Federal Court of Australia

Parmar v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCA 1294

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| Appeal from: | *Parmar v Minister for Immigration* [2020] FCCA 1419 |
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| File number(s): |  |
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| Judgment of: | **SC DERRINGTON J** |
|  |  |
| Date of judgment: | 25 October 2021 |
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| Catchwords: | **MIGRATION** – Judicial review of decision to refuse to grant student visa – whether tribunal denied procedural fairness – whether court did not consider legal and factual errors in the decision of the tribunal – where court invited to engage in merits review |
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| Legislation: | *Migration Act 1958* (Cth) ss 29(1), 31(1), 31(3), 45, 65(1), 499(1), 499(2), s 499(2A)  *Migration Regulations 1994* (Cth) regs 2.01(1)(a), 2.03(1), Sch 1 cl 1222, Sch 2 cl 500.212 |
| Cases cited: | *Kumar v Minister of Immigration and Border Protection* [2020] FCAFC 16; 274 FCR 646  *Leota v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1120  *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* [2004] HCA 32; 78 ALJR 992  *Uelese v Minister for Immigration and Border Protection* [2015] HCA 15; 256 CLR 203 |
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| Division: | General Division |
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| Registry: | Queensland |
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| National Practice Area: |  |
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| Number of paragraphs: | 41 |
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| Date of hearing: | 21 October 2021 |
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| Counsel for the Appellants: | Appellants were self-represented |
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| Solicitor for the First Respondent: | Sparke Helmore Lawyers |
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| Solicitor for the Second Respondent: | The Second Respondent submitted save as to costs |

ORDERS

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|  | | QUD 150 of 2020 |
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| BETWEEN: | VIJAYKUMAR BALDEVDAS PARMAR  First Appellant  DAYA VIJAYKUMAR PARMAR  Second Appellant | |
| AND: | MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS  First Respondent  ADMINISTRATIVE APPEALS TRIBUNAL  Second Respondent | |

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| order made by: | SC DERRINGTON J |
| DATE OF ORDER: | 25 October 2021 |

THE COURT ORDERS THAT:

1. The appeal be dismissed.
2. The appellants pay the costs of the first respondent fixed in the sum of $4500.00.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

SC DERRINGTON J

## Introduction

1. The appellants, Mr and Mrs Parmar, appeal from a decision of the Federal Circuit Court (**FCC**) delivered on 27 April 2020. In his **Reasons**, the primary judge dismissed Mr and Mrs Parmar’s application for judicial review of a decision of the Administrative Appeals **Tribunal** made on 17 December 2018. That decision affirmed a decision of a **Delegate** of the then **Minister** for Immigration and Border Protection to refuse to grant Mr Parmar a Student (Temporary)(Class TU) Student (Subclass 500) visa (**TU500 visa**).
2. The appellants contend that the FCC erred in two respects: first, in failing to consider that the Tribunal had denied the appellants procedural fairness reaching conclusions without taking evidence from Mr Parmar; and secondly, in dismissing the case without considering the legal and factual errors contained in the decision of the Tribunal.
3. The first ground was not raised before the FCC and leave was not sought to advance that ground. The Minister opposed the grant of leave on the basis that, even on a reasonably impressionistic consideration, ground one is evidently devoid of merit and it is therefore not expedient in the interests of justice to grant leave: *Leota v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2020] FCA 1120 at [41]-[44].
4. For the reasons that follow, leave to advance ground one should be refused and the appeal should be dismissed.

## Background

1. The appellants came to Australia on 28 June 2013. Mr Parmar was granted a student visa (Class TU) (subclass 573) (**TU573 visa**). Mrs Parmar’s immigration status depends on that of her husband as she entered as an accompanying family member.
2. Mr Parmar’s TU573 visa was referrable to his enrolment as a higher-education student – he had originally been enrolled in a pathway course leading to a Bachelor of Business at James Cook University (JCU). On deciding that the degree course was too difficult for him, his enrolment at JCU was cancelled. Mr Parmar applied for, and was granted on 6 June 2014, a TU572 visa being for enrolment as a vocational-education student. Mr Parmar enrolled at Spencer College to undertake a Diploma of International Business. His enrolment in that course was also cancelled following a “misunderstanding” about fees. He then enrolled in business courses at Skills Institute. He completed a Diploma of Project Management at that Institute in July 2017 and an Advanced Diploma of Project Management in June 2018.
3. On 4 August 2016, Mr Parmar applied for a further TU500 visa. On 2 August 2016, he had engaged the services of a migration agent to assist with his application. By letter emailed to his migration agent on 15 September 2016, the **Department** of Immigration and Border Protection requested additional information. The information requested related to Mr Parmar’s English proficiency and his health status. The information was provided to the Department on 11 November 2016.
4. By letter emailed to Mr Parmar’s migration agent on 22 November 2016, the Department sought further information relating to whether Mr Parmar met the genuine temporary entrant criterion. The letter set out the criterion by reference to Ministerial Direction No. 69.

