HIGH COURT OF AUSTRALIA

KIRBY J

IN THE MATTER OF AN APPLICATION FOR
A WRIT OF PROHIBITION AND CERTIORARI
AGAINST MINISTER FOR IMMIGRATION AND
MULTICULTURAL AFFAIRS & ORS RESPONDENTS

EX PARTE ARINAH HOLLAND APPLICANT

Re Minister for Immigration and Multicultural Affairs; Ex parte Holland
[2001] HCA 76
25 October 2001
P5/2001

ORDER

Application refused. Applicant to pay Minister's costs.

Representation:

L A Tsaknis for the first respondent (instructed by Australian Government Solicitor)

No appearance for the second and third respondents

The applicant appeared in person

CATCHWORDS

Re Minister for Immigration and Multicultural Affairs; Ex parte Holland

Migration – Application for Spouse visa – Applicant claims de facto married relationship with Australian citizen involving mutual commitment to a shared life to the exclusion of all others – Delegate of Minister and Immigration Review Tribunal refuse visa – Application to High Court for constitutional relief and certiorari – Australian citizen already married undergoes second Islamic marriage to applicant – Whether second marriage a "marriage" within Migration Regulations – Whether Tribunal arguably erred in the exercise of its jurisdiction to conduct review – Whether jurisdictional error arguably established by breach of rules of natural justice – Whether bias of Tribunal member arguably demonstrated.

Constitutional law – Constitutional writ of prohibition and writ of certiorari to perfect its remedies – Requirement of jurisdictional error – Whether jurisdictional error established as reasonably arguable – Need to observe distinction between jurisdictional error and appeal on merits – Unavailability of constitutional writs to correct errors within jurisdiction – Whether reasonably arguable case demonstrated for grant of order nisi.

Words and phrases – "marriage"; "to the exclusion of all others".

Migration Act 1958 (Cth).
Migration Regulations, reg 1.15A.

1 KIRBY J. These proceedings arise under the *Migration Act* 1958 (Cth) ("the Act"). They have been before me on several occasions, first by video link to Canberra and now in a hearing in Perth. It is necessary and desirable to bring them to conclusion.

An application for a spouse visa is rejected

2 Mrs Arinah Holland ("the applicant") seeks an order nisi for the constitutional writ of prohibition and a writ of certiorari directed to the Minister for Immigration and Multicultural Affairs ("the Minister"), Ms Rahima Bannerman and the Immigration Review Tribunal ("the Tribunal"). The writs are sought effectively to quash a decision of the Tribunal, constituted by Ms Bannerman on 27 August 1998, affirming an earlier determination by a delegate of the Minister. That determination had decided that the applicant, then known as Arinah Lamat, did not meet the criteria for a Subclass 820 (Spouse) visa. That visa is known as a General Residence (Class AS) visa. If applicable, it would have enabled the applicant to be considered under various visa subclasses, including Subclass 801 (Spouse). The application, as lodged, was in respect of that category. The applicant claimed a relevant relationship with an Australian citizen, Mr Richard Holland.

3 The applicant had originally applied for a visa on 27 September 1996. Her application was refused on 10 November 1997. It was refused on the basis that the applicant did not satisfy the definition of "spouse" set out in Regulation 1.15A of the Migration Regulations ("the Regulations") made under ss 504 and 505 of the Act. Put shortly, it was found that, although the applicant and Mr Holland had a long-standing personal relationship, it was not one which fulfilled the legal requirement of the Regulations, namely that of a lawful marriage or a de facto married relationship involving a commitment to a shared life to the exclusion of all others.

4 The Tribunal rejected the application to it. The applicant is therefore liable to removal from Australia as a non-citizen without a valid visa entitling her to remain in this country. So far, the case is unremarkable. However, it is necessary to mention a number of complications.

Approach and factual complications

5 I remind myself at the outset of the fact that the constitutional writs, such as prohibition, sought by the applicant, are cardinal features of the arrangements under the Constitution to ensure that all officers of the Commonwealth, such as the respondents to this application, conform to the jurisdiction and powers that are accorded to them by the law of this country[1]; that the constitutional remedies

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1 *Re Carmody; Ex parte Glennan* (2000) 74 ALJR 1148 at 1149 [2]; 173 ALR 145 at 146-147.

