ensure that the G5 employee will be paid if he or she is injured on the job. Virginia does not require worker's compensation insurance for G5 employees; however, it is encouraged.

2.2.8 Tax Payments
The contract shall state that the staff member must obtain a Social Security card within 30 days for the G5 employee and pay the employer's share of Social Security taxes and Medicare and any other required taxes or contributions, including federal and state unemployment insurance, on all wages paid. The contract shall also state that, unless paid by the staff member, the G5 employee must pay applicable Federal and State income taxes on all wages and the G5 employee's share of Social Security and Medicare.

2.2.9 Live-in Arrangement
The contract shall state whether the G5 employee will reside with the staff member. If the G5 employee resides with the staff member, three meals per day shall be provided to the G5 employee. If the G5 employee does not reside with the staff member, one or more meals per day shall be provided to the G5 employee. In either case, the contract shall state that no deduction from the G5 employee's wages will be applied for meals and lodging and the employee will not be charged for meals or lodging.

Staff members residing in Montgomery County, Maryland, are required to provide the G5 employee with a private room for sleeping with a door that can be locked, and reasonable access to a kitchen, bathroom, and laundry facilities.

2.2.10 Medical Insurance
The contract shall state whether the G5 employee will be offered health insurance and, if so, at what cost to the G5 employee. The staff member shall not deduct the cost of health insurance from the G5 employee's wages. However, the G5 employee may pay separately for health insurance. The Affordable Care Act requires G5 employees to obtain health insurance while working in the United States, and staff members

are strongly encouraged to assist their G5 employees in obtaining such coverage.

2.2.11 G5 Employee Dependents

If the G5 employee will be accompanied by dependents, the contract shall state whether benefits (e.g., health insurance, meals, lodging, household items, clothing) will be provided to the dependents and, if so, the cost to the G5 employee, if any. The staff member shall not deduct the cost of these from the G5 employee's wages. However, the G5 employee may pay separately for these benefits. If the G5 employee will be accompanied by minor dependents, the contract shall state that children between the ages of 6 and 17 are generally required to attend school in the U.S. during the school year.

2.2.12 Travel and Transportation to and from the U.S. and Other Costs to G5 Employees

The contract shall state that the G5 employee will be provided with round-trip transportation to and from the United States, at no cost to the G5 employee, to travel to the United States at the beginning of employment and to return home after its termination. The staff member is responsible for travel expenses related to any trips where the G5 employee has been asked to accompany the staff member or his or her family. The contract shall also state whether any other costs will be charged to the G5 employee on a regular basis, e.g., for local transportation, and if so, the amount of such costs.

2.2.13 Termination of Employment and Departure

The contract shall state that either the staff member or the G5 employee may terminate the agreement at any time for cause (e.g., G5 employee misconduct or incompetence), or upon giving the other party at least one month's notice if termination is without cause. When the staff member terminates without cause, the payment of one month's wages will be paid to the G5 employee. The contract shall also state that, if the G5 employee's employment is terminated for any reason, the G5 employee will not be legally permitted to remain in the United States and will be required to promptly leave the country.

The staff member is responsible for reporting all terminations of employment to the Fund. Upon termination of contract, the staff member must notify HRD via the self-service portal whether the G5 employee has departed the United States. The Fund will report this information to the U.S. State Department.

A G5 employee who changes employers is required to depart the United States and initiate the visa application process abroad.

2.2.14 Other Terms of Employment

a. Requirements of Employment. The contract shall state that, if the G5 employee is required to wear a uniform, the staff member will provide the uniform and pay for cleaning at no expense to the G5 employee. It shall also state that the G5 employee's presence in the staff member's residence will not be required except during working hours and that his or her passport, visa, I-94 form, copy of the contract and other personal property will not be withheld for any reason.

b. Legal Provisions. The contract shall state any other terms of employment agreed upon. They must be consistent with this Code. The contract shall also state that it will be interpreted and applied in accordance with the laws of the place of the staff member's U.S. residence during the G5 employee's employment. In addition, the contract will state that once signed by the staff member and the G5 employee, the contract may not be modified except by a written addendum a copy of which must be promptly filed with HRD.

c. Obligations Regarding U.S. Immigration Documents. The I-94 form (entry/departure record) and not the G5 visa, governs the validity of the G5 employee's stay in the U.S. If the G5 employee's I-94 form is marked "D/S" (i.e., Duration of Service) in the date entry box, it is incorrect and the staff member should immediately contact HRD for advice to correct the error. Duration of service entries are reserved for G4 visa holders only.

- The contract shall state that the staff member is required to ensure that form is submitted to the U.S. State Department for extension sixty (60) days prior to expiration and that if the staff member fails to submit the I-94 form to the US State Department prior to its expiry, the G5 will lose their legal status in the US, will be required to leave the US, and will be unable to obtain a G5 visa in future.

- The contract shall also state that the staff member and G5 employee are required to complete U.S. Citizen and Immigration Services (USCIS) Form I-9 Employment Eligibility Verification ("I-9 form") at the beginning of employment. While this form, which confirms that the G5 employee is legally entitled to work in the United States, does not have to be submitted to USCIS, the staff member is required to keep the I-9 form for three years after the date of hire or one year after the date employment ends, whichever is later.

d. Duration of the Contract. The contract shall state that the term of the contract will be at least one year, stating a date of commencement and a date of expiration. The contract shall also state that the contract may be extended by mutual agreement between the G5 employee and staff member.

e. Deduction of Expenses. The staff member shall not deduct any expenses incurred by the G5 employee (including medical care, medical insurance, travel, telephone, household items, clothing, etc.) from the wages of the G5 employee. The staff member may deduct the G5 employee's share of Social Security and Medicare taxes and may withhold federal, state, and local income taxes on behalf of the G5 employee if the G5 employee so requests.

2.2.15 Complaints Procedure

The contract shall state that the G5 employee has the right to make a complaint, or to have a complaint made on his or her behalf, with respect to the G5 employee's fair treatment under this Code with the Fund's Ethics Office, HRD, the National Human Trafficking Resource Center or the Trafficking in Persons and Work Exploitation Task Force Complaint Line, and provide telephone numbers for this purpose. The contract shall also state that the staff member may not interfere with such complaints or retaliate against the G5 employee for any good faith statement or action by or on behalf of the G5 employee in connection with a complaint. This procedure shall not prevent the G5 employee from notifying governmental authorities or taking legal action in connection with any matter affecting his or her employment.

2.3 Notice of Visa Issuance and G5 Arrival and Departure

Visa services will be provided by HRD's Visa Services Office (VSO). An annual fee of $300 will be assessed by HRD after April 15th each year when staff members submit the annual survey. Staff members who employed a G5 employee either for the full year or part of the year will be required to pay the annual fee. This annual fee will be waived for any staff member who uses professional assistance as described in paragraph 2.6 below. The fee will help defray the costs associated with the G5 program. Staff members are prohibited from requiring the G5 employee to pay all or part of the $300 annual fee.

Staff members are required to report to HRD at certain stages during the course of an application for a G5 nonimmigrant visa abroad. These stages are:

- Informing HRD within three days of learning that the G5 visa was issued or the visa application was denied.
- Contacting HRD within three days of deciding to withdraw the offer of employment or after learning that the prospective G5 employee no longer intends to work for the staff member.
- Giving notice to HRD within three days of the employment or arrival in the United States of the G5 employee, and within three days of his or her termination of employment, whether such termination is with or without prior knowledge of the staff member.

2.4 Orientation and Refresher Seminars for Staff Member and G5 Employee

The staff member and the G5 employee must attend an orientation program on their mutual rights and responsibilities as soon as possible after the arrival of the G5 employee in the United States. The G5 employee will attend the orientation during his or her working hours or will be paid by the staff member at the applicable rate for attendance. Failure to attend an orientation seminar within six months after commencement of employment may result in the Fund withdrawing its sponsorship of the G5 visa.

The staff member and G5 employee must also attend a refresher seminar every three years for the duration of the G5 employee's employment. This is to ensure they receive information about recent legal developments. The staff member must permit the G5 employee to attend the refresher seminar during his or her working hours or alternatively, pay the contractual wage rate for such attendance. The Fund may also require the G5 employee to attend periodic meetings to monitor compliance with their contract and the Code. This may include meetings with the U.S. State Department. The staff member must permit the G5 employee to attend such meetings during his or her working hours or alternatively, pay the contractual wage rate for such attendance.

2.5 Maintenance of Records

The staff member must maintain adequate records regarding the employment of a G5 employee during such period of employment and for not less than three whole calendar years following the termination of the G5 employee's employment. These records shall include the following:

a. a copy of the contract and any addendums;

b. proof of wage payments by canceled checks or electronic fund transfers (signed receipts for cash payments are not permissible), IRS Schedule H, W-3, and W-2 forms;

c. a record of the G5 employee's daily and weekly hours worked, including any overtime, and a record of any deductions made;

d. proof of payment of Social Security and Medicare taxes (IRS Schedule H);

e. proof of payment of any required federal and state unemployment taxes;

f. proof of payment of Worker's Compensation insurance premiums;

g. copies of the G5 employee's G5 visa(s), I-9 and I-94 form(s), and other proof of eligibility for employment as a G5 employee;

h. copy of the G5 employee's social security card;

i. copies of any health insurance policy and, to the extent provided by the contract, proof of payment by the staff member for insurance premiums; and

j. information on the G5 employee and any accompanying dependents, including name(s), permanent address (es) and telephone number(s), date(s) of birth, and any other information relevant to the staff member's compliance with this Code.

The staff member may use professional assistance for record keeping, payroll, and tax withholding.

2.6 Audit of Staff Member's Records
The staff member's records regarding a G5 employee are subject to audit periodically or in response to a complaint by or on behalf of a G5 employee. The staff member shall cooperate fully and unconditionally with requests made in connection with such an audit by the Fund.

2.7 Investigation of Complaints
In connection with a complaint by or on behalf of a G5 employee, or by a governmental authority, concerning the staff member's compliance with applicable law, contract and this Code, the Fund may investigate the circumstances surrounding the complaint, request relevant records or other information from the staff member and make such inquiries as may be reasonably necessary and consistent with the Fund's procedures in such matters.