## Statutory and legal framework

1. Section 29(1) of the ***Migration******Act*** *1958*(Cth) gives the Minister power to grant a non‑citizen a visa to travel to and enter, or to remain in, Australia. There are prescribed classes of visa and regulations may prescribe the criteria for visas of a specified class: s 31(1) and (3).
2. A non-citizen who wants a visa must apply for a visa of a particular class: s 45.
3. After considering a valid application for a visa, the Minister must grant the visa “if satisfied” of the various matters identified in s 65(1)(a) of the *Migration Act*. One of the matters of which the Minister or his delegate must be satisfied is that the criteria prescribed by the Act or Regulations for the visa have been met: s 65(1)(a)(ii). If the Minister is not satisfied of the matters identified in s 65(1)(a), the Minister is to refuse to grant the visa: s 65(1)(b). Section 65 provides (notes omitted):

**65 Decision to grant or refuse to grant visa**

(1) Subject to sections 84 and 86, after considering a valid application for a visa, the Minister:

(a) if satisfied that:

(i) the health criteria for it (if any) have been satisfied; and

(ii) the other criteria for it prescribed by this Act or the regulations have been satisfied; and

(iii) the grant of the visa is not prevented by section 40 (circumstances when granted), 91W (evidence of identity and bogus documents), 91WA (bogus documents and destroying identity documents), 91WB (applications for protection visas by members of the same family unit), 500A (refusal or cancellation of temporary safe haven visas), 501 (special power to refuse or cancel) or any other provision of this Act or of any other law of the Commonwealth; and

(iv) any amount of visa application charge payable in relation to the application has been paid;

is to grant the visa; or

(b) if not so satisfied, is to refuse to grant the visa.

1. The power to grant the visa is non-discretionary in that the Minister is under an obligation to grant the visa “if satisfied” of the various matters identified in s 65(1)(a). The satisfaction of the Minister (or the delegate or Tribunal on review) that the prescribed criteria have been met is a condition precedent to the discharge of the obligation to grant or refuse to grant the visa and is a “jurisdictional fact”: *Minister for Immigration and Multicultural and Indigenous Affairs v SGLB* [2004] HCA 32; 78 ALJR 992 at [37] (Gummow and Hayne JJ).

### Clause 500.212 of Schedule 2 to the Regulations

1. Regulation 2.01(1)(a) of the *Migration* ***Regulations*** *1994* (Cth) provides that the prescribed classes of visas include the classes set out in Schedule 1 to the Regulations. Clause 1222 of Schedule 1 prescribes the Student (Temporary) (Class TU) visa.
2. The criteria for the prescribed classes of visa are located in Schedule 2 to the Regulations: reg 2.03(1). The criteria for the Subclass 500 visa for which Mr Parmar applied included “primary criteria” and “secondary criteria”. The primary and secondary criteria are both divided into “criteria to be satisfied at time of application” and “criteria to be satisfied at time of decision”.
3. A “primary criterion” to be satisfied at time of decision, and that which is relevant in the present matter, is that provided by cl 500.212 of Schedule 2 which is in the following terms:

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.

1. The critical state of satisfaction for the purposes of this appeal is “that the applicant intends genuinely to stay in Australia temporarily”. The Tribunal did not reach that state of satisfaction (**Tribunal’s reasons** at [32]) which meant that it could not be satisfied under s 65(1)(a)(ii) that the prescribed criteria had been met.
2. Clause 500.212(a) provides that the state of satisfaction “that the applicant intends genuinely to stay in Australia temporarily” must be reached “having regard to” the four matters identified in the clause as (i) to (iv). Direction 69 provides guidance to decision makers on the factors that “require consideration” in weighing those four matters – see: Preamble to Direction 69.