(and the writ of certiorari sought to perfect constitutional relief) are discretionary in character, although prohibition will usually be granted if the grounds for doing so are made out[2]; and that to secure an order nisi (which is all that the applicant seeks at this stage) she has only to establish a reasonably arguable case that ought to be heard by the Court[3].

6 The Tribunal and Ms Bannerman have submitted to the orders of this Court. The Minister has appeared to contest the grant of relief. The applicant is not legally represented. However, she has been accompanied at all hearings by Mr Richard Holland. In the present hearing she has also had the support of Mr Harold Holland, father of Mr Richard Holland. There was no contest that Mr Richard Holland is an Australian citizen. He was born in the United Kingdom in October 1956. He migrated to Australia in September 1969. He became an Australian citizen on 12 September 1996, that is, shortly before the applicant lodged her application for the visa which is the subject of these proceedings.

7 I now turn to the factual complications. The applicant arrived in Australia on 26 January 1989 as a student on a visa appropriate for that purpose (Subclass 560 (Student)). Subsequently, she departed and returned to Australia on 5 January 1990 on a further visa of the same class. She has not left Australia since that time. In 1996, the fact that the applicant had overstayed her student visa came to the notice of the Minister. She was granted a Bridging visa E and she set in train the steps to regularise her position that ultimately bring the matter to this Court.

8 According to the evidence that was before the Tribunal, as recounted in its reasons, the applicant met Mr Richard Holland on 22 January 1990. They formed a close friendship. According to the applicant, they began living together on 25 December 1995. According to both the applicant and Mr Holland, the couple recognised Mr Holland's continuing obligations to the two children of his marriage to his then wife, Mrs Fallilah Holland. That marriage had been solemnised in 1978 according to the Islamic religion. Mr Holland and the applicant agreed that, until the children had grown up, Mr Holland would, from time to time, return to his former matrimonial home and attend to the education

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2 *R v Ross-Jones; Ex parte Green* (1984) 156 CLR 185 at 194; *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 91 [16], 101-109 [43]-[59], 136-137 [145]-[150], 144 [172].

3 *Re Australian Nursing Federation; Ex parte Victoria* (1993) 67 ALJR 377 at 382; 112 ALR 177 at 183; *Re Brennan; Ex parte Muldowney* (1993) 67 ALJR 837 at 840; 116 ALR 619 at 624.

and welfare of the children. The home in which the children and Mrs Fallilah Holland lived was 120 kilometres from the place where the applicant and Mr Holland had established their home. This fact necessitated his staying overnight on the occasion of some of his visits.

9 Mr Holland did return to his former home on occasions. Nevertheless, both the applicant and Mr Holland asserted before the Tribunal, and have done so throughout these proceedings, that they were living in an exclusive de facto married relationship, with a joint commitment one to the other. According to the Tribunal, and perhaps not unnaturally, Mrs Fallilah Holland was upset by her husband's relationship with the applicant. The Tribunal found that Mrs Fallilah Holland acted "like a woman scorned". Whilst the applicant's proceedings were before the Tribunal, Mrs Fallilah Holland sent a facsimile to the Department of Immigration and Multicultural Affairs ("the Department"). That facsimile was placed before the Tribunal and is now before me. It reads:

> "To Immigration Department ...
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> Further to the immigration review re alleged de facto Arinah Lamat.
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> My lawful husband has been cohabitating [sic] with me practically every other week therefore Miss Lamat cannot possibly be regarded as a de facto wife according to immigration rules (ie to the exclusion of all others).
>
> I cannot possibly endure this situation any longer I am receiving no support from my husband Richard Holland I am to understand that he is near to bankruptcy and it is doubtful if he can support Miss Lamat.
>
> I understand the review is for the 6th May I have faxed this due to the short time available to bring further true statements forward, I am prepared to supply sworn statutary [sic] declaration if you so desire."

A second Islamic "marriage" is entered

10 At first, Mr Holland held back from taking steps to remove the danger to the applicant's migration status by subsisting his marriage to Mrs Fallilah Holland and marrying the applicant according to Australian law. He explained that he did this out of consideration for his children, who were then at a vulnerable stage of their development and education.

