



Administrative Appeals Tribunal

DECISION RECORD

DIVISION: Migration & Refugee Division

APPLICANT: Miss [REDACTED]

CASE NUMBER: [REDACTED]

HOME AFFAIRS REFERENCE(S): BCC [REDACTED]

MEMBER: Stephen Conwell

DATE: 8 February 2019

PLACE OF DECISION: Melbourne

DECISION: The Tribunal remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa:

- cl.500.214 of Schedule 2 to the Regulations.

I, Member S. Conwell certify that
this is the Tribunal's statement of decision and reasons

Statement made on 08 February 2019 at 11:28am

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration and Border Protection on 27 September 2017 to refuse to grant the applicant a Student (Temporary) (Class TU) visa under s.65 of the *Migration Act 1958* (the Act).
2. The applicant applied for the visa on 16 August 2017. At the time of application, Class TU contained two subclasses: Subclass 500 (Student) and Subclass 590 (Student Guardian). The applicant applied for the visa to undertake study in Australia and does not claim to meet the criteria for a Subclass 590 (Student Guardian) visa.
3. The delegate in this case refused to grant the visa on the basis that the applicant did not satisfy the requirements of cl.500.214 of Schedule 2 to the Migration Regulations 1994 (the Regulations) because the applicant failed to provide evidence of genuine access to funds.
4. On 10 January 2019 the Tribunal invited the applicant to give oral evidence and present arguments at a hearing on 31 January 2019. On 18 January 2019 the applicant provided further evidence and written submissions.
5. In reaching its decision the Tribunal did not consider a hearing to be necessary, as it was able to find in favour of the visa applicant on the basis of the material before it, pursuant to s.360(2)(a) of the Act.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The criteria for a Subclass 500 (Student) visa are set out in Part 500 of Schedule 2 to the Regulations. The primary criteria in cl.500.211 to cl.500.218 must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need only satisfy the secondary criteria. The issue in the present case is whether the applicant has genuine access to funds to satisfy cl.500.214.
8. Clause 500.214 requires the applicant to meet certain financial requirements. If the applicant is required to do so by the Minister, they must give evidence of financial capacity that satisfies the requirements set out in an instrument: cl.500.214(3). All primary applicants must also satisfy the Tribunal that, while they hold the visa, sufficient funds will be available to meet their costs and expenses during their intended stay in Australia, as well as the costs and expenses of any members of their family unit who will be in Australia: cl.500.214(2). The Tribunal must also be satisfied that the applicant will have genuine access to the relevant kinds of funds.
9. In the present case, the Minister has required the applicant to give evidence of financial capacity in accordance with cl.500.214(3).

Has the applicant provided evidence of financial capacity in accordance with the instrument?

10. The requirements for evidence of financial capacity for cl.500.214(3) are set out in IMMI 18/010, which is attached to this decision.
11. The applicant provided the Tribunal with a valid Confirmation of Enrolment (COE) showing that she is enrolled in a Diploma of Community Services for the period 16 October 2017 to 4 October 2019 with total course fees of \$18,000, meaning that the fees for the first 12 months are \$9,000. The COE records pre-payments of \$3,100, resulting in an unpaid sum of \$5,900 for the first 12 months.

12. The applicant also submitted a valid Confirmation of Enrolment (COE) showing that she is enrolled in a Bachelor of Community Services for the period 11 November 2019 to 7 November 2021 with total course fees of \$36,000
13. On the basis of the evidence provided, the Tribunal calculates the applicant needs to show access to \$27,190 comprised of living costs of \$20,290, outstanding course fees of \$5,900, and travel costs of \$1,000.
14. The applicant provided evidence of a letter of financial support (Commitment Letter) from her father, [REDACTED], dated 14 January 2019. Her father holds a bank account at Vietnam's Agribank, holding approximately VND 1.023 billion, (equivalent to approximately AUD 61,539 as at the date of the letter).
15. The applicant also submitted evidence of her employment in Australia as a Personal Care Worker (Casual) with Arcare Aged Care., which commenced on 17 November 2016. The applicant submitted a copy of her tax PAYG summary for 2017/18 showing that she earned \$24,230 for that financial year.
16. It is probable that the applicant has already paid her course fees for the first 12 months, however even if outstanding course fees of \$5,900 are included in the calculation, the Tribunal is satisfied that the applicant has genuine access to sufficient funds to satisfy cl.500.214.
17. On the basis of the above, the Tribunal is satisfied that the applicant meets cl.500.214(3).
18. From the evidence provided the Tribunal is satisfied the applicant will have genuine access to the funds meaning that cl.500.214(1) is met.
19. Accordingly, the Tribunal is satisfied that the applicant meets cl.500.214.
20. Given the above findings, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 500 (Student) visa.

