

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 075/06

Principal facts

Personal details

1. Mr X is aged 32 and is a citizen of Vietnam. His parents, three brothers and two sisters, live in Vietnam and he is still in contact with them.

Detention history

2. In August 1995, Mr X arrived in Australia. In November 2000, he was sentenced to five years imprisonment. He was released on parole on 19 February 2004 and detained under s 189(1) of the *Migration Act 1958* on the same day, and was then placed at Villawood Immigration Detention Centre (IDC). He was transferred to Baxter Immigration Detention Facility for ten days in April 2006 while Villawood IDC was temporarily closed.

Visa applications

3. Mr X entered Australia on a Student Visa (SV) (August 1995); granted another SV (June 1996); granted Bridging Visa (BV) (September 1998); granted Tourist Visa (TV) (December 1998); TV ceased (January 1999); granted BV, which ceased one week later (June 2000); granted BV (October 2001), which was valid for period of imprisonment, until February 2004.
4. Protection Visa (PV) application lodged and refused, applied and refused BV, another BV application deemed invalid (October 2004); Refugee Review Tribunal (RRT) affirmed decision to refuse PV (January 2005); Federal Magistrates Court (FMC) dismissed application for judicial review of RRT decision (July 2005); Full Federal Court (FFC) dismissed appeal against FMC decision (September 2005); applied for and refused BV (October 2005).
5. Section 417 requests initiated for the possible consideration by the Minister of her detention intervention powers (September 2005); submission prepared by the Department (DIMA), however this was not progressed as the earlier submission was ongoing (February 2006); BV request refused, second BV request deemed invalid (February 2006); s 417 submission declined (March 2006).

Current immigration status

6. Mr X is an unlawful non-citizen and is currently detained at Villawood IDC.

Removal details

7. DIMA advised that Mr X has no ongoing litigation and that there is no legal obstacle to his removal to Vietnam. In May 2006, the Vietnamese Consul issued a travel document for Mr X that is valid until 15 November 2006. In August 2006, DIMA commenced assessments on fitness to travel to facilitate his removal.

Ombudsman consideration

8. Two DIMA reports to the Ombudsman under s 486N, dated 8 March 2006 and 30 August 2006.
9. Ombudsman staff interviewed Mr X on 4 August 2006.
10. Ombudsman staff sighted a psychological summary report from Professional Support Services (PSS) dated 12 September 2006.

Key issues

Criminal history

11. DIMA advised that in November 2000, Mr X was convicted of supplying a prohibited drug and was sentenced to five years imprisonment. He served three years and three months before being released on parole in February 2004. At interview with Ombudsman staff, Mr X said that he became involved in drugs in his early twenties when he *'didn't know enough'*.

Health and welfare

12. Mr X said that he feels depressed and that he has trouble sleeping and *'thinking'*. He said that he saw a doctor and was prescribed sleeping pills and antidepressants. He said that he stopped taking these after a month, as he did not feel that they were effective.
13. Mr X stated that he stopped using heroin when he was imprisoned six years ago, and refused subsequent treatment through the methadone program. DIMA advised in March 2006 that Mr X was accommodated in an observation room at his request, as he had stated that he was a heroin addict and wished to withdraw from the drug. He spent one night in the room but showed no signs of withdrawal. Several days later he requested a change in sleeping medication to address headaches that he was experiencing. The PSS report notes that during this time Mr X advised the attending psychologist that he was not considering harming himself and was unwilling to discuss any other issues. Due to this, it was deemed not possible to complete any assessment or treatment intervention.

Attitude to removal


14. At the RRT hearing Mr X stated that he did not want to return to Vietnam, as he had provided some anti-government materials to a friend in Vietnam and feared that the government would persecute him on this basis. The RRT did not accept that Mr X faces a real chance of persecution if returned to Vietnam. Mr X said to Ombudsman staff *'if I am in trouble over there, who can I ask for help? ... I am tired of the whole thing ... I just want to go wherever. But I don't want any more trouble. I just want to live my normal life ... I don't care now, I'll even go back to Vietnam but I hope nothing happens to me'*.


Other issues

15. In August 2006, Mr X lodged a complaint with the Ombudsman's office that it took over four months for his request to be relocated from Stage 1 to Stage 2 within Villawood IDC to be approved. This complaint has been referred to DIMA and investigation is ongoing as at the date of this report.

Ombudsman assessment/recommendation

16. Mr X has been in detention for nearly two and a half years, primarily due to his ongoing litigation and his refusal to cooperate with the voluntary removal process. 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.
17. The Ombudsman understands that there is no outstanding litigation that would prevent Mr X's removal from Australia and that his removal is imminent. The Ombudsman makes no recommendations in this report.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date