11 Instead, on 24 February 1992, the applicant and Mr Holland were married before two witnesses by a religious officer of the Islamic faith. The applicant is an adherent to Islam. Mr Holland had converted to Islam after his marriage to Mrs Fallilah Holland. It may be that as between the applicant and Mr Holland, and in accordance with the tenets of Islam, from that date the couple were

regarded as husband and wife and duly married. However, as the marriage to Mrs Fallilah Holland was subsisting at the time of the "marriage" in 1992, the applicant could not, according to Australian law, be treated as lawfully married to the applicant. His second marriage was polygamous.

12 Before the Tribunal an argument was mounted to the effect that the definition of "marriage" in the Regulations was broad enough to include the form of marriage entered in 1992 between the applicant and Mr Holland. The Tribunal correctly rejected this argument. It stated that so to hold would be "tantamount to the Tribunal endorsing a polygamous marriage". With respect, this was not the question before the Tribunal. The issue was not one of endorsement or disendorsement, approval or disapproval. The only question was whether, within the Regulations, when it used the word "marriage", that word connoted a marriage of the kind that Mr Holland had formed with the applicant or only a marriage that accorded with Australian law.

13 Especially in the context of the Regulations, the latter is the only meaning that the Regulations could possibly bear[4]. It follows that the "marriage" of 1992 between the applicant and Mr Holland did not avail the applicant so far as the Regulations were concerned. To succeed before the Tribunal the applicant therefore had to establish that she and Mr Holland, at the time of the application, were two persons domiciled in Australia, over the age of 18 years, of the opposite sex who "have a mutual commitment to a shared life as husband and wife to the exclusion of all others" and lived in a relationship which was "genuine and continuing" although not married to each other[5]:

The Tribunal makes adverse findings

14 The Tribunal heard evidence, which it described in its reasons given by Ms Bannerman. Before the Tribunal, the focus of the contest was upon the status of the continuing relationship between Mr Holland and Mrs Fallilah Holland, that being relevant to the requirement of the Regulations of exclusivity of his relationship with the applicant. The Tribunal complained about Mr Holland's

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4 cf *Marriage Act* 1961 (Cth), s 23(1); *Re F; Ex parte F* (1986) 161 CLR 376 at 382, 401, 405.

5 see Migration Regulations, reg 1.15A(1A)(b). By s 507 of the Act, it is provided that the *Sex Discrimination Act* 1984 (Cth) to the extent that it applies to the status or condition of being married or being the de facto spouse of another person does not operate in relation to the Regulations that specify the "nature and incidents of the relationship between a person and another person" before the person is taken to be the de facto spouse of the other person.

"unhelpfulness" and the "great deal of inconvenience which it had experienced in establishing the facts". These were matters which, it said, were "curious" given Mr Holland's apparent support for the applicant in the proceedings before the Tribunal.

15 The Tribunal went into a great deal of detail about the shared bank account and assets belonging to the applicant and Mrs Fallilah Holland. It was not remarkable, in my view, that links should have remained between Mr Holland and Mrs Fallilah Holland. Indeed, with shared children, it would have been extraordinary if there were not still links of a familial, business and even affectionate kind between parties to such a failed marriage.

16 To some extent the search upon which the Tribunal embarked may have been prompted by the rigidity of the definition in the Regulations requiring that the relationship, in order to be relevant to the visa application, had to be "to the exclusion of all others". Modern relationships exist, including many Australian marriages of great strength and durability, which might not meet that criterion. However, on any view, the criterion of the Regulations is not concerned with the exclusion of all contact with other persons with whom there may have been an earlier marriage or relationship, or with the children of such a marriage or relationship, but with the mutual commitment of the persons concerned to a shared life with each other as a couple.

