

REGISTRY'S SUMMARY<sup>1</sup>: *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)

PROVISIONAL RELIEF – MOTION TO DISMISS IN PART – ANONYMITY – PRODUCTION OF DOCUMENTS

Applicant filed an Application challenging 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 and “engaged in conduct that reflected adversely on the Fund,” in violation of Fund rules. The HRD Director decided, as a “disciplinary” measure, that Applicant would receive a formal written reprimand, which is to remain in her personnel file for three years.

In addition to the “disciplinary” decision, the HRD Director took another decision, characterized by the Fund as an “administrative” decision. That decision (a) directed Applicant to end the employment of a different G-5 employee—who remained employed in Applicant’s household—and (b) stated that the Fund would not be able to support applications made by Applicant for G-5 visas in the future. The “administrative” 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.” Applicant challenged both the “disciplinary” decision and the “administrative” decision.

In Order No. 2019-1, the Tribunal decided two preliminary matters.

In her Application, Applicant requested provisional relief in the form of an order: “(1) prohibiting the Fund from requiring [the 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 G-5 employee]’s continued employment by [Applicant] during the pendency of this case.”

The Fund, for its part, filed a Motion to Dismiss in Part, seeking to dismiss that portion of the Application challenging the “administrative” decision. The Fund contended that the decision to terminate Applicant’s eligibility to hire G-5 employees was a decision of the U.S. State Department rather than of the Fund, and, accordingly that the Tribunal lacked jurisdiction to decide that claim.

As to Applicant’s Request for Provisional Relief, 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)

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<sup>1</sup> This summary is provided by the Registry to assist in understanding the Tribunal’s Order. It does not form part of the Order. The full Order of the Tribunal is the only authoritative text. The Tribunal’s Orders are available at: [www.imf.org/tribunal](http://www.imf.org/tribunal) .

that the filing of an application shall not have the effect of suspending the implementation of the decision contested.

The Tribunal considered the following questions: Does Applicant seek suspension of a decision contested in the Tribunal? Has Applicant shown “irreparable harm” to her in the absence of the provisional relief she seeks? May Applicant assert a request for provisional relief based on alleged “irreparable harm” to the current G-5 employee?

The Tribunal observed that part of Applicant’s request for provisional relief did not seek suspension of a decision contested in the Tribunal, and the Tribunal denied it on that basis. As to the part of the request that did seek suspension of a decision contested in the Tribunal, i.e., that Applicant terminate the employment of her 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 relief she sought. The Tribunal observed that Applicant had been on notice for more than a year that her current G-5 employee must leave her household and had had ample opportunity to make alternate employment arrangements with non-G-5 visa holders. With respect to Applicant’s attempt to assert alleged “irreparable harm” on behalf of her current G-5 employee, the Tribunal concluded that Applicant had not met the requirements for securing provisional relief as envisaged by the Commentary on the Statute, which concerns itself with the employment relationship between the Fund and its own staff members. Accordingly, the Tribunal denied Applicant’s Request for Provisional Relief.

As to the Fund’s Motion to Dismiss in Part, 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 the case,<sup>2</sup> neither do they exclude that possibility. The Tribunal concluded that in the unusual context of the expedited exchange of preliminary pleadings on Applicant’s request for preliminary relief, in which the Fund’s arguments opposing provisional relief and seeking to dismiss part of the Application were closely related, the Motion to Dismiss in Part was admissible. On the merits of the Fund’s Motion, however, the Tribunal decided that it would better serve the interests of justice to decide all of the issues of the case, including Applicant’s challenge to the decision affecting her eligibility to hire G-5 employees, following a full briefing on the merits of the Application. Accordingly, the Tribunal dismissed the Motion to Dismiss in Part. In taking that decision, the Tribunal stated that the Fund had the right to raise in its pleadings on the merits its argument that the Tribunal lacked jurisdiction over Applicant’s challenge to the “administrative” decision.

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<sup>2</sup> Rule XII provides that the Tribunal “. . . may, on its own initiative or upon a motion by the Fund, decide summarily to *dismiss the application* if it is clearly inadmissible.” (Emphasis added.)

In addition to deciding the Request for Provisional Relief and the Motion to Dismiss in Part, the Tribunal: (1) granted Applicant's request for anonymity, given that the case involves a challenge to a misconduct decision and has implications for the personal privacy of Applicant and other individuals; (2) placed the Fund under a continuing obligation to produce documents responsive to one of Applicant's requests for production of documents; (3) denied another of Applicant's requests for production of documents; and (4) granted the Fund's motion to strike from the record a document inadvertently produced that was protected by attorney-client privilege.

Following the issuance of Order No. 2019-1, the exchange of pleadings on the merits resumed.