You have appointed an authorised recipient and are taken to have received this letter at the end of the day it was transmitted to your authorised recipient.

The abovementioned time in which an application may be made to the AAT for merits review of this decision is prescribed by law and cannot be extended.

You may only seek merits review of this decision with the AAT if you are physically present in Australia at the time the application for merits review is made.

**Your immigration status**
During the processing of your visa application, a bridging visa was granted to you for the duration of the visa processing period. If you make a valid application for merits review of this refusal decision then that bridging visa will remain in effect during the merits review proceedings. Otherwise your bridging visa will cease 35 calendar days after the date of the decision. More information on bridging visas is available on our website www.homeaffairs.gov.au/bridging-visas.

**Leaving Australia**
You must depart Australia by the date your bridging visa ceases. If you stay in Australia after the date your bridging visa ceases (and you do not hold another visa) you will be here in Australia unlawfully. This has serious consequences including possible detention and removal from Australia.

If there are reasons why you cannot depart Australia by the time your visa ceases, you should contact us as soon as possible. Our contact details are available on our website immi.homeaffairs.gov.au/help-support/contact-us/

**Lodging another application**
While you are in Australia, you can only lodge another application in very limited circumstances for a visa to allow you to remain in Australia. Refer to Form 1026i *Limitations on Applications in Australia* available on our website immi.homeaffairs.gov.au/help-support/departmental-forms/pdf-forms

If you lodge a new application, you may be granted a bridging visa which will remain in effect until you are notified of a decision on that application.

Any new application will be considered on its individual merits.

**Lodging an application for merits review**
Applications for review can be lodged online, in person, by post, email or fax to the Migration and Refugee Division of the Administrative Appeals Tribunal (AAT) as provided below.

Online: online.aat.gov.au

In person or by post to a registry of the AAT:

| | | |
|---|---|---|
| **Australian Capital Territory**<br>Level 8<br>14 Moore Street<br>Canberra City ACT 2601 | **New South Wales**<br>Level 6<br>83 Clarence Street<br>Sydney NSW 2000 | **Northern Territory**<br>Applications made by residents of the Northern Territory are managed by the South Australia registry. |
| **Queensland**<br>Level 6<br>295 Ann Street<br>Brisbane Qld. 4000 | **South Australia**<br>Level 2<br>1 King William Street<br>Adelaide SA 5000 | **Tasmania**<br>Edward Braddon Building<br>Commonwealth Law Courts<br>39-41 Davey Street<br>Hobart Tas. 7000 |
| **Victoria**<br>Level 4<br>15 William Street<br>Melbourne Vic. 3000 | **Western Australia**<br>Level 13<br>111 St Georges Terrace<br>Perth WA 6000 | **Norfolk Island**<br>Supreme Court of Norfolk Island<br>Kingston<br>Norfolk Island 2899 |

By email to: mrdivision@aat.gov.au

By fax to:

| | | |
|---|---|---|
| **Australian Capital Territory**<br>Fax: (02) 9276 5599 | **New South Wales**<br>Fax: (02) 9276 5599 | **Northern Territory**<br>Fax: (08) 8128 8099 |
| **Queensland**<br>Fax: (07) 3052 3069 | **South Australia**<br>Fax: (08) 8128 8099 | **Tasmania**<br>Fax: (03) 9454 6999 |
| **Victoria**<br>Fax: (03) 9454 6999 | **Western Australia**<br>Fax: (08) 6222 7299 | |

Include a copy of this letter and the attached decision record when lodging any application for review.

More information about the merits review process is available on the AAT website www.aat.gov.au or by telephoning 1800 228 333.

**Questions about this decision**
We cannot consider your visa application any further.

**Visa application charge**
The visa application charge which has already been paid can only be refunded in limited circumstances, regardless of the application outcome.

A receipt for your payment is available through your ImmiAccount.