DECISION

21. The Tribunal remits the application for a Student (Temporary) (Class TU) visa for reconsideration, with the direction that the applicant meets the following criteria for a Subclass 500 (Student) visa:
 - cl.500.214 of Schedule 2 to the Regulations.

Stephen Conwell
Member

Attachment – IMMI 18/010 – Financial capacity instrument (extract)

6 Subclass 500 (Student) visa – primary applicants

- (1) For the purposes of subclause 500.214(3) of Schedule 2 to the Regulations, a primary applicant must give to the Minister evidence of financial capacity that satisfies the requirements of subsection (2), (3), (4), (5) or (6).

Note: For *primary applicant*, see section 4 of Part 1 of this instrument.

- (2) The evidence of financial capacity:
- (a) is in the form specified in section 10; and
 - (b) demonstrates that the primary applicant has sufficient funds available to meet the following costs and expenses of the primary applicant:
 - (i) travel expenses; and
 - (ii) the following living costs and expenses:
 - (A) if the primary applicant intends to stay in Australia for a period of 12 months or more – AUD20,290 (*annual living costs*); and
 - (B) if the primary applicant intends to stay in Australia for a period of less than 12 months – the pro rata equivalent of *annual living costs*, calculated as specified in section 11; and
 - (iii) the following course fees, minus any amount already paid:
 - (A) if the duration, or the remainder, of the primary applicant's period of study in Australia is less than 12 months – the fees for the course of study or the remaining components of the course of study; or
 - (B) If the duration, or the remainder, of the primary applicant's period of study in Australia is more than 12 months – course fees for the first 12 months of the period study in Australia; and

Note: The period of study is the period commencing:

- (a) if the applicant's first course of study commenced after the date of application, on the first day of the first course of study; or
 - (b) if the applicant's first course of study commenced before the date of application, on the date of application,
- and ending on the final day of the applicant's final course of study.
- (c) demonstrates that the primary applicant has sufficient funds available to meet the following costs and expenses of each secondary applicant making a combined application with the primary applicant:
 - (i) travel expenses; and
 - (ii) for each secondary applicant who intends to stay in Australia for a period of 12 months or more – the following costs (*annual living costs*):
 - (A) for a spouse or de facto partner - AUD7,100; and
 - (B) for a dependent child - AUD3,040; and
 - (iii) for each secondary applicant who intends to stay in Australia for a period of less than 12 months – the pro rata equivalent of *annual living costs*, calculated as specified in section 11; and
 - (iv) the following school fees for each school-age dependant:
 - (A) if the school-age dependant intends to stay in Australia for more than 12 months - AUD8000 (*annual school costs*); or
 - (B) if the school-age dependant intends to stay in Australia for less than 12 months – the pro rata equivalent of *annual school costs*, calculated as specified in section 11; or

- (C) if the school-age dependant is enrolled in a course of study at a State or Territory government school where the fees have been waived, and the Primary Applicant is enrolled in a course as a doctoral degree student, a Foreign Affairs student, a Defence student or a Commonwealth sponsored student – nil.

Note: For *secondary applicant*, see section 4 of Part 1 of this instrument.

- (3) The evidence of financial capacity:
 - (a) is official Government documentation of personal income that has been issued in the 12 months immediately before the application is made; and
 - (b) demonstrates that the primary applicant’s parent, spouse or de facto partner has a personal annual income, in the 12 months immediately before the application is made, that is:
 - (i) if there is no secondary applicant– at least AUD60,000; or
 - (ii) if there is a secondary applicant – at least AUD70,000.
- (4) The evidence of financial capacity is the primary applicant’s completed AASES form.

Note: *AASES form* is defined in regulation 1.03 of the Regulations to mean, for a secondary exchange student, an Acceptance Advice of Secondary Exchange Student form from the relevant State or Territory education authority, containing the following declarations:

- (a) a declaration made by the student’s exchange organisation, accepting the student;
 - (b) a declaration made by the student’s parent, or the person or persons having custody of the student, agreeing to the exchange.
- (5) If the primary applicant is a Foreign Affairs student – the evidence of financial capacity is a letter of support from the Department of Foreign Affairs and Trade.
 - (6) If the primary applicant is a Defence student – the evidence of financial capacity is a letter of support from the Department of Defence.

7 Subclass 500 (Student) visa – secondary applicants included in the primary student visa holder’s application

- (1) For the purposes of subclause 500.313(3) of Schedule 2 to the Regulations, a secondary applicant who is included in the primary student visa holder’s application, must give to the Minister evidence of financial capacity that satisfies the requirements of subsection (2), (3), (4), (5) or (6).
- (2) The evidence of financial capacity:
 - (a) is in the form specified in section 10; and
 - (b) demonstrates that sufficient funds are available to meet the costs and expenses of the primary student visa holder set out in subparagraphs 6(2)(b)(i) to (iii) of this Part; and
 - (c) demonstrates that sufficient funds are available to meet the costs and expenses of each secondary applicant making a combined application with the primary student visa holder specified in paragraphs 6(2)(c)(i) to (iv) of this Part.
- (3) The evidence of financial capacity:
 - (a) is official Government documentation of personal income that has been issued in the 12 months immediately before the application is made; and
 - (b) demonstrates that the primary student visa holder’s parent, spouse or de facto partner has a personal annual income that is at least AUD70,000.

