



Australian Government
Department of Immigration and Citizenship

20 March 2013

Mrs Fatemeh JIAN PANAH
Unit 11, 1st Entrance, E-1 Block
3rd Phase, Ekbatan
Tehran
IRAN

In reply please quote:

Name	Fatemeh JIAN PANAH
Date of Birth	18 September 1964
Application ID	IRIS 44610185401
File Number	H13/853
Visa Application Charge Receipt Number	56114

Via email:
shahrzadco@gmail.com

Dear Mrs Fatemeh JIAN PANAH

Notification of the refusal of a STUDENT (Class TU) STUDENT GUARDIAN (Subclass 580) visa.

This letter refers to your application for a STUDENT (Class TU) STUDENT GUARDIAN (Subclass 580) visa, which was lodged at Amman on 12 February 2013.

I wish to advise that the application for this visa has been refused for the following applicant(s):

Fatemeh JIAN PANAH

After careful consideration of all the information you have provided, I was not satisfied that you met the relevant criteria for the grant of this visa as set out in Australian migration law.

The attached Decision Record provides more detailed information about this decision and the applicant(s) it applies to.

Review Rights

There is no right of merits review for this decision.

Visa Application Charge

The visa application charge which has already been paid was for the processing of the application and it must be paid regardless of the application outcome. There are only limited circumstances in which refunds can be given.

people our business

42 Kayed Alarmouti St, Abdoun Aljnoubi
P.O.Box Jordan
Amman 11185
JORDAN

Questions about this Decision

No further assessment of this visa application can be taken at this office. However, if you have questions about this decision, or the process or information that was taken into account, you can contact this office.

Contacting the Department

You can contact us with a general enquiry in a number of ways including by email, through our website, by telephone through our Service Centres or offices around the world, or in person. In Australia you can call 13 18 81 between 8:30 am and 4:30 pm Monday to Friday. Details on contacting our offices outside Australia are available on our website at www.immi.gov.au/contacts/overseas.

Yours sincerely

Wisam Kayali
Temporary Entry Visa Manager
Position Number: 10302
Department of Immigration and Citizenship

DECISION RECORD

Client Details

Main Applicant

Client Name	Fatemeh JIAN PANAH
Client Date of Birth	18 September 1964

Details of visa application

Visa Class	Student (Temporary) (Class TU)
Place of Lodgement	Amman, Jordan
Date of Visa Application	12 February 2013
File Number	H13/853

Information and evidence considered

I am a delegated decision maker under section 65 of the *Migration Act 1958* (the Act). In reaching my decision, I have considered the following:

- relevant legislation contained in the Act and *Migration Regulations 1994* (the Regulations);
- Ministerial Direction No. 53 - Assessing the genuine temporary entrant criterion for student visa applications;
- information contained in the department's policy guidelines, known as the Procedures Advice Manual 3; and
- all documents and information provided by you in support of your application.

You applied for a Student (Temporary) (Class TU) visa. This was taken to be an application for a Guardian visa because it satisfied the validity requirements for that visa subclass.

Findings – Main Applicant

Based on the documents and information provided, I find that you do not meet the criteria for the grant of a Guardian visa.

Under law, a visa cannot be granted unless the applicant meets the relevant legal requirements that are specified in the Act and the Regulations.

The legal requirement in clause 580.226(1)(a) in Schedule 2 to the Regulations has not been met by you on the date I made my decision. The relevant part of clause 580.226(1)(a) states that:

- (1) *The Minister is satisfied that the applicant is a genuine applicant for entry and stay as a student because:*
- (a) *the Minister is 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 clause is also known as the genuine temporary entrant criterion.

Ministerial Direction No 53 – *Assessing the genuine temporary entrant criterion for Student visa applications* sets out the factors that must be taken into account when assessing the genuine temporary entrant criterion for Student visa applications. A complete copy of Ministerial

Direction No 53 is available at www.immi.gov.au/gateways/agents/pdf/direction-53-assessing-gte.pdf

In summary, these factors include:

- The applicant's circumstances in their home country, including the political and economic situation in the applicant's home country, the extent of the applicant's personal ties to their home country, and military service commitments that would present as a significant incentive for the applicant not to return to their home country.
- Whether the applicant's potential circumstances in Australia present as a strong incentive to remain in Australia, including the extent of the applicant's ties with Australia, whether the student visa program may be used to circumvent permanent migration programs, whether the Student visa 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 applicant's immigration history, including visa and travel history for Australia and other countries.