## *Direction 69*

1. The Minister may give written directions to a person or body having functions or powers under the Act about the performance of those functions and the exercise of those powers: s 499(1). Those directions cannot be inconsistent with the *Migration Act* or *Regulations*: s 499(2).
2. The delegate and Tribunal must comply with a valid ministerial direction: s 499(2A); *Uelese v Minister for Immigration and Border Protection* [2015] HCA 15; 256 CLR 203 at [19] (French CJ, Kiefel, Bell and Keane JJ).
3. Direction 69 is a written direction to which s 499 applies and which commenced on 1 July 2016. It concerns the state of satisfaction in cl 500.212(a) about whether “the applicant intends genuinely to stay in Australia temporarily”.
4. As was explained by the Full Court in *Kumar v Minister of Immigration and Border Protection* [2020] FCAFC 16; 274 FCR 646, in relation to the precursor to cl 500.212(a), at [29]

If there is a failure to comply with Direction 53 in reaching an adverse state of satisfaction under cl 572.223(1)(a) which is sufficiently material to the formation of that state of satisfaction, and consequently upon the state of satisfaction in s 65(1) of the Act then, depending on the nature of the non-compliance, jurisdictional error may be established. An example of such jurisdictional error is as follows. If Direction 53 required a particular matter to be taken into account as a mandatory relevant consideration in reaching the required state of satisfaction and such a matter was advanced by an applicant but ignored by the delegate or Tribunal, then jurisdictional error would be demonstrated if the applicant established that he or she was thereby deprived of the possibility of the repository of power forming a favourable state of satisfaction: ***Hossain*** *v Minister for Immigration and Border Protection* (2018) 264 CLR 123 at [29]–[31] (Keifel CJ, Gageler and Keane JJ) and [72] (Edelman J); *Minister for Immigration and Border Protection v* ***SZMTA***(2019) 264 CLR 421 at [45]–[48] (Bell, Gageler and Keane JJ) and [84]–[95] (Nettle and Gordon JJ). Although the decision-maker was, in fact, not satisfied that the visa applicant had met the relevant criteria, that actual state of mind was reached through a “material” non-compliance with statutory requirements prescribed for that decisional process. Accordingly, the state of non-satisfaction was not of the kind upon which the legislature conditioned the exercise of power under s 65(1)(b).

1. Direction 69 is divided into two parts: “Part 1 Preliminary” and “Part 2 Directions”. Part 1 includes:

**Preamble**

…

The genuine temporary entrant criterion for Student visa applications requires the Minister to be satisfied that 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

This Direction provides guidance to decision makers on what factors require consideration when assessing the above paragraphs a to d, to determine whether the applicant genuinely intends to stay in Australia temporarily.

Decision makers must take a reasonable and balanced approach between the need to make a timely decision on a Student visa or Student Guardian visa application and the need to identify those applicants who, at time of decision, do not genuinely intend to stay in Australia temporarily.

1. Part 2 includes:

**Assessing the genuine temporary entry criterion**

1. Decision makers should not use the factors specified in this Direction as a checklist. The listed factors are intended only to guide decision makers when considering the applicant’s circumstances as a whole, in reaching a finding about whether the applicant satisfies the genuine temporary entrant criterion.

2. Decision makers should assess whether, on balance, the genuine temporary entrant criterion is satisfied, by:

a. considering the applicant against all factors specified in this Direction; and

b. considering any other relevant information provided by the applicant (or information otherwise available to the decision maker).

3. Decision makers may request additional information and/or further evidence from the applicant to demonstrate that they are a genuine temporary entrant, where closer scrutiny of the applicant's circumstances is considered appropriate.

4. Circumstances where further scrutiny may be appropriate include but are not limited to:

a. information in statistical, intelligence and analysis reports on migration fraud and immigration compliance compiled by the department indicates the need for further scrutiny;

b. the applicant or a relative of the applicant has an immigration history of reasonable concern;

c. the applicant intends to study in a field unrelated to their previous studies or employment;

d. apparent inconsistencies in information provided by the applicant in their Student visa application.

5. An application for a Student visa or Student Guardian visa should be refused if, after weighing up the applicant’s circumstances, immigration history and any other relevant matter, the decision maker is not satisfied that the applicant genuinely intends a temporary stay in Australia.

