

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 076/06

This is the second s 486O report by the Ombudsman on Mr X. The Ombudsman's first report was sent to the Minister on 1 December 2005 and tabled in Parliament on 28 February 2006. This report updates the material in that report (016/05) and should be read in conjunction with it.

Principal facts

Personal details

1. Since the tabling of the last s 486O report, Mr X has been positively identified as Malaysian national, Mr Y, born 2 October 1954. For consistency with previous reports from the Department (DIMA) and this office, this report will refer to the applicant as Mr X.

Visa applications

2. There have been no visa applications since the last report. The Department initiated a submission to the Minister in November 2005 for her to consider exercising her detention intervention powers under sections 195A and 197AB of the Act. The Minister declined to intervene in December 2005.

Current immigration status

3. Mr X was removed from Australia on 10 July 2006.

Ombudsman consideration

4. Two DIMA reports to the Ombudsman under s 486N, received 18 January 2006 and 19 July 2006.
5. Ombudsman staff re-interviewed Mr X via telephone on 24 May 2006.

Key issues

Nationality and identity

6. DIMA advise that Mr X was identified as a Malaysian national after cross-referencing of biodata, movement records and personal information. Although he refused at interview with Ombudsman staff to acknowledge the name Mr Y, he also chose not to categorically deny ownership of it.
7. Ombudsman staff satisfied themselves that the National Identity Verification and Advice Section (NIVA) within DIMA had correctly identified Mr X as Mr Y, a Malaysian national.
8. DIMA also confirmed that there is no record of Mr X having any relatives in Australia.

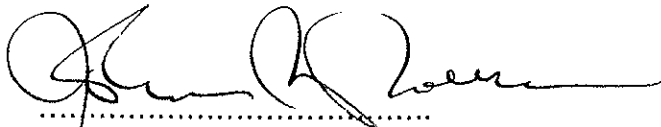
Attitude to removal

9. Mr X maintained his preference to remain in Australia.
10. DIMA developed a removal case management plan in conjunction with the Australian High Commission in Kuala Lumpur to assist Mr X's reintegration into the Malaysian community and provide him with details of appropriate support services.

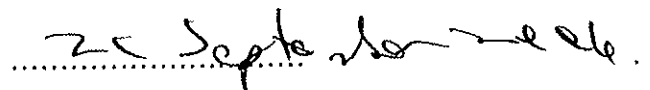
Ombudsman assessment

11. Mr X chose to conceal his identity and remain in immigration detention for the last four and a half years. Although Mr X wanted to remain in Australia, there was no lawful basis for him to do so.

12. The Ombudsman's first report expressed concern about the indefinite detention of Mr X, while acknowledging the difficulties his case presented to DIMA. Recent discussions with DIMA officers indicate that DIMA has, in accordance with one of the recommendations in Mr X's last report, altered its procedures regarding problematic identity cases. The establishment in May 2005 of the National Identity Verification and Advice Section within DIMA will assist in preventing a reoccurrence of circumstances similar to this case. Nevertheless, it is possible these revised processes may not assist in the resolution of all identity cases within a reasonable timeframe. Where that is the case, the Ombudsman's reports will continue to focus on two important issues: the appropriateness of indefinite detention; and, as required by s 189 of the *Migration Act 1958*, the need for an authorised DIMA officer to continue holding a reasonable suspicion that a person in detention is an unlawful non-citizen.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date