2.8 Fair Treatment of G5 Employee

The staff member shall treat the G5 employee fairly and reasonably. In no event shall the staff member abuse the privilege of employing a G5 employee or engage in any conduct toward the G5 employee that would reflect adversely on the Fund. Nor shall the staff member, in connection with an audit or investigation of a complaint, retaliate against the G5 employee for any good faith statement or action by or on behalf of the G5 employee. Violations of this provision, or of any other provision of this Code, may result in loss of the privilege of employing a G5 employee and other appropriate disciplinary action against the staff member, up to and including termination of employment.

2.9 Disclosure of Close Personal Relationships of an Intimate Nature

Although discouraged by the Fund, in the event a close personal relationship of an intimate nature develops between the G5 employee and the staff member or any member of the staff member's household, the staff member must immediately disclose the relationship to the Fund's Ethics Office and obtain their advice. The Ethics Office will advise the staff member on what impact, if any, this relationship has had or may have on the bona fide nature of the employment relationship and the fair treatment (including the perception of fair treatment) of the G5 employee, as well as on conduct that might reflect adversely on the Fund.

2.10 Code and Contract

The Code may be revised and amended from time to time. Staff members should be aware that they are required to comply with the Code at all times, and that the rights and obligations of the staff member and the G5 employee must be consistent with the Code, notwithstanding any provision in the contract to the contrary. In the event that a staff member fails to adhere to the Code, such failure may be grounds for disciplinary action, up to and including termination of employment.

2.11 Certification

The undersigned staff member of the International Monetary Fund hereby certifies that he or she has read this Code of Conduct for the Employment of G5 Employees and will act in accordance with the obligations set forth herein.

Name (please print): _____
Signature: _____ Date:_____

D. Staff Handbook, Ch. 11.02 (Misconduct and Disciplinary Procedures)

68. Staff Handbook, Ch. 11.02 governs misconduct and disciplinary procedures within the Fund:

> **Section 1: Purpose and Scope**
>
> **1.1 General**
> The purpose of this Chapter is to set out the policies and procedures adopted by the Fund with respect to investigations of alleged misconduct and the imposition of disciplinary measures if misconduct is substantiated, including the basic rights, duties and obligations of staff in the investigative and disciplinary process.
>
> **Section 2: Definition of Misconduct**
>
> **2.1 Definition**
> Misconduct for which disciplinary action may be imposed consists of professional or personal actions or behavior that are contrary to or inconsistent with the standards of conduct set out in "Chapter 11.01: Standards of Conduct", Sections 2-12 *[Footnote 1 – The Code of Conduct issued by the Managing Director provides guidance on areas of staff conduct and ethical behavior that are addressed in this Staff Handbook and the Fund's Rules and Regulations, violations of which may provide the basis for disciplinary actions.]*.
>
> **Section 3: Authority and Procedure for Initiating Investigations into Alleged Misconduct**
>
> **3.1 Authority of the Managing Director and Director of HRD**
> The Managing Director (for staff members at Grades B1-B5) or the Director of HRD (for all other staff members) may initiate investigations into allegations of misconduct.
>
> **3.2 Authority of Department Heads**
> Department Heads may initiate investigations in the following circumstances:
>
> i. on matters that have been referred to them by the Office of Internal Audit and Inspection (OIA) when, in their opinion, further investigation of the alleged violations of policies and procedures identified by the OIA is warranted; and

ii. into alleged misconduct of staff members in their department, when in their judgment, the alleged misconduct would not warrant a sanction that exceeds a written reprimand.

3.3 Referral by Department Heads
Notwithstanding paragraph 3.2 above, a Department Head may refer any case to the Director of HRD or to the Managing Director, as appropriate, and must do so if it appears that the misconduct would warrant a sanction beyond a written reprimand. Department Heads should seek the advice of the Director of HRD if they are uncertain as to their authority in a particular case.

3.4 Procedure for Initiating Investigations
Investigations shall be initiated through referral of the matter in writing to the Fund's Internal Investigator, to OIA, to another Fund official or to an outside party as investigating officer. The referral shall set out the nature of the allegations and the scope of the investigation to be conducted. Investigations initiated by a Department Head in accordance with paragraph 3.2 above may only be referred to and conducted by another official in the same department. A material change in the scope of the investigation must be authorized by the official who initiated the investigation.

3.5 Basis for Investigation
Before an investigation is initiated, a preliminary inquiry will normally be conducted to establish whether there is sufficient credible information to warrant an investigation of the alleged misconduct.

Section 4: Preliminary Inquiries

4.1 Purpose of Preliminary Inquiries
The purpose of a preliminary inquiry is solely to determine whether a matter warrants further investigation. It should be conducted in as discreet and expeditious a manner as possible and be limited to this purpose.

4.2 Authority to Initiate a Preliminary Inquiry
The Managing Director or the Director of HRD may request the Internal Investigator to conduct a preliminary inquiry. The Internal Investigator may also conduct a preliminary inquiry on his or her own initiative, upon receiving information concerning alleged misconduct, either directly or through the Integrity Hotline (Annex 11.01.7: Integrity Hotline Program). Such information may come from any source, including Fund staff, contractual employees and vendor personnel, as well as parties external to the Fund.

4.3 Decision following a Preliminary Inquiry
Based on the findings of the preliminary inquiry, the Director of HRD or the Managing Director, as appropriate, shall determine whether an investigation is warranted, whether the matter can be closed, or what, if any, other action is to be taken. For preliminary inquiries carried out at the Internal Investigator's own initiative, the Internal Investigator shall determine whether to close the matter without further action, or to seek authorization from the Managing Director or Director of HRD, as appropriate, to conduct an investigation.

Section 5: Investigations

5.1 Purpose
The purpose of an investigation is to establish the facts and circumstances concerning alleged misconduct so that the responsible Fund official may determine whether misconduct has been committed and, if so, what, if any, disciplinary action is appropriate.

5.2 Conduct of Investigations
Investigations into alleged misconduct shall be conducted in accordance with the provisions of this Chapter, and shall normally be conducted by the Internal Investigator, except in cases where they are initiated by a Department Head under paragraph 3.2 above, or where another Fund official or external investigator has been assigned to the case. The investigating officer shall gather and review any evidence concerning the allegations of misconduct and interview possible witnesses or others who may be in a position to provide relevant information pertaining to these allegations.

5.3 Confidentiality
All aspects of investigations shall be conducted discreetly, with due regard for preserving the privacy of the person against whom allegations of misconduct have been made and who is the subject of the investigation (the respondent). Persons interviewed by the investigating officer and others who may be called upon to assist in an investigation are under a duty of confidentiality and shall not disclose the contents of their interviews or nature of their participation to others, unless authorized to do so by the investigating officer. The investigating officer shall explain the extent to which, in his or her judgment, it may be necessary to divulge such information to others.

5.4 Opportunity to Respond

In the course of the investigation, the investigating officer shall interview the respondent, give the respondent a reasonable opportunity to explain his or her position with respect to the allegations, and present his or her own evidence, including the names of witnesses who might corroborate the respondent's statements, subject to the duty not to interfere with the investigation. Before being interviewed, the respondent shall be informed in writing that an investigation has started, the nature of the allegations that are being investigated, as well as the potential issues and possible violations of the standards of conduct raised by these allegations. Exceptions to notification in advance of the interview should be limited to circumstances in which such notification would seriously interfere with the investigation (e.g., when there is a risk of the destruction of evidence not otherwise obtainable or of intimidation of a potential witness) or possible danger to others (or to the respondent).

5.5 Right to be Accompanied

When the investigating officer informs the respondent that an investigation of which he or she is the subject has started, the investigating officer shall also notify the respondent that he or she may be assisted by and accompanied to the interview(s) by an advisor of his or her choice, including an attorney, from either inside or outside the Fund. *[Footnote 1 – Members of LEG and HRD must obtain permission from the General Counsel and Director of HRD, respectively, before assisting an employee in accordance with this provision.].*

5.6 Duty to Cooperate and Access to Information

i. The investigating officer shall have direct access to all staff members, contractual employees and vendor personnel and to all records relevant to the investigation. *[Footnote 2 – The Ombudsperson may decline to provide information to the investigating officer by reason of the duty to preserve confidentiality.]* All Fund personnel, including the employee who is a subject of an investigation, have a duty to cooperate with the investigating officer and to provide information requested by the investigating officer in a timely manner.

ii. Subject to the right to appeal a request for information to the Director of HRD under paragraph 5.10 below, if the respondent refuses to respond to questions or to provide information upon request, the investigating officer shall be entitled to draw an adverse inference regarding the factual content of the requested information. In addition, such noncooperation may be grounds for a finding of insubordination, which itself could be the basis for disciplinary measures.

iii. The Mediator, Ombudsperson and Peers for Respectable Workplace must not share any information they have learned in confidential meetings relevant to the investigation, unless authorized by the employee who shared the information with them, or unless they believe that there is risk of imminent harm.

5.7 Duty Not to Interfere

Fund personnel have a duty not to interfere with the conduct of an investigation by the investigating officer; such interference may constitute misconduct and a basis for disciplinary measures. Such interference may include refusal to cooperate with the investigating officer; making knowingly false statements to the investigating officer; reprisal against the complainant or a witness, either during or after an investigation; and any other conduct that materially interferes with the investigating officer's ability to conduct an investigation.

5.8 Requests for Information

The investigating officer shall apply standards of relevance with respect to the nature and extent of the information requested of an employee, and reasonableness with respect to the time frame in which information or interviews are to be provided.

5.9 Report of Investigation

Upon completion of the investigation, the investigating officer shall prepare and submit a written report to the official who initiated the investigation ("Report of Investigation"). The Report of Investigation shall be balanced and fairly reflect the totality of the information gathered during the investigation and contain the following:

- summary of the allegations of misconduct;
- the applicable rules and regulations or standard of conduct;
- a description of the available evidence;
- conclusions about whether the allegations of misconduct have been substantiated by a preponderance of the evidence, or whether the evidence either exonerates the respondent or is insufficient to make a finding.