**The applicant’s circumstances**

6. Decision makers must have regard to the applicant’s circumstances in their home country and the applicant’s potential circumstances in Australia.

7. For primary applicants of Subclass 500 Student visas, decision makers should have regard to the value of the course to the applicant’s future.

8. Weight should be placed on an applicant’s circumstances that indicate that the Student visa or Student Guardian visa is intended primarily for maintaining residence in Australia.

**The applicant’s circumstances in their home country**

9. When considering the applicant’s circumstances in their home country, decision makers should have regard to the following factors:

a. whether the applicant has sound reasons for not undertaking the study in their home country or region if a similar course is already available there. Decision makers should allow for any reasonable motives established by the applicant;

b. the extent 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 to return to their home country;

c. economic circumstances of the applicant that would present as a significant incentive for the applicant not to return to their home country. These circumstances may include consideration of the applicant’s circumstances relative to the home country and to Australia;

d. military service commitments that would present as a significant incentive for the applicant not to return to their home country; and

e. political and civil unrest in the applicant’s home country. This includes situations of a nature that may induce the applicant to apply for a Student visa or Student Guardian visa as means of obtaining entry to Australia for the purpose of remaining indefinitely. Decision makers should be aware of the changing circumstances in the applicant’s home country and the influence these may have on an applicant’s motivations for applying for a Student visa or a Student Guardian visa.

10. Decision makers may have regard to the applicant’s circumstances in their home country relative to the circumstances of others in that country.

**The applicant’s potential circumstances in Australia**

11. In considering the applicant’s potential circumstances in Australia, decision makers should have regard to the following factors:

a. the applicant’s ties with Australia which would present as a strong incentive to remain in Australia. This may include family and community ties;

b. evidence that the student visa programme is being used to circumvent the intentions of the migration programme;

c. whether the Student visa or Student Guardian visa is being used to maintain ongoing residence;

d. whether the primary and secondary applicant(s) have entered into a relationship of concern for a successful Student visa outcome. Where a decision maker determines that an applicant and dependant have contrived their relationship for a successful Student visa outcomes, the decision maker may find that both applicants do not satisfy the genuine temporary entrant criterion; and

e. the applicant’s knowledge of living in Australia and their intended course of study and the associated education provider; including previous study and qualifications, what is a realistic level of knowledge an applicant is expected to know and the level of research the applicant has undertaken into their proposed course of study and living arrangements.

**Value of the course to the applicant’s future**

12. Decision makers should have regard to the following factors in considering the value of the course to the applicant’s future:

a. whether the student is seeking to undertake a course that is consistent with their current level of education and whether the course will assist the applicant to obtain employment or improve employment prospects in their home country. Decision makers should allow for reasonable changes to career or study pathways; and

b. relevance of the course to the student’s past or proposed future employment either in their home country or a third country; and

c. remuneration the applicant could expect to receive in the home country or a third country, compared with Australia, using the qualifications to be gained from the proposed course of study.

**The applicant’s immigration history**

13. An applicant’s immigration history refers both to their visa and travel history.

14. When considering the applicant’s immigration history, decision makers should have regard to the following factors:

a. Previous visa applications for Australia or other countries, including:

i. if the applicant previously applied for an Australian temporary or permanent visa, whether those visa applications are yet to be finally determined (within the meaning of subsection 5(9) of the Act), were granted, or grounds on which the application(s) were refused; and

ii. if the applicant has previously applied for visa(s) to other countries, whether the applicant was refused a visa and the circumstances that led to visa refusal.

b. Previous travels to Australia or other countries, including:

i. if the applicant previously travelled to Australia, whether they complied with the conditions of their visa and left before their visa ceased, and if not, were there circumstances beyond their control;

ii. whether the applicant previously held a visa that was cancelled or considered for cancellation, and the associated circumstances;

iii. the amount of time the applicant has spent in Australia and whether the Student visa or Student Guardian visa may be used primarily for maintaining ongoing residence, including whether the applicant has undertaken a series of short, inexpensive courses, or has been onshore for some time without successfully completing a qualification; and

iv. if the applicant has travelled to countries other than Australia, whether they complied with the migration laws of that country and the circumstances around any non-compliance.

**If the applicant is a minor – the intentions of a parent, legal guardian or spouse of the applicant**

15. If the primary or secondary applicant for a Subclass 500 Student visa is a minor, decision makers should have regard to the intentions of a parent, legal guardian or spouse of the applicant.