17 However that may be, the Tribunal regarded the evidence on exclusivity as conflicting. It found that Mrs Fallilah Holland's evidence had been "largely motivated by self-interest and malice and therefore treats it with caution". It referred to various evidentiary indications pointing in different directions. The Tribunal then came to two crucial passages in its reasons. It said:

> "Throughout these proceedings both the Department and this Tribunal have expended a great deal of effort and stretched limited resources investigating this matter. Neither the Applicant nor Mr Holland have co-operated in this process; in fact they actively impeded it. Mr Holland's demeanour before the Tribunal alternated between rudeness, aggression and contempt. It would appear that adherence to the laws of this country has never been of high priority to him. He has made a false statement in the application form by stating that he and the Applicant lived at [an address in Stirling] when in fact he did not live there. His entering into a second marriage without dissolving his first is a bigamous act under Australian law, a matter he was well aware of. His feigned ignorance of legal and financial issues is at odds with the fact that his employment involves complex financial matters requiring a knowledge of laws of other countries. The Department may well wish to take these matters further. The Tribunal finds that Mr Holland's reluctance to assist the Tribunal with its inquiries bordered upon obstruction and the Section 86 property

> settlement should be further investigated. It goes without saying that the Tribunal did not find him to be a credible witness."

The Tribunal went on:

> "However the Tribunal does recognise that the Applicant is largely the innocent party in this matter. She presented as an intelligent, educated and articulate woman with a good command of English. Had she not entered into a relationship with Mr Holland in 1990, she would doubtlessly have established eligibility for a permanent visa of another class well before now. It is curious why she did not do so, choosing instead to absorb herself into the community in full awareness of her unlawful status. Mr Holland for reasons of his own, does not appear to have encouraged or assisted her to regularise her status in Australia. Having the Applicant work in his business for what in effect was her food and keep and not paying her a proper wage, invites a finding that in addition to any other criticism made of him by the Tribunal, he also exploited her. Mr Holland's primary concern throughout this matter has been for his own welfare, and not that of the Applicant."

18 In the result, on the evidence, the Tribunal decided that the applicant had not satisfied it that the definition of "spouse" in the Regulations was applicable to her relationship with Mr Holland or, more accurately, his relationship with her. Accordingly, it concluded that the applicant was not entitled to the visa that she had sought. The primary decision was, therefore, affirmed.

19 There were two relevant sequels to this decision which was made on 27 August 1998. First, on 22 September 1998 the applicant, together with Mr Holland, wrote to the Minister asking him to "reverse" the decision and to exercise his powers to allow the couple to continue to live in Australia "as husband and wife, exclusively". This letter enclosed copies of divorce papers that had by then been filed as between Mr Holland and Mrs Fallilah Holland. However, the Minister declined to interfere.

20 In April 1999, the marriage between Mr Holland and Mrs Fallilah Holland was dissolved. On 22 April 2000 Mr Holland married the applicant. He claims now to fulfil all of the criteria to act as sponsor for his now wife to obtain a permanent residency visa. He informed the Department of these developments. However, he was informed by the Department that it would be necessary for the applicant, although now Mr Holland's wife, to make an application for a visa *offshore*, that is, in a country other than Australia. The couple were told that they could not make another application *onshore* for a visa, whilst the decision of the Tribunal stood in the way rejecting that application. An offshore visa would take many months, perhaps even longer, to process.

Jurisdictional error and merits review

21 This then was the position between the parties when the application first came before me by video link from Perth to Canberra. Affidavits were filed on behalf of the applicant seeking to support the order nisi for which she applied on the footing that, as subsequent events had proved, the Tribunal had made an error in finding that the couple did not have a committed exclusive relationship at the time of the application.

22 I sought to explain to the applicant and Mr Holland the distinction between errors of jurisdiction and errors within jurisdiction[6]. This is not an easy distinction to explain to lawyers, still less non lawyers[7]. Judges have made attempts and not all of them have been convincing. In England, the distinction has been abolished by the courts[8]. I too would abolish the distinction, at least so far as the constitutional writs are concerned, and hold that those writs are available to redress established errors of law[9]. However, that does not represent the present doctrine of this Court which I am obliged to apply at this stage of the current proceedings.

23 Any mistake which the Tribunal might have made in evaluating the evidence relevant to the relationship between the applicant and Mr Holland would, by this criterion, be an error made within jurisdiction. Moreover, even if a wider criterion of error of law were adopted, any error made by the Tribunal in this case would seem to involve no more than an error of fact. Upon this basis, the principal argument of the applicant against the decision of the Tribunal did not authorise me to grant the order nisi sought by the applicant. It did not

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6 *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 91 [16], 132-133 [136]-[137]; *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 75 ALJR 889 at 903 [80]-[82], 927-928 [210]-[214]; 179 ALR 238 at 256-257, 290-292.