- (4) If the primary student visa holder is a Foreign Affairs student and has provided a letter of support mentioned in subsection 6(5) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Foreign Affairs and Trade will meet the living costs and expenses of each secondary applicant.
- (5) If the primary student visa holder is a Defence student and has provided a letter of support mentioned in subsection 6(6) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Defence will meet the living costs and expenses of each secondary applicant.
- (6) If:
 - (a) the primary student visa holder is a Foreign Affairs student or a Defence student and has provided a letter of support mentioned in subsection 6(5) or (6) of this Part; but
 - (b) the letter of support does not indicate that the relevant department will meet the living costs and expenses of each secondary applicant;
 then the evidence of financial capacity:
 - (c) demonstrates that sufficient funds are available to meet the costs and expenses of the secondary applicant specified in paragraphs 6(2)(c)(i) to (iv) of this Part.

8 Subclass 500 (Student) visa – secondary applicants not included in the primary student visa holder’s application

- (1) For the purposes of subclause 500.313(3) of Schedule 2 to the Regulations, a secondary applicant (the first secondary applicant), who is not included in the primary student visa holder’s application, must give to the Minister evidence of financial capacity that satisfies the requirements of subsection (2), (3), (4), (5) or (6).
- (2) The evidence of financial capacity:
 - (a) is in the form specified in section 10; and
 - (b) demonstrates that sufficient funds are available to meet the costs and expenses of the primary student visa holder specified in subparagraph 6(2)(b)(ii) of this Part; and
 - (c) demonstrates that sufficient funds are available to meet course fees for any component of the primary student visa holder’s course of study which will be completed while the first secondary applicant is in Australia, up to an amount equivalent to fees for 12 months of the course of study, minus any amount already paid; and
 - (d) demonstrates that sufficient funds are available to meet the costs and expenses of each secondary student visa holder and that the first secondary applicant has sufficient funds available to meet their own costs and expenses, and the costs and expenses of each additional secondary applicant making a combined application with the first secondary applicant, specified in subparagraphs 6(2)(c)(ii) to (iv) of this Part; and
 - (e) demonstrates that the first secondary applicant has sufficient funds available to meet their own travel expenses and the travel expenses of all additional secondary applicants making a combined application with the first secondary applicant.
- (3) The evidence of financial capacity:
 - (a) is official Government documentation of personal income that has been issued in the 12 months immediately before the application is made; and
 - (b) demonstrates that the primary student visa holder’s parent, spouse or de facto partner has a personal annual income that is at least AUD70,000.
- (4) If the primary student visa holder is a Foreign Affairs student and has provided a letter of support mentioned in subsection 6(5) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Foreign Affairs and Trade will meet the living costs and expenses of each secondary applicant.

- (5) If the primary student visa holder is a Defence student and has provided a letter of support mentioned in subsection 6(6) of this Part – the evidence of financial capacity is the letter of support if the letter of support indicates that the Department of Defence will meet the living costs and expenses of each secondary applicant.
- (6) If:
- (a) the primary student visa holder is a Foreign Affairs student or a Defence student and has provided a letter of support mentioned in subsection 6(5) or (6) of this Part; but
 - (b) the letter of support does not indicate that the relevant department will meet the living costs and expenses of each secondary applicant;
- then the evidence of financial capacity:
- (c) demonstrates that sufficient funds are available to meet the costs and expenses of each secondary student visa holder and that *the first secondary applicant* has sufficient funds available to meet their own costs and expenses, and the costs and expenses of each additional secondary applicant making a combined application with *the first secondary applicant*, specified in subparagraphs 6(2)(c)(ii) to (iv) of this Part; and
 - (d) demonstrates that *the first secondary applicant* has sufficient funds available to meet their own travel expenses and the travel expenses of all secondary applicants making a combined application with *the first secondary applicant*.

...

10 Evidence of financial capacity

The following forms of evidence of financial capacity are specified:

- (a) money deposit with a financial institution;
- (b) loan with a financial institution;
- (c) government loans;
- (d) scholarship or financial support.

11 Pro rata equivalent

In this Part, the pro rata equivalent of annual costs is calculated by:

- (a) dividing the annual amount by 365; and
- (b) multiplying the resulting number by the number of days the applicant is intending to stay in Australia.