

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 110/06

Principal facts

Personal details

1. Mr X is aged 55 and is a citizen of Indonesia. Ms Z (see Report 111/06), is his wife of 22 years and is also an unlawful non-citizen currently detained at Villawood Immigration Detention Facility (IDF). Mr X and Ms Z have two sons aged 20 and 19, who live with their maternal grandmother in Indonesia.

Detention history

2. Mr X was found working in breach of his visa conditions in October 2002. He was transferred the next day to Villawood IDF under s 189(1) of the *Migration Act 1958*. Mr X was released in January 2003 on a Bridging Visa (BV) after a friend paid a security bond of \$5000.
3. In August 2004 Mr X was again found working in breach of his visa conditions, and transferred to VIDF under s 189(1).
4. Mr X and his wife were offered alternative detention in the Port Augusta Residential Housing Centre but they declined the offer.

Visa applications

5. Mr X arrived in Australia (March 1999) on a one month Tourist Visa; an application for a Protection Visa (PV) was lodged and an associated BV was granted (March 1999); the PV application was refused (September 1999); the PV refusal was affirmed by the Refugee Review Tribunal (RRT) (March 2000); a BV was granted (May 2000) resulting from inclusion in a High Court (HC) class action; the BV was cancelled under s 116 and Mr X was detained (October 2002).
6. Mr X applied for a BV, but withdrew the application (October 2002); another application for a BV was refused (November 2002); the BV refusal was appealed to the Migration Review Tribunal (MRT); the MRT affirmed the BV refusal decision (November 2002); a BV was granted following inclusion in a HC class action (January 2003); the HC remitted the matter to the Federal Court (FC) (June 2003); Mr X's application as a respondent to the class action was dismissed by the FC (February 2004); a s 417 request lodged with the Minister (March 2004); a BV was granted (April 2004); a further BV was granted (July 2004); BV cancelled under s 116 and Mr X was again detained (August 2004).
7. The s 417 request was refused by the Minister (November 2004); an application for judicial review of the RRT decision was lodged with the FC (January 2005); the FC transferred the matter to the Federal Magistrates Court (FMC) (February 2005) who dismissed the matter (May 2005); an appeal was lodged with the Full FC (FFC) seeking judicial review of the FMC decision (June 2005); the FFC dismissed the appeal (October 2005); an application for special leave to the HC to appeal the FFC decision was filed (October 2005) and dismissed (11 April 2006); a request under s 48B lodged seeking the Minister's discretion to make a further PV application (26 April 2006); the Department (DIMA) referred a request under s195A/197AB to the Minister for the possible consideration of her detention intervention powers (2 June 2006); the Minister declined to intervene (1 September 2006); the s 48B request was assessed as not meeting guidelines and finalised (15 September 2006).

Current immigration status

8. Mr X is an unlawful non-citizen in detention at Villawood IDF.

Removal details

9. DIMA advised that Mr X and his wife signed a request for voluntary removal on the understanding that removal take place after Ms Z has had an endoscopy. DIMA also advised that on 12 September 2006 it commenced removal authorisation under s 198 of the Act, and that Mr X and his wife have been provided with forms to assist them in completing passport applications and the request for removal.
10. DIMA further advised that Mr X and his wife signed a request for removal on 25 September 2006 and travel documentation was sent to the Indonesian Consulate the next day. Recent DIMA advice states that flight details have been confirmed with Mr X and Ms Z departing on Monday 13 November 2006.

Ombudsman consideration

11. The DIMA reports to the Ombudsman under s 486N were dated 10 May 2006 and 24 October 2006.
12. Ombudsman staff interviewed Mr X and his wife on 3 August 2006 at Villawood IDF with the assistance of an Indonesian-speaking interpreter.

Key issues

Health and welfare

13. The DIMA reports stated that Mr X has had no medical or management issues whilst in detention.
14. At interview with Ombudsman staff Mr X said that being in detention '*makes me crazy*', and he expressed concern that he '*might lose control of myself*'.

Attitude to removal


15. Mr X and Ms Z said that they would be prepared to go anywhere other than Indonesia as they believe that Christians and Chinese are victimised in Indonesia.

Other detention issues

16. Mr X said the food at Villawood IDF was always curry, which he thought was good for the Indian detainees.
17. Mr X said that the detention provider staff were all right if one was well behaved and as he and his wife respected staff they were in turn also respected.
18. With regards to DIMA, Mr X said that he could not voice an opinion, as '*they own the place*'. Both Mr X and his wife commented favourably about their DIMA case officer.

Ombudsman assessment/recommendation

19. Mr X has been in detention for about two and a half years, primarily due to ongoing litigation relating to his unsuccessful claim for a Protection Visa. The DIMA decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. There is no evidence available to the Ombudsman that would lead to a different conclusion.
20. The Ombudsman understands that there is no outstanding litigation that would prevent Mr X's removal from Australia. Mr X and his wife, Ms Z, have requested voluntary removal and this is due to take place on 13 November 2006. The Ombudsman makes no recommendations in this report.


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Dr Vivienne Thom
A/g Commonwealth and Immigration Ombudsman

10 November 2006
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Date