5.9.1 Scope of Report

The investigating officer should confine his or her comments in the Report to issues pertaining to the alleged misconduct and should not draw conclusions on other matters, such as the quality of management practices. General observations not directly involving the specific matter under investigation should be presented separately.

5.10 Review Process for Request for Information during an Investigation

In the event of disagreement between a staff member *[Footnote 1 – "Staff member" means a full-time or part-time employee of the Fund who has been appointed to either a regular or term position and whose letter of appointment indicates that he or she is a "staff member of the Fund."]* and the investigating officer over a request for information in connection with an investigation, the staff member may refer the matter for determination to the Director of HRD if the staff member believes the request is unreasonable either because:

i. the information requested is irrelevant to the subject matter of the investigation, or
ii. the time allowed for a response or production of the information is insufficient.

The request for information at issue shall be suspended pending that review, which should be dealt with in an expeditious manner. The determination of the Director of HRD on the matter shall be final and shall not be subject to review under the Fund's grievance procedures under "Chapter 11.03: Dispute Resolution", except as part of a subsequent challenge, if any, to the final disciplinary decision, under the applicable channels of review.

Section 6: Authority to Impose Disciplinary Measures

6.1 Authority

The Director of HRD shall have the authority to impose any of the disciplinary measures specified in Section 8 below, provided that in the case of staff members in Grades B1-B5, the imposition of the measures (iv) through (xi) listed in paragraph 8.1 below shall be decided by the Managing Director. In cases of violation of the requirements of "Chapter 11.01: Standards of Conduct", Sections 8 and 9, the Director of COM may recommend the appropriate disciplinary action to be imposed.

6.2 Authority of Department Heads

Department Heads shall have the authority to impose disciplinary sanctions up to a formal, written reprimand on staff members in their department.

6.2.1 Advice of the Director of HRD

If Department Heads are uncertain whether a matter falls within their authority, they should seek the advice of the Director of HRD on this point.

6.2.2 Consultation with HRD
Before deciding on disciplinary action, a Department Head shall consult with the Director of HRD concerning the appropriateness of the proposed action in the specific case at hand, in order to ensure consistent treatment among staff members of different departments.

6.3 Delegation of Authority
In any particular case, the Managing Director, the Director of HRD or the Department Head, as applicable, may delegate the authority given to them under this Chapter to another Fund official, graded at B1 or above, whose rank is at least one grade higher than that of the staff member *[Footnote 1 – "Staff member" means a full-time or part-time employee of the Fund who has been appointed to either a regular or term position and whose letter of appointment indicates that he or she is a "staff member of the Fund."]* under investigation for misconduct. However, the authority of the Director of HRD, to impose the disciplinary measures (iv) through (xi) listed in paragraph 8.1 below may be delegated only to a Deputy Director of HRD.

Section 7: Decisions on Disciplinary Action

7.1 Responsible Official
For purposes of this Section, the term "responsible official" means the Managing Director, Director of HRD, Department Head or other Fund official to whom authority has been delegated pursuant to this Chapter.

7.2 Transmission of the Report of Investigation and Response of the Staff Member
At the conclusion of an investigation into alleged misconduct, and before making a decision on any disciplinary action, the responsible official shall give the respondent a copy of the Report of Investigation for review and comments. Respondents shall be given reasonable opportunity to present any comments they may have on the Report of Investigation and the allegations made against them. In any personal appearance, respondents may be accompanied by an advisor of their choice, including an attorney, from either inside or outside the Fund. *[Footnote 7 – Members of LEG and HRD must obtain permission from the General Counsel and the Director of HRD respectively, before assisting an employee in accordance with this provision.]*

7.3 Further Inquiry
If the staff member *[Footnote 1 – "Staff member" means a full-time or part-time employee of the Fund who has been appointed to either a regular or term position and whose letter of appointment indicates that he*

or she is a "staff member of the Fund."]'s response raises issues that, in the responsible official's opinion, were not fully addressed or resolved in the Report of Investigation, the responsible official may request that further inquiry into the matter be conducted before deciding whether or not the staff member has committed misconduct and deciding on an appropriate disciplinary action.

7.4 Decision
On the basis of the Report of Investigation, the staff member's response, and any additional information obtained as the result of any further inquiry as referred to in paragraph 5.3 above, the responsible official shall determine whether the allegations are well founded and whether the staff member's conduct constitutes misconduct.

7.4.1 Finding of Misconduct
If the responsible official finds that misconduct occurred, he or she shall notify the staff member in writing of his or her conclusions and the reasons therefor, and of the disciplinary measure(s) to be imposed. Where applicable, the Director of HRD or Managing Director shall determine the amount and/or duration of disciplinary measures and the conditions, if any, to be met for their discontinuance.

7.4.2 No Finding of Misconduct
If the responsible official concludes that no misconduct has occurred, he or she shall inform the staff member who was the subject of the investigation that the staff member's actions did not constitute misconduct and that the matter is closed.

7.5 Interim Measures
Pending the completion of an investigation and a decision on the matter, and where the responsible official finds reasonable cause for such action:

i. the staff member may be relieved of specific duties or temporarily reassigned by the Department Head or Director of HRD; or
ii. the staff member may be placed on administrative leave with pay by the Director of HRD in accordance with "Administrative Leave with Pay", provided that, in respect of staff members in Grades B1-B5 who are subject to Rule N-12, such measures shall be imposed by the Managing Director.
iii. the payment of benefits or allowances may be suspended or postponed.

7.6 Opportunity to be Heard on Interim Measures
Before imposing any of the above interim measures, the responsible official shall give the staff member a reasonable opportunity to be heard

on the facts at issue and allegations against him or her, unless exceptional circumstances require otherwise.

7.7 Disciplinary Measures During Period of Review
In cases where a staff member requests review of a decision to impose disciplinary measures as provided in "Chapter 11.03: Dispute Resolution", the disciplinary measures shall remain in force and shall not be suspended during the period in which the review is conducted, unless the Director of HRD or Managing Director, as appropriate, decides that a suspension of the measures pending review is warranted by exceptional circumstances in a specific case.

Section 8: Disciplinary Measures

8.1 Types of Measures
Disciplinary measures may take one or more of the following forms:

i. written warning;
ii. formal, written, reprimand;
iii. forfeiture of specific benefits or allowances;
iv. reassignment;
v. ineligibility for specific salary increases;
vi. ineligibility for specific promotion(s);
vii. suspension of salary;
viii. reduction in salary;
ix. suspension with or without pay;
x. demotion; and
xi. termination of employment.

8.2 Proportionality
The severity of the disciplinary measures imposed shall be commensurate with the seriousness of the misconduct. In determining the seriousness of the misconduct and in deciding upon the disciplinary measure(s) to be imposed, the nature of the misconduct and the circumstances in which it occurred shall be taken into account and, in appropriate cases, the disciplinary measure imposed may vary from the list provided in paragraph 8.1. In particular, account shall be taken of:

i. the extent to which the misconduct adversely reflects upon the reputation or adversely affects the interests of the Fund;
ii. the extent to which the misconduct involves intentional actions or negligence;
iii. whether the misconduct involves repeated actions or behavior; and
iv. the prior conduct of the staff member *[Footnote 1 – "Staff member" means a full-time or part-time employee of the Fund who has been*

appointed to either a regular or term position and whose letter of appointment indicates that he or she is a "staff member of the Fund."].

Section 9: Confidentiality and Records Retention

9.1 Confidentiality
In any case in which the procedures specified in this Chapter are applied, information regarding the case shall be provided only to those staff members who have a need to be informed. Staff members shall treat such information in a strictly confidential manner, consistent with the Personal Information Privacy Guidelines.

9.2 Notification by or to Departments
Department Heads shall notify HRD of any written warnings and formal written reprimands issued by them in order to ensure that information and records on disciplinary measures imposed are complete and are centrally maintained. The Director of HRD shall notify the relevant Department Head of any disciplinary actions imposed on staff members of that department. Subject to paragraph 9.3 below, a written record of any disciplinary action imposed on a staff member *[Footnote 1 – "Staff member" means a full-time or part-time employee of the Fund who has been appointed to either a regular or term position and whose letter of appointment indicates that he or she is a "staff member of the Fund."]* shall be retained in the staff member's personnel file.

9.3 Records
Records of disciplinary measures imposed shall be purged from a staff member's personnel file and destroyed after a three-year period, provided that there has been no recurrence of the misconduct during that period of time. The Fund may, however, retain information about the misconduct and the sanction imposed, including the Report of Investigation, in the confidential files maintained by the Director of HRD and the Ethics Office, provided that access thereto shall be strictly limited on a need-to-know basis.

Section 10: Administration

10.1 Administration
The Director of HRD shall be responsible for the administration of this Chapter.

CONSIDERATION OF THE ISSUES

69. The Application presents the following principal questions for decision by the Administrative Tribunal: (a) Shall the Tribunal sustain the Fund's misconduct decision against Applicant? (b) Does Applicant have recourse to the Tribunal in relation to her challenge to the decision barring her utilization of the G-5 visa program and, if so, has she prevailed on that challenge? The Tribunal additionally will consider Respondent's request for "reasonable compensation" from Applicant, pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief.

A. Shall the Tribunal sustain the Fund's misconduct decision against Applicant?

(1) What standard of review governs Applicant's challenge to the misconduct decision?

70. A finding that a staff member has engaged in misconduct in contravention of the Fund's internal law is a special category of individual decision taken in the administration of the staff of the Fund. The Tribunal has distinguished the standard of review it applies to challenges to misconduct decisions from that applicable to challenges to other individual decisions. This is because in reviewing "quasi-judicial" decision-making processes, including misconduct decisions, the Tribunal's scrutiny may be heightened. *Ms. "BB", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2007-4 (May 23, 2007), para. 123, citing *Ms. "J", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2003-1 (September 30, 2003), para. 121. This heightened scrutiny responds to the gravity of a finding of misconduct, both to the individual staff member and to the institution itself.[12]

71. In *Ms. "EE", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2010-4 (December 3, 2010), para. 85, the Tribunal summarized its jurisprudence concerning the standard of review applicable to disciplinary matters as follows:

> This Tribunal also has recognized that '"in disciplinary matters,'" international administrative tribunals have held that '". . . review is not limited to determining whether there has been an abuse of discretion but encompasses a fuller examination of the issues and circumstances.'" *Ms. "BB", Applicant v. International Monetary Fund, Respondent,* IMFAT Judgment No. 2007-4 (May 23, 2007), para. 124, quoting *D v. International Finance Corporation*, WBAT Decision No. 304 (2003), para. 23. The IMFAT has referred to jurisprudence of the United Nations Administrative Tribunal, indicating that although the "imposition of disciplinary sanctions

[12]The Tribunal nonetheless rejects Applicant's repeated characterizations in her pleadings of a Fund disciplinary sanction as a "criminal" sanction. *See, e.g.*, Reply, pp. 12, 18 (referring to "the Fund's disciplinary – *i.e.* criminal – law," and alleging that Applicant was "deemed a Fund criminal").

