

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 501/08

Principal facts

Personal details

1. Family A comprises Mr X aged 31, Ms Y aged 28, and their sons, B aged five and C aged four. They are all citizens of Indonesia.

Detention history

2. Family A arrived in Australia in November 2005 on an unauthorised boat. On 8 November 2005 they were detained under s 189(1) of the *Migration Act 1958* and placed in an apartment in Darwin. They were transferred to Christmas Island Immigration Reception Processing Centre and on 22 November 2005 were placed in Community Detention on Christmas Island. On 23 June 2007 the family were removed to Indonesia.
3. Family A re-entered Australia on 21 December 2007 on an unauthorised boat. They were detained the same day under s 189(3) and placed at Christmas Island Immigration Detention Centre (IDC). On 16 January 2008 the family were placed in Community Detention on Christmas Island.

Visa applications

First arrival

4. A s 197AB request was granted and Family A was placed in Community Detention (November 2005); lodged Protection Visa (PV) and associated Bridging Visa (BV) applications (November 2005), BV assessed as invalid, PV refused; appealed to the Refugee Review Tribunal (RRT) (December 2005), decision affirmed (March 2006); lodged s 417 request (May 2006), assessed as not meeting the guidelines for referral to the Minister (December 2006) but referred to the Minister on a schedule, the Minister declined to consider (January 2007); lodged s 417 request (January 2007, February 2007 and June 2007), assessed as not meeting the guidelines for referral to the Minister (February 2007 and June 2007); the Minister revoked the family's community detention arrangement to facilitate their removal (June 2007).

Second arrival

5. The Department (DIAC) assessed the family under the s 197AB guidelines, assessed as meeting the guidelines and the Minister placed the family in Community Detention (January 2008); DIAC commenced a Refugee Status Assessment (RSA) for the family (January 2008); initiated assessment under s 195A, assessed as not meeting the guidelines for referral to the Minister (April 2008); RSA assessed the family as not meeting Australia's protection obligations, sought review of the RSA decision (June 2008); further information received in relation to the RSA review and submitted a s 46A(2) request (October 2008), the Minister decided not to consider exercising his discretion under s 46A(2) (November 2008); RSA review ongoing.

Current immigration status

6. Family A are unlawful non-citizens detained in the community on Christmas Island.

Removal details

7. DIAC advises that removal action has been suspended until the outcome of the RSA review.

Ombudsman consideration

8. DIAC's reports to the Ombudsman under s 486N are dated 6 May 2008 and 24 October 2008.
9. Ombudsman staff interviewed Mr X and Ms Y on 13 August 2008 in the presence of their lawyer Mr Z. Ombudsman staff also spoke with Ms Y by telephone on 31 October 2008.
10. Ombudsman staff sighted the following documents: a health assessment from International Health and Medical Services (IHMS) for Mr X and a Mental State Examination (MSE) assessment for Mr X both dated 3 April 2006; progress notes from Professional Support Services (PSS) for Mr X dated between 28 April 2006 and 18 August 2006; a health assessment from IHMS for Ms Y dated 22 June 2007; a RSA decision record dated 3 June 2008; a medical summary report from IHMS for Ms Y dated 13 October 2008; a medical summary report from IHMS for Mr X dated 16 October 2008; and medical summary reports from IHMS for B and C both dated 17 October 2008.

Key issues

Health and welfare

11. DIAC advises that the Australian Red Cross (ARC) manages the care and welfare of Family A and since March 2008 IHMS has managed the health and medical needs of the family. Ms Y told Ombudsman staff that she is very happy with the support provided and the access to facilities.
12. The family's health was assessed by IHMS during their first arrival in Australia. The MSE of April 2006 described Mr X as being flat and resigned to his fate although no serious mental health issues were identified. PSS progress notes indicated that Mr X experienced *'elements of anxiety associated with the uncertainty of his situation, but said that he and his family are generally coping well'*. Ms Y's IHMS assessment prior to her removal from Australia noted that her mood was *'flat ... anxious, depressed ... exhausted ... anxious about the family, fearful of incarceration, worried about the future, e.g. Deportation'*.
13. The October 2008 IHMS report notes that Ms Y *'reports past traumatic experiences but declines any referral or follow up'*. The IHMS reports of October 2008 did not identify any significant medical issues with other members of the family.
14. Mr X said that on their second arrival the family were placed in Christmas Island IDC and they were the only people in the detention centre. Mr X said that this was a difficult period. Ms Y said that they were later placed in Community Detention but for a period of about five weeks the family was not allowed to leave the house and had food and necessary items brought to them. Ms Y explained that the isolation was difficult but since then they have settled in. Mr X also said that *'things have much improved with the kids'*.

Criminal history

15. DIAC advises that in October 2000 Mr X was convicted of attempting to smuggle people into Australia. He was sentenced to 18 months imprisonment and was released on a supervised release order on 20 March 2001.

Attitude to removal


16. The RSA decision outlined the refugee claims of Family A. Mr X explained that Indonesian authorities accused him of being involved in politics with West Papuans and if returned to Indonesia, he fears he will be arrested, interrogated, imprisoned and tortured. Mr X went into hiding and Ms Y said that during this period she was visited on numerous occasions by Indonesian authorities who asked about the whereabouts of her husband. The RSA stated that Ms Y *'claims that she fears that she would be arrested, beaten, assaulted, imprisoned and lose her children if she returns to Indonesia'*. Ms Y told Ombudsman staff that she becomes stressed when she thinks about returning to Indonesia. She said, *'what's most important is my safety and my family's safety'*.
17. The RSA accepted that Ms Y held a subjective fear of returning to Indonesia but that neither Mr X nor Ms Y would face a real chance of persecution for a Convention reason if returned to Indonesia.

Other detention issues

18. During interview with Ombudsman staff Mr X said that as they are in a community detention arrangement he and his wife cannot undertake paid work but are allowed to participate in voluntary work. DIAC advises that Mr X volunteers for a Neighbourhood Centre twice a week and that he will be attending English classes. Ms Y said that she volunteers once a week for the local charity shop and she has recently been approved to study English at night school. Mr X and Ms Y also said that they assist with community activities such as market days. They confirmed that B attends the local kindergarten Monday to Thursday and C attends a playgroup twice a week.
19. Mr X explained that DIAC have opened an account for the family at two stores where they are able to purchase day-to-day items. Mr X said that the amount allocated to the family is sufficient.
20. DIAC further states that *'The family have been assisted in locating an appropriate Mosque and Islamic organisations to support them in meeting their religious needs'*.

Ombudsman assessment/recommendation

21. Family A spent one year and seven months in immigration detention on their first arrival in Australia and 11 months on the second arrival. In total, the family have been detained for two and a half years most of which has been spent in Community Detention.
22. The DIAC decision that Family A does not qualify for protection has been reviewed and affirmed and the Ombudsman has no further comment on this matter. The Ombudsman notes that a RSA review is in progress.
23. The Ombudsman notes that if Family A remains in detention a further report under s 486N will fall due in May 2009. The Ombudsman will, at that time, review Family A's circumstances, considering again the impact of detention on them and the suitability of continued detention in an immigration facility. The Ombudsman makes no recommendations in this report.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman

15 December 2008
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Date