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.

Reasons – Main Applicant

In considering whether you met the genuine temporary entry criterion I had regard to the following factors, consistent with clause 580.226 and Ministerial Direction No 53. The factors were used to weigh up your circumstances as a whole, in reaching a finding about whether you satisfy the genuine temporary entrant criterion.

I have given regard to your personal circumstances; I have taken into account the information provided in your application and supporting documentation relating to your personal circumstances, commitments, and the current situation in your home country.

I have considered the political and security situation in your home country, as an Iranian national who is residing in Iran. I have considered your personal circumstances in the context of the current situation in your home country, a country with substantial security, political and economic issues. I find that these issues are of such a nature that they are sufficient to indicate that they would induce an application for a Student visa as a means of obtaining entry to Australia for the purpose of applying for a permanent visa through the Australian Government's Protection Visa regime. In reaching my decision, I have taken into consideration the country information published by the Australian Department of Foreign Affairs and Trade - <http://www.smarttraveller.gov.au/zw-cgi/view/Advice/Iran> and also other publicly available information on the civil and political situation in Iran. I have also noted there are a number of Iranian applicants who do not comply with their student visa conditions and others who seek to engage Australia's protection obligations.

Australia is currently experiencing a high rate of immigration non-compliance and protection visa claims by Iranian citizens and applicants from Iran are considered very high risk in terms of intention to breach a visa requirement or claim protection. The onus for clients from Iran is to satisfy a decision maker that their intention to enter Australia as Guardians is genuine.

I have also considered your economic conditions relative to the circumstances in Iran and Australia. I note that you are currently unemployed and you have not provided documentary evidence of any business ties that would encourage you to return to your home country at the expiry of your visa. Your economic situation in Iran was taken into consideration as part of this assessment. I am therefore not satisfied that you will be compelled to return to Iran on account of any business or economic reasons.

I have also taken into consideration your potential circumstances in Australia, your ties with Australia that would serve as a significant incentive to stay in Australia indefinitely. I note that you have one son currently residing in Australia. I consider his presence in Australia as a concern as this may provide you with an incentive to remain in Australia.

I have given regard to your immigration history. As you had no immigration history to consider that may be beneficial or adverse to your application, this aspect was not relevant to my assessment.

Clause 580.226 (1)(a)(iii) applies to applicants who are minors i.e. under 18 years of age. As you are over 18 years of age, this factor 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 assessment of your intentions to stay in Australia temporarily.

Conclusion of reasons – Main Applicant

After weighing up these factors as a whole, you have not been able to satisfy me that you genuinely intend a temporary stay in Australia.

Assessment of Main Applicant against other subclasses in Class (TU)

As the application was made on form 157G (Application for a Student Guardian visa), it was not a valid application for grant of any other subclass in Student (Temporary) (Class TU).

You did not satisfy the secondary criteria for grant of a Subclass 580 visa because you are not a member of the family unit of a person who is the holder of a Subclass 580 visa, or of a person who satisfies the primary criteria in Subdivision 580.21.

Decision – Main Applicant

As set out in Ministerial Direction Number 53, I have weighed your circumstances and immigration history and have also considered whether there are any other matters relevant to this assessment of the your genuine intention to temporarily stay in Australia.

On balance, I am not satisfied that you are a genuine applicant for entry and stay as a student because I am not satisfied that you intend to genuinely stay in Australia temporarily having regard to your circumstances and immigration and other relevant matters. On this basis, I am not satisfied that you meet the requirements of 580.226(1)(a). I must refuse grant of this visa.

Yours Sincerely

Wisam Kayali
PN 10302
Senior Visa Officer
Department of Immigration and Citizenship
Australian Embassy, Amman