> involves the exercise of discretionary authority, this authority is distinctively quasi-judicial in nature." *Ms. "BB,"* para. 124, citing *Kiwanuka v. Secretary General of the United Nations*, UNAT Judgment No. 941 (1999). [Footnote omitted] In the context of a fuller examination of its own jurisprudence relating to standards of review, the IMFAT has held that in reviewing "quasi-judicial" decision-making processes its scrutiny may be heightened. *Ms. "J",* paras. 110, 121 (review of disability retirement decision), cited in *Ms. "BB"*, para. 123. In a case in which it was called upon to consider a challenge to a misconduct decision, the IMFAT followed the lead of other international administrative tribunals in examining '"(i) the existence of the facts; (ii) whether they legally amount to misconduct; (iii) whether the sanction imposed is provided for in the law of the [organization]; (iv) whether the sanction is not significantly disproportionate to the offence; and (v) whether the requirements of due process were observed."' *See Ms. "BB"*, paras. 124-125, quoting *D*, para. 23.

72. In *Ms. "BB"*, para. 125, the Tribunal identified three principal questions for decision when an applicant challenges a misconduct decision: Did Applicant engage in misconduct in contravention of the Fund's internal law? Was Applicant accorded due process in the misconduct proceedings? If Applicant was properly found to have engaged in misconduct, was the penalty imposed proportionate to the offence and determined in accordance with the applicable Fund regulations? In the words of the World Bank Administrative Tribunal (WBAT), the tribunal is required to "evaluate the factual reality of the misconduct, the legitimacy of the means by which the facts were established, and the proportionality of the sanctions imposed." *M*, WBAT Decision No. 369 (2007), para. 54.

73. This is not to say that the Tribunal may not afford any deference to the judgment of the decision maker in a disciplinary case. In that regard, the Tribunal will be guided by the principle, first stated in *Ms. "J"*, para. 99, that its "degree of deference—or depth of scrutiny—may vary according to the nature of the decision under review, the grounds upon which it is contested, and the authority or expertise that has been vested in the original decision maker." Here, the nature of the legal framework governing the alleged misconduct will be pertinent to the deference the Tribunal may afford to the decision maker. That legal framework responds to the sensitive relationships that exist between the Fund as an international intergovernmental organization and the government of the host country.

(2) <u>The legal framework governing the alleged misconduct</u>

74. The provisions of the Fund's internal law governing staff conduct in relation to G-5 employment relationships comprise a separate section of the Staff Handbook, with its own procedures and penalties. Staff members subject to disciplinary action for alleged violation of Staff Handbook, Annex 11.01.8 (Requirements for the Employment of G5 Domestic Employees)

also remain subject to the internal law governing misconduct generally, that is, Staff Handbook, Ch. 11.02 (Misconduct and Disciplinary Procedures).[13]

75. It is the U.S. Government that issues G-5 visas, and the pertinent provisions of the Fund's Staff Handbook expressly require that staff members comply with the legal requirements mandated by the host country. The aim of the governing internal law is to "ensure the fair treatment of G5 employees, consistent with applicable federal and state laws and the staff rules of the Fund." (Staff Handbook, Annex 11.01.8, Section 1.1.)

76. The G-4/G-5 employment relationship is accordingly highly regulated by the Fund in the interest of maintaining compliance with the immigration laws of the host country. These, in turn, are designed to protect the interests of G-5 household employees against potentially abusive employment relationships with G-4 employers.[14] The concern for the protection of G-5 visa holders vis-à-vis their G-4 employers is evident in a number of key provisions, including requirements for a written contract, minimum wage, and a complaints procedure. The Fund requires G-4 staff member employers to sign a certification that they have "read this Code of Conduct for the Employment of G5 Employees and will act in accordance with [its] obligations." (Fund's Code of Conduct for the Employment of G5 Employees, Annex 11.01.8, Section 2.11.) The Fund's G-4 staff members who choose to employ G-5 household employees are also required to complete training sessions to familiarize themselves with the legal requirements.

77. It is important to observe that the host country shapes the conduct of G-4 international civil servants in relation to their employment relationships with G-5 household employees. It does so by retaining ultimate control over whether G-5 visas will be granted, either in an individual case or with respect to an entire organization. A recent Diplomatic Note of the U.S. Secretary of State reminded international organizations that the opportunity to employ G-5 household employees is conditioned on compliance with the governing law. *See Ms. "PP"*, Order No. 2019-1, para. 33 and note 3. The Fund emphasizes in its pleadings that it is because of the "nature of the G-5 Program, and the risks to the Fund's overall use of the Program and its reputation if the Program is misused" that it has established the Code of Conduct for the Employment of G-5 Employees.

78. The Fund has submitted as part of the record of the case documentation showing that many of the provisions of the Fund's internal law governing the G-4 /G-5 employment relationship reflect the requirements of the law of the host country. These include as required contract provisions that: "The employer will pay the costs of the employee's travel from the United Sates to the employee's home country or country of residence at the end of employment (for any reason) without deducting costs from the employee's salary or using any other means to

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[13] These provisions are set out above at RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW.

[14] In her pleadings before the Tribunal, Applicant herself acknowledges the landscape on which these rules have been drawn: "Because G-5 employees are typically low-paid, uneducated and highly vulnerable, and because some G-5 employers view servitude as an abject condition, there is a distressingly high rate of exploitation that in certain notorious cases has been indistinguishable from chattel slavery."

recover such costs," 9 FAM 402.3-9 (B) (3) (U) (c) (3) (e); and "The contract should include a provision that the employer or the employee may terminate the contract within a specified time period, or the employer may give the employee the equivalent weeks of pay instead of notice to terminate the contract." 9 FAM 402.3-9 (B) (3) (U) (c) (10) (b). *See generally* 9 FAM 402.3-9: ATTENDANTS, SERVANTS, AND PERSONAL EMPLOYEES OF OFFICIALS – A-3, C-3, G-5, AND NATO-7 VISAS.

79. The Tribunal takes notice of the nature of the G-5 visa program and the risks, both to the fair treatment of G-5 employees and to the Fund's reputation, associated with the G-4/G-5 employment relationship. These risks give rise to heightened obligations on G-4 staff members as reflected in the Code of Conduct for the Employment of G-5 Employees. Furthermore, in view of the sensitive diplomatic relationships inherent in decisions taken in relation to the G-5 visa program, the Tribunal will afford a measure of deference to the HRD Director's expertise in considering what conduct will constitute "fair and reasonable treatment" and what conduct will "reflect adversely on the reputation of the Fund."

(3) Applicant's challenge to the "regulatory decision" governing the individual misconduct decision in her case

80. The Tribunal must decide as a threshold matter Applicant's challenge to the "regulatory decision" governing the individual misconduct decision in her case. Applicant asserts that she raises a "regulatory" challenge to the rules governing her conduct as overbroad and granting the Fund "unlimited discretion" in categorizing conduct as misconduct, so as to deprive Applicant of her "rights to predictability, fairness and meaningful opportunities to respond to accusations of having violated Fund 'law'."

81. In deciding that Applicant failed to afford the complainant G-5 employee "fair and reasonable treatment" and engaged in conduct that "reflected adversely on the Fund," the HRD Director cited Annex 11.01.8 (Requirements for the Employment of G5 Domestic Employees), Section 2.8 (Fair Treatment of G5 Employee), which provides that the G-4 Fund staff member shall treat the G-5 household employee "fairly and reasonably." Annex 11.01.8 also provides that its violation may result in loss of the privilege of employing a G-5 employee, as well as other disciplinary sanctions:

> **2.8 Fair Treatment of G5 Employee**
>
> The staff member shall treat the G5 employee fairly and reasonably. In no event shall the staff member abuse the privilege of employing a G5 employee or engage in any conduct toward the G5 employee that would reflect adversely on the Fund. Nor shall the staff member, in connection with an audit or investigation of a complaint, retaliate against the G5 employee for any good faith statement or action by or on behalf of the G5 employee. Violations of this provision, or of any other provision of this Code, may result in loss of the privilege of employing a G5 employee and other appropriate disciplinary action against the staff member, up to and including termination of employment.

82. It is instructive that a prohibition on actions that "may reflect adversely on the integrity or reputation of the Fund and/or its staff" also appears in Staff Handbook, Ch. 11.01 (Standards of Conduct), Section 12.1, which governs, more generally, staff obligations in a personal capacity:

> **12.1 Staff Obligations in Personal Capacity**
>
> Staff members shall *refrain from unlawful acts or other actions taken in their personal capacities that may reflect adversely on the integrity or reputation of the Fund and/or its staff, including,* notoriously disgraceful conduct (e.g., domestic violence or abuse of family members), *failure to comply with their legal obligations with respect to a G5 domestic employee ("Annex 11.01.8: Requirements for the Employment of G5 Domestic Employees")* or failure to comply with a lawful order from a court or other governmental authority (e.g., payments to satisfy tax obligations or family law obligations, including spouse [footnote omitted] and child [footnote omitted] support.

(Emphasis added.)

83. The Tribunal observes that the Fund's requirement that its staff members refrain from taking actions in their personal capacities that "may reflect adversely on the integrity or reputation of the Fund and/or its staff" is a provision that speaks directly to the sensitive relationships between the organization and the host and/or member governments. The Tribunal also notes that Ch. 11.01, Section 12.1, expressly references three examples of conduct falling within its ambit: domestic violence or abuse; non-compliance with legal obligations with respect to employment of G-5 employees; and non-compliance with a lawful order of a court or other government authority, for example, with regard to tax or family law obligations. Each of these implicates compliance with norms established by the host government.