**Any other relevant matters**

16. Decision makers should also have regard to any other relevant information provided by the applicant (or information otherwise available to the decision maker) when assessing the applicant’s intention to temporarily stay in Australia. This includes information that may be either beneficial or unfavourable to the applicant.

## Ground One

1. As has already been described, by ground one, the appellants contend that the Tribunal denied them procedural fairness. It is said that the Tribunal reached conclusions without taking evidence from the appellants. The ground is without merit and leave to raise it on appeal must be refused.
2. The letter of 22 November 2016 from the Department to the appellants noted that the Department had serious concerns about Mr Parmar’s true intentions in Australia in light of:

* his not having departed Australia since 28 June 2013;
* his study history, which indicated that he had been enrolled in:
  + Unipath English 2
  + Bachelor of Business
  + Diploma of International Business
  + Advanced Diploma of Business
  + Advanced Diploma of Management;
* his failure to complete the Bachelor of Business or Advanced Diploma and was reported by his education providers for non-payment of fees on 4 August 2014 and 16 February 2016;
* his enrolment now in a Diploma of Project Management and Advanced Diploma of Project Management which commenced on 13 June 2016 and are due for completion on 8 June 2018;
* his failure to be enrolled in a course of study for a period of almost four months from 17 February 2016 to 12 June 2016 during which time he was residing in Australia as the primary holder of a student visa and did not depart Australia and so failed to comply with the conditions of his visa.

1. Mr Parmar provided a statement in response to the concerns raised by the Department. In that statement, Mr Parmar made the following representations under various headings:

## No movement records since 2013

* “Once I had been finished my study National Diploma of Business (level 6) from New Zealand career college, New Zealand, I had already made the plan for further study and I had chosen Australia as per my own researched. For the file processing of Australia student Visa Subclass (573), I went to India from New Zealand on 17th March, 2013 and came to New Zealand on 22nd May 2013. During this period, I did collect all my remaining documents which were require to put in Australia student visa file…. Within these last two years 2015 and 2016, I couldn’t plan to India trip due to study was going on in April-May month (Indian Summer time). I knew that it won’t be possible to visit quickly to India. After that there is not any family function and by the grace of God everybody is healthy in the family so we decide not to visit them as our goal is to complete all the studies and go back upon the completion.”
* “I am very much focused that I have left my son back in India so that I can focus on my studies. I am a responsible father and always miss my son but could not travel to India due to my study commitments. I want to complete my studies and want to go back to India upon completion of my studies. As a responsible son and being a genuine student I did not travel back to my home country because I wanted to complete my studies on time.”

## Incomplete Bachelor of Business, James Cook

* “Once I successfully finished my Unipath English 2 to qualify in enrolment of Bachelor of Business, I started my study in James Cook University. During the first trimester, I was unable to study well… so… decided to start with Diploma to better understand of study style. And at the end, I enrolled in Diploma of International business which started on 26 May 2014 for that I put my 572 subclass visa file on 11th May 2014. Once started my study, I got approval on my visa file on which was approved on 6th June 2014.”
* “As per immigration history, James cook had cancelled my COE …(Certificate of Enrolment)… on 4th of August 2014, During this time frame I was already continuing my diploma study with Spencer college, this is no possibility to study at both side.”

## Incomplete Advance Diploma of management

* “Once completed my Diploma in International business and Advance diploma of business, **There was my last study Advance diploma of management in Spencer College** and both diploma’s fees was fully paid. I have completed my studies and my COE was till June and no cancelled COE has been received after that I was enrolled in Skills Institute and till date that I am studying there. I never breached any visa conditions and continued my studies as my previous institute has cancelled my COE without informing me. It is not my fault and I took another admission upon the completion of my studies. I am a genuine student since begging and always complied with my visa conditions.”

