

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 079/06

Principal facts

Personal details

1. Mr X is a single male aged 20. He is a citizen of Vietnam and some of his family continue to reside in Vietnam.

Detention history

2. Mr X arrived in Australia by boat in July 2003, was detained under s 189(2) of the *Migration Act 1958*, and placed in detention at Christmas Island Immigration and Reception Processing Area (IRPC). His sister was also detained at Christmas Island IRPC.

Visa applications

3. Applied for a Protection Visa (PV) (1 July 2003); refused by the Department (DIMA) (October 2003); refusal affirmed by the Refugee Review Tribunal (RRT) (April 2004); appeal to the Federal Court (FC) discontinued (July 2005).

Current immigration status

4. On 29 July 2005, the Minister exercised her public interest powers under s 195A and granted Mr X a temporary PV (TPV).

Removal details

5. DIMA did not explore Mr X's removal whilst he was in detention due to his ongoing litigation.

Ombudsman consideration

6. The DIMA report to the Ombudsman under s 486N was received on 22 July 2005.
7. Ombudsman staff interviewed Mr X by telephone on 14 September 2005.
8. Ombudsman staff sighted DIMA's submissions to the Minister (22 and 28 July 2005).

Key issues

Visa application

9. DIMA's submissions to the Minister outline the reasons why Mr X was granted a TPV. He was part of a group of Vietnamese individuals that arrived by boat in July 2003. The 53 individuals were all detained at Christmas Island IRPC and all but 12 were subsequently released from detention on substantive visas. Mr X was one of the 12 individuals who remained in detention. While some of the 53 persons were granted PVs after successful RRT appeals in the first instance, many were granted visas following remittal from the FC to the RRT. On remittal, the RRT found that publicity generated by third parties since arriving in Australia gave rise to a well-founded fear of persecution on the basis of imputed political opinion.
10. DIMA's submission states that the remaining Christmas Island IRPC detainees, including Mr X, had similar claims to the other Vietnamese arrivals who had already been granted PVs. The Minister decided to exercise her public interest powers under s 195A and granted Mr X a TPV.

Attitude to removal

11. In his interview with Ombudsman staff, Mr X expressed a fear of returning to Vietnam, believing that he would be persecuted because of his involvement in anti-government activity.

Health and welfare

12. Mr X did not have any significant health issues while in detention.

Community links

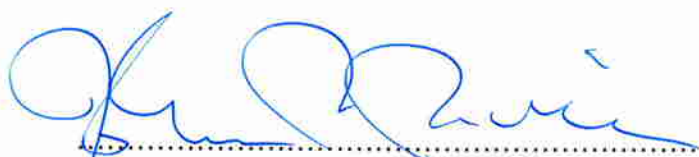
13. Mr X informed Ombudsman staff that he is receiving assistance from a church, including help with accommodation, an English course, and orientation into the community.
14. Mr X said that he would like to become a good, ordinary citizen, however he commented that he feels uncertain about his future.

Other detention issues

15. During his interview with Ombudsman staff, Mr X reflected on his time in detention on Christmas Island, commenting that he was generally treated well by DIMA staff and detention centre staff. He advised that the food and accommodation was generally acceptable. However, he mentioned that there was one incident where a young detainee had a birthday and the local community made a birthday cake for her. DIMA officials did not allow her to receive the cake and this surprised and disappointed some detainees and local people.

Ombudsman assessment/recommendation

16. Mr X spent just over two years in immigration detention, as a consequence of his pursuit of an application for a PV. He has been granted a TPV.
17. The only remaining issue that is relevant to this reporting function is that Mr X was granted a TPV, rather than a PV. The Ombudsman does not make a specific recommendation on this issue, as the Ombudsman does not presently have before him all the background information that is relevant to that decision. In part, too, the decision to grant a person a TPV can rest on considerations of government policy. However, the Ombudsman notes the uncertainty that is faced by people on TPVs and the negative impact this can have on their ability to settle into the community effectively. This adversity can be greater when a person has already spent a considerable period of time in immigration detention.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

22 September 2016
Date