84. In these areas of personal conduct, the Fund regulates the activities of its staff members precisely to protect the interests of the Fund vis-à-vis the host country. The Fund's interest in conforming with the norms of the host country is illustrated by the facts underlying the Tribunal's Judgment in *Mr. "P" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2001-2 (November 20, 2001), in which it upheld and applied a provision of the Fund's Staff Retirement Plan (SRP) that provides for the Fund's giving effect to family support orders, relating to pension payments, that have been issued by national courts. That innovation to the SRP stemmed from a policy of the U.S. Government, articulated in a Diplomatic Note of the U.S. Secretary of State, that international civil servants serving in the United States should not be permitted to use international organizations' privileges and immunities to shield themselves from court mandated family law obligations. *Mr. "P" (No. 2)*, para. 78. In the instant case, involving the Fund's governance of the conduct of G-4 Fund staff members in relation to G-5 household employees, the interests of the host government—which has created the G-5 visa program to provide a mechanism for G-4 visa holders to hire non-immigrant, foreign workers as household employees in the United States—might be said to be as pronounced.

85. It is well established that the Tribunal's deference to the Fund's decision-making authority is '"at its height when the Tribunal reviews regulatory decisions (as contrasted with individual decisions), especially policy decisions taken by the Fund's Executive Board."' *Mr. E. Verreydt, Applicant v. International Monetary Fund, Respondent*, Judgment No. 2016-5 (November 4, 2016), para. 79, quoting *Ms. "J"*, para. 105. *See also Ms. "GG" (No. 2), Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 2015-3 (December 29, 2015), para. 361.

86. Although the requirements that G-4 staff members should treat their G-5 employees "fairly and reasonably" and that staff members shall refrain from actions in their personal capacities that "may reflect adversely on the integrity or reputation of the Fund" are obligations expressed in open-ended terms, the Tribunal considers that these obligations are not so vague or overbroad as to be unfair. In this regard, the Tribunal notes that the Fund law provides examples of conduct that would breach the specified obligation. In the case of the duty to treat G-5 employees fairly and reasonably, Annex 11.01.8, Section 2.8, provides that staff members who employ G-5 employees, for example, should not, where the G-5 employee has laid a complaint against the staff member, retaliate against the G-5 employee for any good faith statement or action by or on behalf of the G-5 employee. Likewise, Ch. 11.01, Section 12.1, provides three examples of conduct which "may reflect adversely on the integrity or reputation of the Fund": domestic violence or abuse of family members; failure to comply with their legal obligations with respect to a G5 domestic employee; and failure to comply with a lawful order from a court or other governmental authority. The Tribunal considers that these examples provide adequate guidance to staff members as to the content of their obligations. Moreover, the Tribunal observes that the Fund's detailed rules regulating how G-5 household employees should be treated will provide G-4 staff members who are G-5 employers with guidance as to what will be considered to be "fair and reasonable" treatment. Accordingly, the Tribunal rejects Applicant's contention that the standards set are "abusively subjective" so as to violate her right to due process in the disciplinary proceedings.

87. The Tribunal accordingly denies Applicant's challenge to the "regulatory decision" and now turns to her challenge to its application in her individual case.

(4) Did Applicant engage in misconduct in contravention of the Fund's internal law?

88. A determination that a staff member has engaged in misconduct in contravention of the Fund's internal law will ordinarily comprise: (i) findings as to the existence of pertinent facts; and (ii) the interpretation of the governing law to decide whether those facts constitute misconduct. [15] This two-step approach is codified in Staff Handbook, Ch. 11.02, Section 7.4,

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[15] This two-step process was highlighted in *Ms. "BB"*, para. 126, where the issue was whether, as the applicant contended, she had been disciplined for "conduct that did not constitute misconduct." The Tribunal concluded that the Fund was not wrong in denominating her conduct as misconduct because Ms. "BB"'s use of confidential personnel information of other staff members in pursuance of her right to administrative review of personnel actions in her own case represented a "serious violation of the privacy of Fund staff in contravention of the Fund's internal law." *Id.*, paras. 133-134.

which states that the HRD Director "shall determine whether the allegations are well founded and whether the staff member's conduct constitutes misconduct."

89. In this case, the Tribunal observes that, in pursuing her challenge to the misconduct decision against her, Applicant agreed to bypass the evidentiary proceedings that ordinarily are afforded by the Fund's Grievance Committee, when she decided to bring her case directly to the Tribunal, pursuant to Article V, Section 4, of the Statute.[16] At the Tribunal stage, Applicant did not seek to invoke the Tribunal's own fact-finding authority to hold witness hearings. Accordingly, in determining whether to sustain the misconduct decision contested in this case, the Tribunal is limited to the factual record assembled by the Fund's OII, and the various assertions made by Applicant in her submissions to that office and to the HRD Director, in determining the existence of the pertinent facts.

(a) Did Applicant fail to afford "fair and reasonable treatment" to a G-5 employee and engage in conduct that "reflected adversely on the Fund," in violation of the Fund's Code of Conduct for the Employment of G5 Employees?

90. The question whether the conduct established by the factual record constituted misconduct under the rules of the Fund lies at the core of the quasi-judicial decision-making process that the Tribunal is called upon to review in challenges to misconduct decisions. In this review, the Tribunal will apply a heightened level of scrutiny. That does not mean, however, that it will not take account of the "expertise that has been vested in the original decision maker," *Ms. "J"*, para. 99, in reviewing such decisions. That expertise may come into play, as in this case, where interpretation of the governing rule involves an understanding of the sensitive relationships between the institution and host country. The Tribunal rejects Applicant's characterization of these decisions as "political."

91. Application of the terms "fair and reasonable" will necessarily require the exercise of judgment by the decision maker to determine whether the facts establish that the staff member has engaged in misconduct. In the case of the Code of Conduct for the Employment of G5 Employees, the norm of "fair and reasonable treatment" is given further content by the detailed provisions of that Code.[17]

92. In a case involving violation of the rules governing employment relationships between G-4 staff members and G-5 household employees, application of an objective standard for judging whether the conduct established by the factual record constitutes misconduct is particularly pertinent. In respect of their dealings with G-5 household employees, G-4 staff members are held to a high standard of compliance because the legal framework governing that relationship is designed with two key objectives in mind, that is, protection of vulnerable G-5 household

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[16] *See supra* CHANNELS OF ADMINISTRATIVE REVIEW.

[17] *See supra* RELEVANT PROVISIONS OF THE FUND'S INTERNAL LAW.

employees, and compliance by Fund staff members with the rigorous standards that the host country has developed in establishing the G-5 visa program.

93. In this case, a constellation of actions and inactions on the part of the staff member were seen to support a conclusion that she failed to meet the governing standard. The HRD Director based the decision that Applicant failed to afford "fair and reasonable treatment" to a G-5 household employee and engaged in conduct that "reflected adversely on the Fund," in violation of Staff Handbook, Annex 11.01.8 (Requirements for the Employment of G-5 Domestic Employees), Section 2.8 (Fair Treatment of G5 Employee) on a series of factual findings: (i) Applicant "ended [the complainant G-5 employee]'s employment" and did so for reasons other than "any conduct on [the complainant G-5 employee]'s part," while failing to provide at least one month's notice or make payment in lieu, as required by Section 14 of the G-5 Contract; (ii) "directed [the complainant G-5 employee] to write and sign a letter indicating that she had resigned voluntarily"; (iii) rather than waiting until the next day to seek guidance from the Fund regarding legal rights and responsibilities in the circumstances, Applicant called a local police officer to the home "in [the complainant G-5 employee]'s presence and in a way which was upsetting to her"; (iv) Applicant's spouse left the complainant G-5 employee at the airport later that evening, knowing that her flight was not to depart until the evening of the following day; and (v) Applicant failed to pay wages due for work performed by the complainant G-5 employee during the period of her employment.

94. The parties dispute whether the complainant G-5 employee resigned from her employment with Applicant or whether it was Applicant who terminated the employment relationship and, if so, whether the termination was for cause. The Tribunal concludes that it is not necessary to decide these questions in order to determine whether Applicant failed to afford "fair and reasonable treatment" to a G-5 household employee and engaged in conduct that "reflected adversely on the Fund," in violation of the Fund's internal law. In the view of the Tribunal, the controversy in this case may be resolved on the basis of conduct in which Applicant indisputably engaged.

95. Having reviewed the record of the case, the Tribunal concludes that it is able to sustain the Fund's decision that Applicant engaged in misconduct in contravention of the Fund's internal law, not for each of the reasons that the HRD Director cited in her decision but because the Fund has established the existence of facts that, in the view of the Tribunal, allowed the HRD Director to conclude that Applicant failed to afford "fair and reasonable treatment" to a G-5 household employee and engaged in conduct that "reflected adversely on the Fund," in violation of the Code of Conduct for Employment of G5 Employees (Staff Handbook, Ch. 11.01 (Standards of Conduct), Annex 11.01.8 (Requirements for the Employment of G-5 Employees). In the view of the Tribunal, the Fund may take a holistic approach to judging whether a staff member has failed to afford a G-5 household employee the "fair and reasonable treatment" that the Code requires.

96. In the estimation of the Tribunal, the pertinent facts are: (a) rather than waiting until the following workday for further clarification and assistance from the Fund, Applicant called U.S. Immigration and Customs Enforcement (ICE) and then, when receiving no response, summoned the local police, leading to an encounter that Applicant should have known was likely to be intimidating and frightening to the complainant G-5 employee who had arrived only a few days

earlier in the United States; (b) on the same evening, Applicant's spouse left the complainant G-5 employee at the airport, knowing that her return flight was not to depart for approximately another twenty-four hours, evidencing a lack of care in ensuring her safe return; and (c) although Applicant ultimately did—just prior to the airport drop-off—purchase the complainant G-5 employee's return air ticket, (i) the termination letter that the complainant G-5 employee signed stated that *she* would be responsible for buying the ticket, (ii) Applicant queried the police officer about whether Applicant would have to pay for the ticket, and (iii) Applicant's spouse, in the video he recorded of the airport drop-off, told the complainant G-5 employee that Applicant and her spouse had purchased the airplane ticket as "good Samaritans."