In this case, I am not satisfied that clause 500.212 in Schedule 2 of the Migration Regulations is satisfied. This clause provides that:

***500.212***
*The applicant is a genuine applicant for entry and stay as a student because:*

*(a) the applicant intends genuinely to stay in Australia temporarily, having regard to:*

*(i) the applicant's circumstances; and*

*(ii) the applicant's immigration history; and*

*(iii) if the applicant is a minor—the intentions of a parent, legal guardian or spouse of the applicant; and*

*(iv) any other relevant matter; and*

*(b) the applicant intends to comply with any conditions subject to which the visa is granted, having regard to:*

*(i) the applicant's record of compliance with any condition of a visa previously held by the applicant (if any); and*

*(ii) the applicant's stated intention to comply with any conditions to which the visa may be subject; and*

*(c) of any other relevant matter.*

This clause is also known as the genuine temporary entrant criterion.

Ministerial Direction No 108 - *Assessing the genuine temporary entrant criterion for Student and Student Guardian visa applications* sets out the factors that must be taken into account when assessing the genuine temporary entrant criterion for Student visa applications. This Ministerial Direction is made in accordance with section 499 of the Migration Act. Further information is available at: immiauthor.homeaffairs.gov.au/Visa-subsite/files/direction-no-108.pdf

In summary, these factors include:

- the applicant's circumstances in their home country, including the applicant's economic situation, political and civil unrest in the applicant's home country, the extent of the applicant's personal ties to their home country, whether the applicant has sound reasons for not studying in their home country if a similar course is available, and military service commitments that would present as a significant incentive for the applicant not to return to their home country
- the applicant's potential circumstances in Australia, including the extent of the applicant's ties with Australia that present as a strong incentive to remain in Australia, evidence that the student visa program may be used to circumvent the intention of the migration program, whether the Student visa or the Student Guardian is being used to maintain ongoing residence, the applicant's knowledge of living in Australia, and whether the primary and secondary applicants have entered into a relationship of concern
- the value of the course to the applicant's future, including the course's consistency with the applicant's current education level, whether the course will assist the applicant to gain employment in their home country, relevance of the course to the applicant's past or future employment in their home country or a third country, and remuneration and

career prospects in the applicant's home country or a third country to be gained from the course

- the applicant's immigration history, including visa and travel history for Australia and other countries, previous visa applications for Australia or other countries, and previous travels to Australia or other countries
- if the applicant is a minor, the intentions of a parent, legal guardian or spouse of the applicant.

Any other matter relevant to the applicant's intention to stay in Australia temporarily must also be considered. These factors have been weighed up to make an overall decision.

In considering whether the applicant met the genuine temporary entry criterion I had regard to the following factors, consistent with clause 500.212 and Ministerial Direction No 108. The factors were used to weigh up the applicant's circumstances as a whole, in reaching a finding about whether they satisfy the genuine temporary entrant criterion.

I have given regard to the applicant's circumstances in their home country. In their application, the applicant has declared their relationship status as never married and declared their parents who are residing in the Pakistan and two brothers, one residing in Netherlands and one brother in Australia. While I acknowledge the applicant's family as an offshore personal tie, I do not consider these ties, on their own, will serve as significant incentives to depart Australia upon the completion of their proposed courses.

Given the applicant is not currently employed in Pakistan, I am not satisfied the applicant's employment situation provides strong incentive for them to return home on completion of their proposed studies in Australia. I find that the employment opportunities in Australia are likely to be a significant incentive for the applicant to remain onshore.

The applicant has declared their highest level of schooling undertaken as a Diploma of Accounting and Finance graduating in 2019 and a Diploma in Marketing graduating in 2004. The applicant provided academic transcripts in support of their student visa application. There is no evidence to indicate that the applicant has explored further study options in their home country. I also question the benefits arising from the same level course in Australia as against the benefits obtained from a Diploma course in their home country.

