Are you a genuine visitor to Australia?

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When applying for a tourist visa, the *Department of Immigration and Citizenship* (DIAC) will assess your visa application to determine whether you genuinely intend to visit Australia and abide by the conditions placed on your visa. You must address certain issues to ensure visa grant.

In one case wherein we represented the visa applicant on appeal to the Migration Review Tribunal (MRT), the visa applicant from the Philippines, had applied for a three month tourist visa to accompany her son's family who had just been granted permanent residence. She had only two children. She had previously visited Australia on various tourist visas to visit her daughter and her family. Her husband was in Abu Dhabi UAE where he has been working for a number of years.

The issue of genuineness of visit arose due to the applicant's apparent de facto residency by living in Australia for a cumulative period of two years over the last four years. The recent migration of her son and his family to Australia was regarded as diminishing her links with the Philippines. Based on these major circumstances, DIAC determined that the applicant was likely to overstay in Australia and refused her visa.

On appeal to the *Migration Review Tribunal* (MRT), the Tribunal member considered paragraph 8 of the Direction No. 36 of 2005 in determining whether an applicant intends a genuine visit. We quote the summary stated in the MRT decision, as follows:

a. Personal circumstances that may encourage the applicant to return to his or her home country, including: on-going employment; the presence of immediate family member in their home country; and property or other significant assets owned in their home country;

b. Personal circumstances or other conditions in the applicant's home country, that may encourage the applicant to remain in Australia, including: the applicant's economic situation; the applicant's personal ties to Australia; military service commitments; civil or economic disruption in the applicant's home country

c. The applicant's immigration history, including but not limited to: previous travel overseas and compliance with, the immigration laws of countries; and previous visa applications for Australia, and compliance with the conditions of their visa

d. The credibility of the applicant in terms of character and conduct, including evidence of any false or misleading information and /or documentation that has been presented in relation to this or any other visa application

e. Whether the purpose of the applicant's visit, the duration of the stay proposed and any other plans the applicant has made in respect of their visit are reasonable, that is, are the activities proposed consistent with business, tourism and /or visiting friends and relatives and is the period of stay consistent with the period of their approved leave (if applicable)

f. The immigration activities in Australia of other nationals from the applicant's home country

g. Intelligence and analysis reports on illegal immigration and malpractice locally developed at overseas posts

In setting aside the DIAC decision, in favour of visa grant, the MRT member considered our position that:

- The visa applicant has no history of overstay nor breach of condition and therefore there was no reason to believe that she would overstay if granted a visitor visa.
- The visa applicant had her own funds to support herself during her stay in Australia, in addition to the free accommodation, food and transport provided by her children and thus there was no reason to believe that she would breach her condition of "no work" in Australia during this visit.
- The purpose of this visit was purely to help her son and his family, relocate and resettle in Australia. It was for this reason that she had applied only for a three month visa. Once they were settled, she would return to the Philippines where she had a small business to operate.
- It is customary in the Philippines that the husband makes the decision on the place of residence of the spouses and therefore, the visa applicant was not in a position to decide on her own, as to whether to reside in Australia. Her husband who was working in Abu Dhabi has never been to Australia and has not discussed any plan to relocate to Australia.
- Moreover, the visa applicant and her husband could apply for a parent visa, should the husband decide that they should reside in Australia to be with their two children permanently. Thus, there was no reason to believe that the visa applicant would overstay her visitor visa.

After considering the above in relation to the Paragraph 8 of Direction no 36 of 2005 the MRT held that the visa applicant satisfied the requirements of the Subclass 676 Tourist Visa.

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