97. It is plain that a G-4 employer is, in all events, responsible for the G-5 employee's transportation costs to and from the U.S., irrespective of the reason for the conclusion of the employment relationship. This requirement is (a) codified in the staff rules, (b) a feature of U.S. law, and (c) a fact of which Applicant was reminded on the same afternoon in her correspondence with the Fund's immigration law firm. Moreover, G-4 staff members who employ G-5 household employees are informed of this rule during the orientation process. The relevant training slides provide that: "The G-4 employer must pay G-5 transportation costs to the U.S. at the start of employment, and from the U.S. following end of employment, regardless of why employment ends." (G-4/G-5 Orientation Version 3.2) Although Applicant, given her account of the events, may not have felt it was fair for her to bear the costs of the complainant G-5 employee's return transportation, her legal responsibility in such circumstances was clear.

98. The conduct of Applicant towards the complainant G-5 employee showed insensitivity to the needs and circumstances of the complainant G-5 employee, conduct that the Fund's law is designed to prevent. In the view of the Tribunal, the Fund properly found that these actions constituted a failure on Applicant's part to provide "fair and reasonable treatment" to the complainant G-5 employee.

99. Furthermore, Applicant's conduct in respect of the employment relationship into which she had entered with the complainant G-5 employee demonstrated a disregard for the importance of adherence to the governing law of the Fund, which in the case of the Code of Conduct for the Employment of G5 Employees echoes the law of the host country. When Applicant decided to avail herself of the opportunity to hire a non-immigrant foreign worker as a household employee pursuant to the G-5 visa program, she became subject to a detailed set of regulations governing that employment relationship. In the view of the Tribunal, when Applicant failed to adhere to the governing law of the Fund, Applicant engaged in conduct that "reflected adversely on the reputation of the Fund."

100. Even assuming, as Applicant appears to argue, that she acted in good faith in taking some of the actions at issue in this case, motive does not absolve her of responsibility for misconduct. In *Ms. "BB"*, para. 133, the Tribunal, upholding the Fund's decision that a staff member's use of confidential personnel data of other staff members for private advantage was conduct that constituted misconduct, observed that ". . . while the Applicant may have acted in good faith in supposing otherwise, it does not follow that the Fund was wrong in denominating her conduct as misconduct." In drawing its conclusion, the Tribunal noted its own assessment that the impugned

activities of Ms. "BB" amounted to a "serious violation of the privacy of Fund staff in contravention of the Fund's internal law." *Ms. "BB"*, para. 134.

101. As a G-4 employer of a G-5 visa holder, Applicant was required to certify that she had "read this Code of Conduct for the Employment of G5 Employees and will act in accordance with [its] obligations." (Fund's Code of Conduct for the Employment of G5 Employees, Annex 11.01.8, Section 2.11.) These legal obligations were also communicated to her through the Fund's required training sessions. In the view of the Tribunal, Applicant's actions revealed judgment that fell short of the care with which G-4 staff members are required to carry out their obligations under the Fund's internal law governing the employment relationship between G-4 Fund staff members and their G-5 household employees.

102. For these reasons, the Tribunal concludes that Applicant failed to afford "fair and reasonable treatment" to a G-5 employee and engaged in conduct that "reflected adversely on the Fund," in violation of the Fund's Code of Conduct for the Employment of G5 Employees.

(b) Was Applicant afforded due process in the disciplinary proceedings?

103. Applicant advances the following arguments in support of the view that the Fund failed to afford her due process in the disciplinary proceedings against her: that she was held to vague and subjective standards (an allegation the Tribunal has rejected above)[18]; that the Fund's communications with the State Department unfairly prejudiced the outcome of her case (an issue that is addressed below)[19]; that the OII Investigation was not impartial; and that the HRD Director unfairly formulated new charges against her. Applicant seeks as relief compensatory and moral damages, including for failures of due process in the misconduct investigation. The Fund denies that the disciplinary proceedings were affected by any procedural irregularity.

104. Applicant seeks to impugn the disciplinary process on the ground that OII's Investigation lacked impartiality. According to Applicant, the report produced by OII, the ROI, demonstrates that the Fund's investigators did not take an interest in conducting a credibility analysis of the witnesses and relied on false statements of Applicant's accusers. As recounted in this Judgment, Applicant had open to her—and indeed availed herself of—multiple opportunities to present her own account of disputed facts through the Investigation conducted by OII and later directly before the HRD Director whose decision she now contests before the Tribunal. Furthermore, the Tribunal observes that Applicant had an opportunity to challenge the credibility of witnesses by engaging in an evidentiary hearing before the Fund's Grievance Committee and/or by seeking to invoke the Tribunal's authority to hold witness hearings. Applicant elected not to confront directly the witnesses against her through such proceedings.

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[18] *See supra* Applicant's challenge to the "regulatory decision" governing the individual misconduct decision in her case.

[19] *See infra* Does Applicant have recourse to the Tribunal in relation to her challenge to the decision barring her utilization of the G-5 visa program and, if so, has she prevailed on that challenge?

105. Applicant additionally contends that because the OII and the HRD Director did not make identical factual findings in support of their conclusions that Applicant had engaged in misconduct, Applicant did not have the opportunity to respond to all of the allegations against her. The Tribunal finds Applicant's argument without merit. The grounds cited by the HRD Director for her decision that Applicant failed to afford "fair and reasonable treatment" to a G-5 employee and engaged in conduct that "reflected adversely on the Fund" emerged from the same constellation of facts and the same evidence that the OII reported in the ROI. In addition, the HRD Director took account of the further written and oral submissions of Applicant in meeting directly with her. Applicant was represented by counsel throughout OII's investigatory proceedings and the HRD Director's decision-making process.

106. The Tribunal observes that, following OII's Preliminary Inquiry, OII requested and received authorization from the HRD Director to conduct a full Investigation. OII issued a Notice of Investigation, which advised Applicant that she would have the opportunity to explain her position and to present evidence, both orally and through written submissions, and to be assisted by counsel. The Notice of Investigation appended excerpts of applicable rules, regulations, and standards of conduct. Applicant provided a written response to OII through counsel, denying the allegations. Applicant was then interviewed by OII in the presence of her counsel, and thereafter submitted a supplementary written statement.[20] At the next stage of the disciplinary proceedings, the HRD Director provided Applicant with the ROI and its attachments. Applicant filed a written Response, which was followed by an in-person meeting between the HRD Director and Applicant, accompanied by Applicant's counsel.[21] These proceedings tracked the requirements of the Fund's internal law.

107. The Tribunal additionally notes Applicant's comment that the "preponderance of the evidence" standard applicable to the Fund's OII in misconduct cases, as stated in Staff Handbook, Ch. 11.02, Section 5.9, is an "overly light burden on the Fund." Applicant, however, makes no direct challenge to this regulatory decision. Accordingly, the Tribunal will not address in this Judgment the question of burden of proof, which it notes is distinct from the Tribunal's own standard of review applicable to a challenge to a misconduct decision.[22]

108. Having reviewed the record of the case, the Tribunal finds no ground to conclude that the Fund failed to afford Applicant the process that was due in the disciplinary proceedings that resulted in the HRD Director's decision that Applicant had engaged in misconduct in contravention of the Fund's internal law. The Tribunal is satisfied that the process followed the terms of the Fund's law governing misconduct cases and was consistent with the general principles of notice and fair hearing that underlie those regulations. *See Ms. "BB"*, para. 142 (no

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[20] *See supra* FACTUAL BACKGROUND; Notice of Investigation and Applicant's responses.

[21] *See supra* FACTUAL BACKGROUND; Applicant's response to ROI.

[22] *See supra* What standard of review governs Applicant's challenge to the misconduct decision?

irregularity of procedures where "Applicant was accorded full opportunity to present her views and defend herself against the charge of misconduct.").

(c) Was the disciplinary measure, namely, the three-year formal, written reprimand, proportionate to the offence and determined in accordance with applicable Fund regulations?

109. As a disciplinary measure, the HRD Director decided that Applicant would receive a formal written reprimand (Staff Handbook, Ch. 11.02 (Misconduct and Disciplinary Procedures), Section 8.1(ii)), to remain in her personnel file for three years. A "formal, written, reprimand" is the second least severe of the available disciplinary measures. The Tribunal now addresses the question whether the disciplinary measure of a three-year formal, written reprimand was proportionate to the offence and was determined in accordance with the applicable Fund regulations.

110. Staff Handbook, Ch. 11.02 (Misconduct and Disciplinary Procedures), Section 8.1, prescribes eleven types of disciplinary measures, ranging from a written warning to termination of employment. In addition, Staff Handbook, Annex 11.01.8 (Requirements for the Employment of G5 Domestic Employees), Section 2.8 (Fair Treatment of G5 Employee), that is, the provision that Applicant has been found to have violated, states: "Violations of this provision, or of any other provision of this Code [of Conduct for the Employment of G5 Employees], may result in loss of the privilege of employing a G5 employee and other appropriate disciplinary action against the staff member, up to and including termination of employment."

111. The Tribunal notes that the HRD Director's Decision included the statement that, but for the "position communicated to [the Fund] by the State Department," the bar on Applicant's eligibility to hire G-5 employees would have been limited to four years and would not have affected the then current G-5 employee. The Tribunal considers below whether the decision, conveyed by the HRD Director and attributed to the position taken by the State Department, is a decision in relation to which Applicant may seek recourse in the Tribunal.[23] In Applicant's view, the Tribunal may properly review the sanctions in all events: "[D]ismissal of the misconduct case logically requires the rescission of all sanctions—including those attributed by the Fund to the U.S. Government. The Tribunal would, however, still be fully empowered to review all sanctions imposed on [Applicant] in the event that the misconduct case against her is upheld to any degree." In Applicant's words, the Tribunal must not allow any Fund finding of misconduct that might survive the Tribunal's scrutiny to "serve as a fig leaf for disproportionate punishment."