I have considered the applicant's circumstances in Australia. At time of lodgement of this application, the applicant declared that they were holding a Tourist Visa. The applicant has now lodged a Student – Vocational Education (TU500) visa application, proposing to study a Diploma of Leadership and Management and an Advanced Diploma and Management. I give weight to the fact that the applicant arrived in Australia on a Tourist visa and are now extending their stay by applying for a student visa onshore. The courses the applicant are proposing to study will extend their stay onshore until at minimum March 2026. This will bring their total stay in Australia in excess of two (2) years. I find it inconsistent with the behaviour of a genuine temporary entrant seeking a change in pathway shortly after arriving in Australia for temporary visitor purposes. Therefore, it appears that the intention in this application would have included a greater level of planning and preparation before arriving in Australia. I am of the view that the current study choices are more aligned to using the Student visa program as a means of maintaining ongoing residency in Australia rather than the applicant's career goals and opportunities in their home country.

The applicant has indicated they have a brother in Australia. I acknowledge family connections to Australia can be a positive factor and legitimately influence a student's decision to study in Australia. However, when I consider the applicant's family ties in Australia in conjunction with other aspects set out in this record, I have serious concerns that these ties reduce the applicant's incentive to return to their home country on completion of their proposed studies. I consider the presence in Australia of this family member as a potential incentive to remain in Australia. I am therefore not satisfied the applicant will be compelled to return home because of any family reasons.

I have considered the value of the proposed courses to the applicant's future. The applicant stated *"My educational background and work experience have equipped me with a strong foundation in accounting and finance, and I believe that combining these skills with leadership and management qualifications will open up diverse career opportunities. Australia, with its world-class education system and multicultural environment, is the ideal destination for me to gain a global perspective and expand my professional horizons."* The applicant states on completion of the courses they will return to their home country and begin looking at career options. While it is reasonable to study with the hope of improving job prospects, I am concerned the applicant has not explored study options in their home country where they intend to seek employment and a career. Given the applicant's individual circumstances, I consider that the significant cost of the courses is unlikely to be offset by the potential income derived by the applicant in their expected employment field. Accordingly, I am not convinced the proposed courses will add value to the applicant's future or why these courses cannot be undertaken in the home country. I give weight to apparent lack of value of the courses to the applicant's future, which indicates that their primary motivation for pursuing these courses may be other than the quality of education in Australia.

I am not satisfied, given their individual circumstances that the applicant genuinely intends a temporary stay in Australia.

I have considered the applicant's immigration history. The applicant has declared to have visited Australia. While there is no evidence to indicate the applicant has not been compliant with the conditions subject to which their visa was granted, I find this is not significant in determining their genuineness as a temporary resident in Australia. This in conjunction with the reasons stated above leads me to find that the applicant is not a genuine person who intends to reside temporarily in Australia. I am unable to be satisfied that the applicant will return to their home country at the end of their proposed study in Australia to pursue their stated goal.

As the applicant is over 18 years of age, the intention of the applicant's parent(s) or legal guardian was not relevant to my assessment.

I have given regard to whether there is any other relevant matter and find that no other matter is relevant to the assessment of the applicant's intentions to stay in Australia temporarily.

I have considered all of the information provided by the applicant in support of their application. On balance, I am not satisfied that the information provided by the applicant regarding their circumstances in their home country, potential circumstances in Australia, the value of their proposed courses to their future, their immigration history and other relevant matters are sufficient to demonstrate that the applicant is a genuine temporary entrant.

Therefore, I find the applicant does not meet clause 500.212 for a Student visa.

I have given regard to whether there is any other matter that is relevant to the assessment of the applicant's genuine intention to temporarily stay in Australia, and I find that there are no other relevant matters for consideration.

Based on the information before me and my assessment detailed above, I am not satisfied that the applicant meets clause 500.212.

**Conclusion**
After weighing up these factors as a whole, I am not satisfied that the applicant intends genuinely to stay temporarily in Australia.

**Decision**
As clause 500.212 is not met by the applicant, I find the criteria for the grant of a Student visa are not met by the applicant. Therefore, I refuse the application by the applicant for a Student visa.

**Assessment against the criteria of other subclasses in class TU**
As the application was not made on Form 157G (Application for a Student Guardian visa), I have not considered the application against the subclass 590 Student Guardian visa criteria in this visa class.

Yours sincerely

Maria
Position Number: 00004317
Department of Home Affairs

24 July 2024