

REGISTRY'S SUMMARY¹: *Ms. "PP", Applicant v. International Monetary Fund, Respondent (Applicant's Second Request for Provisional Relief)*, IMFAT Order No. 2020-1 (January 13, 2020)

PROVISIONAL RELIEF – FINALITY OF TRIBUNAL'S DECISIONS – RESPONDENT'S REQUEST FOR REASONABLE COMPENSATION

Applicant brought a second request for provisional relief in connection with a pending Application in which she challenges “disciplinary” and “administrative” decisions of the Director of the Human Resources Department (HRD) in relation to a finding of misconduct against Applicant concerning the treatment of a G-5 household employee. The “administrative” 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. It is the “administrative” decision that has given rise to each of Applicant’s requests for provisional relief.

In an earlier Order, *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), the Tribunal denied Applicant’s first request for provisional relief. That request had sought 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.”

Applicant’s second request for provisional relief 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 G-5 employees]’s visa.”

The Tribunal observed that Applicant’s Second Request for Provisional Relief bore a strong resemblance to the second prong of her first request for provisional relief. In Order No. 2019-1, the Tribunal had denied that part of the request on the ground that it did not seek suspension of a decision contested in the Tribunal. In her Second Request, Applicant asserted that the Fund’s refusal to convey the I-94 application was “part and parcel of the HRD Director’s decision challenged in the Application.” In the view of the Tribunal, however, even assuming that the decision from which Applicant now sought provisional relief was “part and parcel” of the decision contested in the Application, her new request would still fail. “Although the Second Request emerges from facts arising following the issuance of the

¹ 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.

Tribunal's Order No. 2019-1," said the Tribunal, "the Second Request suffers from the same defects as the request denied by that Order." (Para. 14.) The Tribunal noted that Applicant had again sought the Tribunal's intervention in her quest to retain the services of the G-5 employee in her household during the pendency of the Tribunal proceedings.

The Tribunal concluded that Applicant had not substantiated the argument that her new request "materially differ[ed]" from her earlier request. Applicant had not offered any additional evidence in support of the view that she had "met the essential requirement for provisional relief, which is to show that 'irreparable harm' will result in the absence of the relief she seeks." (Para. 17.) Nor did she establish a basis for the Tribunal to conclude that she may raise a claim for provisional relief on the grounds of alleged "irreparable harm" to the G-5 employee. The Tribunal accordingly concluded that the provisional relief Applicant sought in her Second Request for Provisional Relief was not "warranted by the circumstances" (Commentary on the Statute, p. 27) of the case.

The Tribunal emphasized that provisional relief is an "extraordinary measure that the Tribunal will order only in limited circumstances." (Para. 16.) Provisional relief is an exception to the ordinary rule (stated in Article VI, Section 4, of the Statute) that the filing of an application shall not have the effect of suspending the implementation of the decision contested.

The Tribunal additionally observed that the same principles that underlie the finality of the Tribunal's Judgments, that is, "promoting judicial economy and certainty among the parties," likewise counseled against the Tribunal's re-opening questions already resolved by its earlier Order No. 2019-1.

Accordingly, Applicant's Second Request for Provisional Relief was denied.

Additionally, in Order No. 2020-1, the Tribunal deferred a decision on a Request for Reasonable Compensation brought by the Fund pursuant to Article XV of the Tribunal's Statute. That Request sought an order that Applicant bear the Fund's costs associated with responding to Applicant's Second Request for Provisional Relief, which the Fund contends was "manifestly without foundation" in terms of Article XV. The Tribunal concluded that it would be better positioned to weigh the considerations raised by the Fund's Request at a later stage of the proceedings in the case.