112. Given the Tribunal's determination below that the Fund did not abuse its discretion in relation to the HRD Director's decision to defer to State Department communications concerning Applicant's utilization of the G-5 visa program, the Tribunal's review of the proportionality of the disciplinary measure will be limited to the question whether the HRD Director's decision that

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[23] *See infra* Does Applicant have recourse to the Tribunal in relation to her challenge to the decision barring her utilization of the G-5 visa program and, if so, has she prevailed on that challenge?

Applicant would receive a formal written reprimand (Staff Handbook, Ch. 11.02 (Misconduct and Disciplinary Procedures), Section 8.1(ii)), to remain in her personnel file for three years is proportionate, in the circumstances of the case, to the offence established of failing to afford "fair and reasonable" treatment to a G-5 employee and engaging in conduct that "reflected adversely on the Fund."

113. As considered above, that a disciplinary measure shall be proportionate to the severity of the offence forms part of the standard of review applied by this Tribunal. [24] The same principle is codified in the Fund's written internal law, which states that the "severity of the disciplinary measures imposed shall be commensurate with the seriousness of the misconduct." (Staff Handbook, Ch. 11.02, Section 8.2.) That provision further identifies the following criteria to be considered by the decision maker in determining the disciplinary sanction: "(i) the extent to which the misconduct adversely reflects upon the reputation or adversely affects the interests of the Fund; (ii) the extent to which the misconduct involves intentional actions or negligence; (iii) whether the misconduct involves repeated actions or behavior; and (iv) the prior conduct of the staff member."

114. In the instant case, the HRD Director's Decision, referring to the factors set out in the staff rules, concluded that Applicant's actions "adversely affected the interests of the Fund, including in relation to the Fund's relationship with the G-5 program administrators at the Department of State," and that Applicant was responsible for several instances of unfair and unreasonable treatment of her G-5 employee, all taking place on the same day. At the same time, the HRD Director stated that she had "taken into consideration that [Applicant] faced a difficult situation as an employer in unusual and stressful circumstances" and that there was "no evidence in the record suggesting any unfair treatment of [the then current] G-5 employee."

115. The Tribunal considers that the approach taken by the HRD Director, as well as the considerations she took into account in determining the sanction to be imposed upon Applicant, were appropriate in the circumstances. It accordingly finds no ground to overturn the reasoned decision of the HRD Director to impose a three-year formal, written reprimand as a disciplinary sanction in this case.

(5) Tribunal's conclusions on Applicant's challenge to the misconduct decision

116. Accordingly, for the reasons set out above, the Tribunal concludes that Applicant's challenge to the misconduct decision must fail.

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[24] *See supra* What standard of review governs Applicant's challenge to the misconduct decision?

B. Does Applicant have recourse to the Tribunal in relation to her challenge to the decision barring her utilization of the G-5 visa program and, if so, has she prevailed on that challenge?

117. Applicant also seeks to challenge before the Tribunal the decision barring her utilization of the G-5 visa program, which the HRD Director conveyed in the Decision of June 11, 2018. From the outset of this litigation, including in the exchange of preliminary pleadings, Respondent has maintained that the decision barring Applicant's utilization of the G-5 visa program is a decision of the U.S. Government and not of the Fund, and that therefore Applicant's challenge to it should be dismissed as falling outside of the Tribunal's jurisdiction. In *Ms. "PP"*, Order No. 2019-1, para. 51, the Tribunal deferred its decision on that question, observing that the interests of justice would best be served by deciding it following a full briefing on the merits of the Application. The Tribunal now has the benefit of that briefing, including the oral pleadings of the parties.

118. In its pleadings on the merits of the Application, Respondent both re-asserts its position that the Tribunal lacks jurisdiction over the challenged decision and argues, in the alternative, that if the Tribunal decides that the bar on Applicant's utilization of the G-5 visa program resulted from Fund actions that are subject to Tribunal review, it should deny the challenge on its merits because the Fund acted reasonably and in keeping with its responsibilities vis-à-vis both the U.S. Government and Applicant. Applicant, for her part, contends as follows: the contested decision was taken by the Fund; the Fund and the State Department should not be permitted to "hide behind each other"; and the Fund was complicit in the State Department's evaluation of the complaint it had received about Applicant, by "stoking" the U.S. Government with inculpatory material against her. Observing that the HRD Director had initially planned to adopt a lesser penalty with regard to Applicant's eligibility to access the G-5 visa program, Applicant submits that the Fund may not permit its staff members to "suffer punishments at the Fund's hands that the Fund would not itself impose for the same misconduct." Applicant seeks as relief restoration of her eligibility to employ G-5 employees.

(1) Has Applicant challenged an "administrative act" of the Fund in terms of Article II of the Tribunal's Statute?

119. The Tribunal's subject matter jurisdiction is limited to challenges to the "legality of an administrative act adversely affecting" an applicant. (Statute, Article II (1)(a).) "Administrative act," in turn, is defined as "any individual or regulatory decision taken in the administration of the staff of the Fund." (Statute, Article II (2)(a).) It is not disputed that a challenge to an act of the U.S. Government does not lie within the jurisdiction of the Administrative Tribunal. The question is whether the decision communicated to Applicant by the HRD Director on June 11, 2018, barring Applicant's utilization of the G-5 visa program was, as Applicant contends, a decision of the Fund, or, as the Fund maintains, a decision of the U.S. Government.

120. The section of the HRD Director's Decision pertinent to these questions reads as follows:

Impact of U.S. State Department Action

> As you know, [the complainant G-5 employee] also filed a complaint with the United States Department of State. The Department has advised me that, based on their appreciation of the facts, they have lost confidence in your ability to maintain a proper relationship with a G-5 domestic worker and that this will impact your ability to obtain a G-5 visa in future. HRD explained to the Department that the Fund's investigation found no evidence suggesting unfair treatment of your current G-5 employee . . . . The Department in turn explained that their practice is not to authorize a G-5 visa in future where there is any evidence of non-compliance with any G-5 program requirements. They also indicated that they consider it would adversely affect the Fund's reputation for a Fund-supported G-5 employee to remain in your employment.
>
> Due to the position communicated to us by the State Department, I am obliged to make the following decisions in the interests of the Fund:
>
> i. I must direct you to end [the then current G-5 employee]'s employment in your household no later than September 10, 2018.
>
> ii. The Fund will not be able to support applications made by you for a G-5 visa in future.
>
> It is important to understand that the two decisions immediately above are administrative, and not disciplinary, in nature.

The HRD Director's Decision explained, by way of background, that she had originally "decided to impose, as a second disciplinary measure [in addition to the formal, written reprimand], forfeiture of Fund support for any new G-5 employee for four years," but that she had "received information from the State Department . . . , which requires administrative action by the Fund that makes this second disciplinary measure redundant."

121. Accordingly, the decision that was taken by the HRD Director was to forgo any "disciplinary" sanction against Applicant in relation to her eligibility to utilize the G-5 visa program. Instead, and in light of the view of the State Department that it had "lost confidence" in Applicant's ability to maintain a proper relationship with a G-5 employee, the HRD Director instructed Applicant to terminate her employment of her then current G-5 employee and informed her that the Fund would not support future applications by her to employ a G-5 employee. The question is whether the HRD Director's decision was an "administrative act" in terms of Article II of the Statute.

122. The Fund contends that the "relationship between the HRD Director's decision and the actions of the U.S. State Department is one of simply deferring to the party authorized to make such a determination of its own rules; i.e., the Fund deferring to a decision of the State Department over its own program and relaying that decision to Applicant." Furthermore, it submits, "declining to fight an external decision to a staff member's satisfaction, in the face of evidence of the futility of such a fight, is not a challengeable Fund decision." Applicant, by contrast, maintains that in deciding to follow the views of the U.S. Government, the "HRD Director acted in the Fund's name against a Fund staff member, and was thus not free of Fund legal constraints when doing so."

123. The Commentary on the Statute,[25] p. 14, states in relation to the definition of "administrative act," that "[t]his definition is intended to encompass all decisions affecting the terms and conditions of employment at the Fund, whether related to a staff member's career, benefits, or other aspects of Fund appointment, including the staff regulations set forth in the N Rules."

124. In the view of the Tribunal, when the HRD Director decided she would forgo the disciplinary measure concerning Applicant's access to the G-5 visa program that she had planned to impose pursuant to the Fund's internal law (that is, to impose a 4-year bar on the Fund's support of her eligibility to hire G-5 household employees and not affecting the then current G-5 employee) in favor of deferring to the more stringent views communicated by the State Department on the matter, that was a "decision taken in the administration of the staff of the Fund" in terms of Article II of the Tribunal's Statute. The Fund's decision affected the terms and conditions of Applicant's employment, by depriving her of the Fund's sponsorship of the access she ordinarily would have had to hire household employees through the G-5 visa program.

(2) Did the Fund abuse its discretion in deferring to the State Department's decision to bar Applicant's utilization of the G-5 visa program?

125. Having decided that the HRD Director's decision to defer to the State Department's communications concerning Applicant's access to the G-5 visa program was an "administrative act" of the Fund in terms of Article II of the Statute, the Tribunal must address the question whether the Fund abused its discretion in taking that decision.

126. Before considering that question, it bears noting that the Fund has not produced any written decision of the State Department to support its assertion that it was required to take the action that Applicant contests, and it maintains that there is none. Rather, it refers to oral exchanges, said to have been undertaken between a State Department representative and a senior

[25] The consolidated Commentary on the Statute comprises the Report of the Executive Board to the Board of Governors on the Establishment of an Administrative Tribunal for the International Monetary Fund (1992) and the Reports of the Executive Board to the Board of Governors on Amendments to the Statute of the Administrative Tribunal for the International Monetary Fund (2009 and 2020).

HRD official.[26] In the view of the Tribunal, the record of the case amply documents that the HRD Director initially had decided on a 4-year suspension of the Fund's sponsorship of G-5 visas for Applicant as a disciplinary sanction and that the State Department subsequently communicated a different approach. The record also shows that the State Department, including in a Diplomatic Note of the U.S. Secretary of State, citing the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, has reminded the Fund that the issuance of G-5 visas, either in individual cases, or in relation to an entire international organization, is a privilege that may be withheld by the U.S. Government. *See Ms. "PP"*, Order No. 2019-1, para. 33 and note 3. For these reasons, the Tribunal is satisfied that it has been established on the record that the State Department communicated to the Fund its view that the Fund instruct Applicant to end the employment of her then current G-5 employee and not support applications by Applicant for a G-5 visa in future.