7 *Coal and Allied Operations Pty Ltd v Australian Industrial Relations Commission* (2000) 74 ALJR 1348 at 1367 [82]; 174 ALR 585 at 609; *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 75 ALJR 889 at 903 [81], 927 [211]; 179 ALR 238 at 256-257, 290-291.

8 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at 171; Aronson and Dyer, *Judicial Review of Administrative Action*, 2nd ed (2000) at 166-172; cf *Craig v South Australia* (1995) 184 CLR 163 at 178-179.

9 cf *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 75 ALJR 889 at 927-928 [210]-[214]; 179 ALR 238 at 290-292.

establish a reasonably arguable case for the provision of constitutional relief and the writ of certiorari to make that relief good.

24 I make it plain that, if this had been an appeal to this Court on its merits, at least on the evidence before me, I would have upheld the appeal. I would have found, on the evidence, that the applicant and Mr Holland have now and have at all times in the hearing before the Tribunal and before me met the requirements of the definition in the Regulations to warrant the grant of a spouse visa. However, that is not the consideration which is before me. On no view are the constitutional writs equivalent to a full appeal on the merits. It would be wrong for me to approach the matter on that footing[10].

Natural justice and procedural fairness

25 When I apprehended this difficulty, I asked counsel for the Minister whether, in the events that had occurred since the Tribunal's decision, it was possible once again to enliven any residual discretion of the Minister to permit the applicant and her husband, now lawfully married, to proceed with a fresh application in Australia for a spouse visa. I was informed that no such power existed in the Minister. I therefore explored whether the applicant's stated complaints about the process before the Tribunal amounted to a foundation for a different basis for the relief sought, namely for a breach of the rules of natural justice or procedural fairness. Under current doctrine such an error, if it could be established, would amount to jurisdictional error[11]. It would thus possibly give rise to a foundation for relief of the type claimed. It would therefore justify the issue of an order nisi.

26 When asked to explain the complaints he made about the Tribunal's procedures, Mr Holland complained about the dress of the Tribunal member which he suggested was offensive to a Muslim woman like the applicant. He suggested that the Tribunal member had herself reacted adversely to the applicant's dress. I rejected this suggestion as unprofitable of exploration. The applicant is dressed in conventional conservative Muslim dress proper to an Islamic woman in some communities. There may be Australians who find that mode of dress offensive to them. However, in our diverse and multicultural

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10 *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 75 ALJR 889 at 929 [221]; 179 ALR 238 at 293.

11 *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 89 [5], 91-92 [17], 140-141 [162]-[163]; *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 75 ALJR 889 at 903 [80]-[82], 915-916 [148], 928 [213]-[214]; 179 ALR 238 at 256-257, 274, 291-292.

society we must all adjust our threshold of resentment about points of difference in matters such as dress. The suggestion that there was any injustice to the applicant, based on considerations such as this, is without any evidentiary foundation. I would reject it.

27 Unfortunately, the record of the proceedings before the Tribunal was either never transcribed or the transcript has been mislaid by the Department. No sound recording of the proceedings could be found. In these circumstances, as I explained to the applicant, the only way in which what had occurred before the Tribunal could be proved before this Court was by affidavit evidence[12]. I therefore allowed the applicant an adjournment to place such evidence before the Court during its sittings in Perth.

28 Without relevant objection on the part of the Minister, the applicant and Mr Holland tendered a number of affidavits which were read before the Court today. Those affidavits deposed as follows:

29 The applicant deposed, once again, to the facts of her relationship with Mr Holland. She maintained that the "allegation" by the Tribunal that she and Mr Holland were not living together in an exclusive relationship after 25 December 1995 was "incorrect" and based on "biased and untruthful testimonial [sic] from . . . Fallilah Holland and not on facts".

30 As explained earlier, without more, this assertion would not provide a basis for intervention by this Court. The applicant complained about the reliance by the Tribunal on Mrs Fallilah Holland's evidence, although she had not appeared to give oral testimony. The applicant said that the Tribunal should have preferred the testimony of the witnesses who gave oral evidence. This too involves no jurisdictional error. In any case, the Tribunal expressly discounted the evidence of Mrs Fallilah Holland. It based its decision on a balance of the evidence which it believed.

