

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:

- (a) *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*
- (b) *because 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) *because of any other relevant matter.*

This clause is also known as the genuine student criterion.

Ministerial Direction No 106 - *Assessing the genuine entry and stay requirements for Student visa and Student Guardian visa applications* sets out the factors that must be taken into account when assessing the genuine student criterion for Student visa applications. This Ministerial Direction is made in accordance with section 499 of the Migration Act. Further information is available at immi.homeaffairs.gov.au/Visa-subsite/files/direction-no-106.pdf

In summary, these factors include:

- ☛ whether the primary applicant has reasonable reasons for not undertaking the study in their home country or region if a similar course is already available there, the nature of the applicant's personal ties to their home country (for example family, community and employment) and whether those circumstances would serve as a significant incentive for the applicant to apply for a Subclass 500 (Student) visa as means of obtaining entry to Australia for purposes other than study or other than to accompany a Subclass 500 (Student) visa holder to Australia (as applicable), economic circumstances of the applicant that would present as a significant incentive for the applicant to apply for a Subclass 500 (Student) visa as means of obtaining entry to Australia for purposes other than study or other than to accompany a Subclass 500 (Student) visa holder to Australia (as applicable). These circumstances may include consideration of the applicant's circumstances relative to the home country and to Australia, whether military service commitments that would present as a significant incentive for the applicant to apply for a Subclass 500 (Student) visa as means of obtaining entry to Australia for purposes other than study or other than to accompany a Subclass 500 (Student) visa holder to Australia (as applicable); and political and civil unrest in the applicant's home country. This includes situations of a nature that may present as a significant incentive for the applicant to apply for a Subclass 500 (Student) visa as means of obtaining entry to Australia for purposes other than study or other than to accompany a Subclass 500 (Student) visa holder to Australia (as applicable).

- ✧ The applicant's potential circumstance in Australia, including the primary applicant's knowledge of living in Australia and of their intended course of study and the associated education provider; including previous study and qualifications, the level of research the primary applicant has undertaken into their proposed course of study and living arrangements, whether the Subclass 500 (Student) visa is being used to maintain ongoing residence and not for the purposes of study; and whether the primary and secondary applicant(s) have entered into a relationship of concern for a successful Subclass 500 (Student) visa outcome, i.e. whether the primary and secondary applicants have contrived their relationship for the purpose of obtaining a Subclass 500 (Student) visa.

- ✧ The value of the course to the applicant's future, whether the primary applicant is seeking to undertake a course that is consistent with their past employment and their current level of education, and whether the course will assist the primary applicant to obtain employment or improve employment prospects in their home country or another country, and remuneration the primary applicant could expect to receive in their home country or another country, using the qualifications to be gained from the proposed course of study.

- ✧ 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 travel to Australia or other countries and whether they complied with their visa conditions.

- ✧ If the applicant is a minor, the intentions of a parent, legal guardian or spouse of the applicant.

- ✧ The applicant's intention to comply with their visa conditions, including the applicant's record of compliance with any condition of a visa previously held by the applicant and the applicant's stated intention to comply with any conditions to which the visa may be subject.

- ✧ Any other relevant matter including, if multiple course loads would make successful completion of a course by the primary applicant impossible or highly improbable, if the primary applicant previously held a student visa – whether they were reasonably engaged in the course of study for which the visa was granted, having regard to whether:
 - ✧ they satisfied course requirements for the course;
 - ✧ they participated in assessment activities for the course;
 - ✧ they commenced and completed their course as scheduled;
 - ✧ they demonstrated logical course progression;
 - ✧ there is a history of starting, but not completing courses; and
 - ✧ there are study gaps of concern, a pattern of changing or deferring courses, changing to unrelated courses or changing education providers.

Whether there is any other relevant information provided in respect of the visa application when assessing applicants against paragraph 500.212(c) or 500.312(c) (as applicable). This includes information that may be either beneficial or unfavourable to the applicant.

In considering whether the applicant met the genuine student criterion I had regard to the following factors, consistent with clause 500.212 and Ministerial Direction No 106. The factors were used to weigh up the applicant's circumstances as a whole, in reaching a finding about whether they satisfy the genuine student criterion.

The applicant lodged a student visa application on 23 May 2024 and provided a Confirmation of Enrolment (COE) to undertake the following courses of study:

Master of Applied Finance

The applicant provided various supporting documents including:

Evidence of Academics

Evidence of English language test

Evidence of funds

I have considered the terms of Ministerial Direction 106 and their application to the applicant's case in relation to the material before me.

I have considered the applicant's circumstances in their home country. I have had regard to whether the applicant has reasonable reasons for not undertaking the study in their home country or region if a similar course is already available there.

I note the applicant completed Bachelor of Business Administration in home country. They have not provided evidence, since that time, they have made any thorough investigation of further study options in their home country, which raises serious concerns regarding their motivation to now study in Australia.

I acknowledge the applicant has personal ties in their home country in the form of their immediate family and place some weight on that in favour of the applicant. Against that, I note the applicant has not demonstrated economic ties to their home country. I weigh this more heavily. I find the applicant's economic circumstances in their home country may serve as a significant incentive for the applicant to apply for a Subclass 500 (Student) visa as means of obtaining entry to Australia for purposes other than study.

I acknowledge that the applicant has demonstrated some knowledge of living in Australia and provided reasons for choosing Australia as their preferred study destination. However, the applicant has not demonstrated that they sufficiently researched their proposed course or education provider. While I accept the applicant may aspire to obtain an internationally recognised qualification, given their lack of consideration or research, I am not satisfied the applicant has demonstrated a commitment to study in Australia and to achieve their stated educational outcome

I have considered the value of the course to the applicant's future. I have had regard to whether the primary applicant is seeking to undertake a course that is consistent with their current level of education, whether the course will assist them to obtain employment or improve employment prospects in their home country or another country, and the relevance of the course to the applicant's past or proposed future employment.

The applicant has indicated in their application form that they intend to pursue career as a Financial Analyst, Executive Finance Accounts, etc. after completion of the proposed course. While it is reasonable to study with the hope of improving job prospects, I am concerned the applicant has not provided detailed or convincing testimony / evidence as to how they would achieve this against the prevailing employment circumstances for individuals with their anticipated educational background. Given the applicant's individual circumstances, I consider that the significant cost of the course 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 course will add value to the applicant's future. I give weight to apparent lack of value of the course to the applicant's future, which indicates that their primary motivation for pursuing this course may be other than the quality of education in Australia.

I have given regard to the applicant's previous immigration history. I have considered all information the applicant has provided regarding their immigration history, and find that no adverse information has been presented in relation to this criterion.

I have given regard to the applicant's acknowledgement in their application that if granted a student visa, they are required to understand and abide by its visa conditions.

I have given regard to whether there is any other matter that is relevant to the assessment of the applicant's application. I find that there are no other relevant matters for consideration.

Conclusion

On the basis of the above, I am not satisfied that the applicant is a genuine applicant for entry and stay as a student. Accordingly, I find that clause 500.212 of the Migration Regulations is not met.

Decision

As clause 500.212 is not met by the applicant, I find the criteria for the grant of 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

Ashima
Position Number: 60036440
Department of Home Affairs

10 July 2024