127. Although maintaining that the HRD Director "was, in effect, simply informing Applicant of a determination made by the U.S. Government," the Fund's pleadings also state that the HRD Director made a "choice" not to counter the determination of the State Department. The Fund defends this choice as "entirely reasonable and well within [the HRD Director]'s discretion to view it as more important to respect the U.S. Government's decision than it was to seek to (further) challenge a decision of the U.S. Government that had been relayed to the Fund as final." Respondent asks the Tribunal to "give that choice deference." In taking the "administrative decision" to comply with the State Department's decision, submits the Fund, the HRD Director ". . . acted well within her managerial discretion and her duties as a Fund official. . . . to weigh the costs of following the State Department's determination against the costs of not doing so." According to Respondent, these costs included "express risks to the Fund's reputation, as made clear by the State Department, as well as the risks to all other staff members who participate in the G-5 Program."

128. Did the Fund abuse its discretion in acquiescing to the pressure it maintains was brought to bear upon it by the U.S. Government? What is clear is that when the Fund directed Applicant to end the then current G-5 employee's employment and decided that it "will not be able to support applications made by [Applicant] for a G-5 visa in future," it did so based *not* upon its own findings of misconduct against Applicant (which, in its view, would have garnered a somewhat lesser penalty) but rather "[d]ue to the position communicated to us by the State Department" and "their appreciation of the facts." (HRD Director's Decision.) When the views of the Fund and the U.S. Government diverged, the Fund—although acquiescing in the State Department's approach— sought to distance itself from that approach by memorializing its own view in the HRD Director's Decision, noting that it would have denied Applicant support for G-5 visas only for a four-year period and not affecting the then current G-5 employee.

129. It is not entirely clear to the Tribunal why the Fund considered that it was "obliged" to dispense with its own conclusion, under the governing internal law of the Fund, that one of the disciplinary measures it would impose on Applicant would be a 4-year suspension of her

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[26] *See supra* FACTUAL BACKGROUND; 2018 communications between the Fund and the State Department.

eligibility to hire a new G-5 employee. The record indicates that the issuance of a G-5 visa requires action first by the international organization and then by the U.S. Government. Even if the Fund had imposed a 4-year bar on Applicant's eligibility to access the G-5 visa program, the State Department would have been able to enforce a longer or indefinite bar, given that it is the entity that ultimately holds the authority to issue a G-5 visa.

130. The Tribunal notes, however, that this case arises in the context of sensitive relationships between an international intergovernmental organization and the host government, which are relevant to its disposition of the case. The Tribunal also notes that the Fund had concluded that Applicant had failed to afford "fair and reasonable treatment" to the complainant G-5 employee and engaged in conduct that "reflected adversely on the Fund" in violation of the Fund's Code of Conduct for the Employment of G5 Employees, decisions which the Tribunal has found to have been justified on this record. Given the sensitive character of the relationship between the Fund and the host government, and given the Fund's decisions regarding Applicant's treatment of the G-5 employee, the Tribunal cannot conclude that the Fund abused its discretion in following the views expressed directly to it by the State Department in the context of Applicant's case.

131. Moreover, the Tribunal notes that the record shows that the Fund did take steps, albeit unsuccessful, on Applicant's behalf. As set out in the HRD Director's Decision, and supported in the Grievance Committee statements by a senior HRD official, these include that HRD explained to the State Department that the Fund's investigation found no evidence suggesting unfair treatment by Applicant of the then current G-5 employee. Additionally, following the issuance of the HRD Director's Decision, the senior HRD official consulted further with the State Department by email to see if its position might have changed in light of additional information that Applicant had brought to the HRD Director's attention. In the Grievance Committee proceedings, the HRD official stated: "[S]o we pressed them in writing as to whether or not their view had changed, and, initially, they did not respond, and then in this meeting on an unrelated matter, they said we've got no further comment to make except to remind you that we can withdraw the G5 benefits for the organization at any time." On November 6, 2018, in an email message to Applicant's counsel, the HRD official communicated that the State Department had stated that it has "consistently withdrawn G-5 benefits where there have been even minor infractions of program requirements and this was their final comment."

132. The Tribunal accordingly does not find in the circumstances of the case that the Fund has failed in any duty to act on behalf of a G-4 staff member when the U.S. Government decided that it was not willing to grant Applicant further access to the G-5 visa program for the employment of household employees.

(3) Tribunal's conclusions on Applicant's challenge to the decision to bar her utilization of the G-5 visa program

133. The Tribunal concludes that in challenging the HRD Director's decision to defer to the State Department's determination barring Applicant's access to the G-5 visa program, Applicant has challenged an "administrative act" of the Fund in terms of Article II of the Statute. In the view of the Tribunal, however, Applicant has not shown that the HRD Director abused her discretion when, in deference to the views of the U.S. Government, she directed Applicant to end

the employment of the then current G-5 employee and decided that the Fund would not support applications by Applicant for a G-5 visa in future.

C. Shall the Tribunal grant Respondent's request for "reasonable compensation" from Applicant, pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief?

134. In *Ms. "PP"*, Order No. 2020-1, para. 20, the Tribunal deferred until this Judgment the question whether to grant the Fund's request for "reasonable compensation" from Applicant, pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief. The Fund maintains that Applicant's second request for provisional relief was "manifestly without foundation" in terms of Article XV. In its Rejoinder, Respondent has renewed, and quantified, its Article XV request. Applicant opposes the Fund's request, maintaining that the Fund has failed to meet the stringent standard set by Article XV.

135. Article XV provides in full:

> 1. The Tribunal may order that reasonable compensation be made by the applicant to the Fund for all or part of the cost of defending the case, if it finds that:
>
> > a. the application was manifestly without foundation either in fact or under existing law, unless the applicant demonstrates that the application was based on a good faith argument for an extension, modification, or reversal of existing law; or
> >
> > b. the applicant intended to delay the resolution of the case or to harass the Fund or any of its officers or employees.
>
> 2. The amount awarded by the Tribunal shall be collected by way of deductions from payments owed by the Fund to the applicant or otherwise, as determined by the Managing Director, who may, in particular cases, waive the claim of the Fund against the applicant.

The associated Commentary on the Statute, p. 40, emphasizes that Article XV provides a mechanism to assess reasonable costs against applicants who bring cases that the Tribunal determines are "patently without foundation." The provision is "directed at applications that amount to an abuse of the review process," and it is intended to "serve as a deterrent to the pursuit of cases that are manifestly without factual basis or legal merit." *Id.*

136. This is only the second instance in which the Fund has invoked Article XV of the Statute. In *Mr. "V", Applicant v. International Monetary Fund, Respondent*, IMFAT Judgment No. 1999-2 (August 13, 1999), paras. 132-139, the Tribunal rejected an Article XV request for costs incurred in defending against allegedly frivolous claims brought by an applicant in underlying Grievance Committee proceedings. The Tribunal observed that the statutory trigger that the

application be "manifestly without foundation" had not even been alleged, given that the purportedly frivolous claims complained of were not made in the Tribunal but in the administrative review process.

137. Moreover, the Tribunal in *Mr. "V"* emphasized the high bar that the Fund must meet in making a claim for compensation pursuant to Article XV. The Tribunal observed that Article XV, which "penalizes the bringing of frivolous claims by exacting from the offending party the cost of defending against them, thereby deterring the pursuit of cases that amount to an abuse of the review process," should not be interpreted as symmetrical with Article XIV, Section 4, which permits awards of costs to prevailing applicants, "thereby increasing access to the Tribunal for aggrieved staff members." *Mr. "V"*, para. 138. The Tribunal in *Mr. "V"* accordingly underscored the Statute's concern for affording applicants access to the Tribunal and cautioned that penalizing such access will be rare.

138. The Tribunal's authority to award compensation against an applicant pursuant to Article XV is one that it will exercise sparingly, consistent with the purposes of the Statute. Before the Tribunal will exact from an applicant compensation to the Respondent for exercising the right to seek redress before this Tribunal, it will require the Fund to meet the stringent test set by Article XV and elaborated in the associated Commentary. In the view of the Tribunal, in light of the Statutory commitment to access to justice and the novel circumstances in which Applicant's second request for provisional relief arose, the Tribunal cannot say that her request was "manifestly without foundation" and, accordingly, Respondent's Article XV request must be denied.

CONCLUSIONS OF THE TRIBUNAL

139. For the reasons elaborated above, the Tribunal concludes as follows:

140. First, the Tribunal sustains the Fund's decision that Applicant engaged in misconduct in contravention of the Fund's internal law. The decision that Applicant failed to afford "fair and reasonable treatment" to a G-5 employee and engaged in conduct that "reflected adversely on the Fund" in violation of the Fund's Code of Conduct for the Employment of G5 Employees is supported by the evidence. Nor has Applicant shown that the Fund failed to afford her due process in the disciplinary proceedings or imposed a sanction that is disproportionate to the offence for which she has been found responsible. Applicant's challenge to the fairness of the rule governing her misconduct is also without merit.

141. Second, the Tribunal concludes that the Fund did not abuse its discretion when the HRD Director decided to defer to communications from the U.S. State Department in relation to Applicant's utilization of the G-5 visa program.

142. Third, the Tribunal denies the Fund's request, pursuant to Article XV of the Statute, to recover "reasonable compensation" from Applicant for the cost of responding to her second request for provisional relief.

DECISION

FOR THESE REASONS

The Administrative Tribunal of the International Monetary Fund unanimously decides that:

1. The Application of Ms. "PP" is denied.

2. Respondent's request for "reasonable compensation" from Ms. "PP", pursuant to Article XV of the Statute, for the cost of responding to her second request for provisional relief is denied.

Catherine M. O'Regan, President

Andrés Rigo Sureda, Judge

Edith Brown Weiss, Judge

/s/
Catherine M. O'Regan, President

/s/
Celia Goldman, Registrar

Washington, D.C.
May 20, 2021