1. By letter emailed to the appellants’ migration agent dated 7 February 2017, the Department informed Mr Parmar that his application for a further student visa had been refused on the basis that the Delegate was not satisfied that Mr Parmar intended genuinely to stay temporarily in Australia. In the statement of reasons, the Delegate said that he had taken into consideration the documents provided by Mr Parmar in his application. The Delegate was not satisfied that the proposed qualifications would be of greater benefit to him than the work experience and qualifications already held by Mr Parmar. The Delegate considered Mr Parmar’s proposal to undertake another diploma and advanced diploma and formed the view that, as these courses were at a similar level to his previous studies, and not a higher level, it appeared that Mr Parmar intended to continue to use the student visa program to remain as a de facto resident in Australia rather than to progress his education as a genuine student.
2. The Delegate considered Mr Parmar’s previous immigration, including his non-enrolment in any course of study between 17 February 2016 and 12 June 2016. The Delegate acknowledged Mr Parmar’s explanation that all fees were paid and he had been enrolled but that there had been an error on the part of the Education Provider. Mr Parmar provided no evidence or documentation to support his claim. The Delegate rejected his explanation.
3. The letter informed Mr Parmar that he was entitled to apply to the Tribunal for merits review of the decision and that such an application must be given to the Tribunal “within 21 calendar days after the day on which you are taken to have received this letter”. The letter went on to state:

This review period is prescribed in law and an application for merits review may not be accepted after that date.

…

**Receiving this letter**

As this letter was sent to you by email, you are taken to have received it at the end of the day it was transmitted.

1. On 21 February 2017, Mr Parmar, through his migration agent, made an online Application for Review by the Tribunal of the decision to refuse him a further student visa.
2. On 8 November 2018, the Tribunal invited the appellants to attend a hearing on 5 December 2018. In response to that invitation, the appellants engaged Pratibha Sharma, a registered migration agent practising with Honest Immigrations, to represent them at the hearing before the Tribunal. On 18 December 2018, the Tribunal informed Mr Parmar that it had decided to affirm the decision to refuse to grant him a student visa and provided its Statement of Reasons (Tribunal’s reasons).
3. Those reasons record that the appellants appeared before the Tribunal on 5 December 2018 to give evidence and present arguments. Ms Sharma had filed written submissions with the Tribunal, dated 27 November 2018, prior to the hearing and she also attended the hearing to assist the appellants (Tribunal’s reasons at [7]-[8]).
4. The Tribunal’s reasons record that it referred to the written submission dated 27 November 2018 addressing the Delegate’s decision which addressed the genuine temporary entrant criteria (Tribunal’s reasons at [18]). It included details of his employment in India, the history of his studies in Australia, and the difficulties he had encountered dealing with Spencer College. The Tribunal gave Mr Parmar the opportunity to seek additional time to comment or respond to the Tribunal’s concerns, put to him during the hearing, that he was proposing to study a course of similar content, at the same level as previous courses in which he had been enrolled, and that, despite being in Australia for five and half years, he had successfully completed only one diploma-level course and one advanced-diploma level course (Tribunal’s reasons at [15]-[16]). Mr Parmar did not seek additional time (Tribunal’s reasons at [17]).
5. The Tribunal afforded Mr Parmar the opportunity to explain why he had not returned to India after completing his qualifications and what the likely impact on his employment prospects in India would be given that he was 36 years of age, has been out of India and the Indian job market for 10 years, and has not worked in business or management leadership positions in Australia (Tribunal’s reasons at [22]). The Tribunal did not accept that Mr Parmar’s explanation was consistent with an intention to stay in Australia temporarily (Tribunal’s reasons at [31]).
6. Even if this ground had been raised before the FCC, there is simply no basis for Mr Parmar’s contention that the primary judge erred in not finding that the Tribunal had denied him procedural fairness in reaching conclusions without taking evidence from him.
7. Ground one cannot succeed.

## Ground Two

1. By their second ground of appeal, the appellants contend that the primary judge erred in dismissing the case without considering the legal and factual errors contained in the Tribunal’s decision. No particulars of the legal or factual errors have been articulated.
2. In oral submissions, Mr Parmar referred to the Tribunal’s findings that it did not accept Mr Parmar’s explanation as to why he failed to successfully complete courses he enrolled in at Spencer College and his assertion that the “college corruptly offered to recognise his completed coursework on condition he remained for a further two years and paid for two more courses” (Tribunal’s reasons at [17]-[18]).
3. The primary judge, correctly, identified this complaint as one inviting the court to undertake an impermissible merits review (Reasons at [27]).
4. No error is established and ground two cannot succeed.

## Disposition

1. The appeal must be dismissed with costs fixed in the sum of $4500.00.

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| I certify that the preceding forty-one (41) numbered paragraphs are a true copy of the Reasons for Judgment of the Honourable Justice SC Derrington. |

Associate:

Dated: 25 October 2021