31 Mr Richard Holland, in his affidavit, suggested that the Tribunal had twisted his evidence and erred in reporting him as rude and unco-operative. Mr Holland was at no time rude before me. He states that before the Tribunal he was polite at all times. Mr Holland complains that the Tribunal was unduly suspicious about his evidence. He relied on the divorce from his first wife in April 1999 as demonstrating that the Tribunal had shown bias against him and

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12 cf *Government Insurance Office of New South Wales v Fredrichberg* (1968) 118 CLR 403 at 410; *Builders Licensing Board v Mahoney* (1986) 5 NSWLR 96 at 97-99.

the applicant. However, as a matter of law, this is not correct. Error, if that it be, is not retrospective proof of earlier bias.

32 Mr Harold Holland deposed that he had always been supportive of his son and the applicant. He confirmed that "a couple of times over two years" his son had returned to his former matrimonial home to take care of the children during their examinations. He and his wife had lent the applicant and Mr Holland a deposit for their new home. These facts tend to reinforce a conclusion that the Tribunal may have misjudged the evidence of Mr Harold Holland and the true nature of the relationship between Mr Holland and Mrs Fallilah Holland at the time of the application before it. However, they do not, of themselves, establish bias or procedural unfairness at the time of the Tribunal's decision.

33 Mr William Sykes was a witness at the Tribunal hearing. He gave evidence, by his affidavit, about his perceptions of the relationship between the applicant and Mr Holland. He deposed to the fact that the two are "a genuine and committed couple". This too does not show jurisdictional error in the Tribunal's decision. Mr Paul King gave evidence that he too was a witness of the Tribunal hearing. He lives on the property next door to the applicant and Mr Holland. He confirmed that they were still living together in an exclusive relationship. But this also falls short of showing jurisdictional error on the part of the Tribunal at the time of its original decision.

Conclusion: no jurisdictional error is shown

34 It follows that no evidentiary basis is established by the applicant to found a reasonably arguable case for a complaint of jurisdictional error on the part of the Tribunal when it reached its conclusion. No such basis is shown on the record, at least if the Tribunal's reasons, in default of a transcript, constitute the record before this Court[13]. Nor is jurisdictional error shown, whether for breach of the requirements of natural justice or otherwise, in the evidence about the Tribunal proceedings that was read today.

35 If, as I am inclined to think, there may have been an error of fact and of evaluation of the evidence by the Tribunal, it was one made within the Tribunal's jurisdiction. The law allows tribunals to make such errors, subject to any procedures of appeal that exist, none of which are relevant in this Court. In the present state of the law, the Constitution only permits this Court to intervene if the applicant shows that the Tribunal made an error of jurisdiction as, for example, by misunderstanding or misexercising its jurisdiction or exercising it in a biased and unfair way. None of those errors is made out.

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13 *Craig v South Australia* (1995) 184 CLR 163 at 180-183.

36 It follows that, whilst I do think that there may have been an element of tension in the relationship between Mr Holland and the Tribunal, this has not been shown to constitute a breach of the requirements of natural justice or of the law of bias prejudicing the applicant. The subsequent divorce and marriage of the couple, established by the evidence, tend to show that the Tribunal may have been wrong in its assessment of the character and mutual commitment and exclusivity of the relationship between the applicant and Mr Holland. But they do not show that, on the evidence before the Tribunal, it erred in the exercise of its jurisdiction in concluding to the contrary.

37 I cannot therefore assist the applicant by issuing the order nisi which she seeks. If it were properly within my power to do so, I would grant her request. She clearly is personally innocent of any default in the applicable Regulations. It was fully accepted for the Minister that, so far as the applicant was concerned, she was at all times in an exclusive relationship with Mr Holland. I fear that she may have suffered a substantive injustice. However, if she has, it is not one that this Court can cure. It may be one that a proper and prompt administration of the Act by the Minister and his Department, after this decision, will lead to a speedy cure. In light of experience, optimism might be out of place.

Orders: application dismissed

38 The application for an order nisi is therefore refused. The applicant must pay the Minister's costs.