

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 111/06

Principal facts

Personal details

1. Ms X is aged 41 and is a citizen of Indonesia. Mr Z (see Report 110/06) is her husband of 22 years and is also an unlawful non-citizen currently detained at Villawood Immigration Detention Facility (IDF). Ms X and Mr Z have two sons aged 20 and 19, who live with their maternal grandmother in Indonesia.

Detention history

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

Visa applications

5. Ms 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 decision was appealed to the Refugee Review Tribunal (RRT) (September 1999) who affirmed the PV refusal (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 Ms X was detained (October 2002).
6. Ms X filed an order nisi application with the HC (November 2002); a BV application was refused; the BV refusal decision was appealed to the Migration Review Tribunal (MRT) who affirmed the 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); judicial review of the MRT decision sought in the FC, and an associated BV was granted (June 2003); the HC ordered the associated BV to be withdrawn (June 2003); BV was cancelled (August 2004) under s 116 and Ms X was again detained.
7. The FC refused the order nisi and dismissed the matter (November 2004); s 417 request sent to the Minister who refused the request (January 2005); an application was lodged with the Federal Magistrates Court (FMC) for judicial review of the RRT PV refusal decision (April 2005); the FMC dismissed the application (October 2005); appeal of the FMC decision to the Full FC (FFC) (November 2005) was upheld and the matter remitted back to the RRT (21 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 RRT again affirmed the earlier decision to refuse a PV (18 July 2006); a combined s 417 and s 48B request lodged (31 July 2006); the Minister declined to use her intervention powers (1 September 2006); s 417 and s 48B requests assessed as not meeting the guidelines (15 September 2006).

Current immigration status

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

Removal details

9. DIMA advised that Ms X and her husband signed a request for voluntary removal on the understanding that removal take place after Ms X has had an endoscopy. DIMA also advised that on 12 September 2006 it commenced removal authorisation under s 198, and that Ms X and her husband have been provided with forms to assist them in completing passport applications and the request for removal.
10. DIMA further advised that Ms X and her husband signed a request for removal on 25 September 2006 and that travel documentation was sent to the Indonesian Consulate the next day. Recent DIMA advice states that flight details have been confirmed with Ms X and Mr 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 Ms X and her husband on 3 August 2006 at Villawood IDF with the assistance of an Indonesian-speaking interpreter.

Key issues

Health and welfare

13. The DIMA report dated May 2006 stated that Ms X does not have any major health issues but had complained of stomach problems and toothache, for which she received dental treatment.
14. The DIMA report dated October 2006 stated that Ms X complained of stomach pain, and was referred to an external specialist who placed her on the public waiting list for an endoscopy and small bowel biopsy. The report also states that Dr A conducted a health check of Ms X and it is his professional opinion that she is fit to travel.
15. At interview with Ombudsman staff Ms X spoke of her stomach pains and said that she had been waiting four months to see a specialist doctor. Ms X said that being in detention makes her stressed and sick, and that she cannot eat. She commented that she was prescribed paracetamol and sleeping tablets for her complaints, and that while the sleeping tablets helped her sleep, they did not reduce her stress.

Attitude to removal

16. Ms X and Mr 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

17. Ms X said that she cried all the time, and that she and her husband now argued with each other, which has never happened before. She also commented that she did not like the food at Villawood IDF, which she thought was always curry. She said that she tried to eat a bit of the food, but that she vomits a lot and had lost four kilograms.
18. Both Ms X and her husband commented favourably about their DIMA case officer.

Ombudsman assessment/recommendation

19. Ms X has been in detention for about two and a half years, primarily due to ongoing litigation relating to her unsuccessful claim for a Protection Visa. The DIMA decision that Ms 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 Ms X's removal from Australia. Although Ms X indicated she wanted medical treatment before leaving Australia, DIMA has advised that she has been declared fit to travel. Ms X and her husband, Mr Z, have requested voluntary removal and this is due to take place on 13 November 2006. The Ombudsman makes no recommendations in this report.

V. Thom

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Dr Vivienne Thom
A/g Commonwealth and Immigration Ombudsman

10 November 2006

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Date