

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 509/09

Principal facts

Personal details

1. Ms X is aged 30 and is a citizen of New Zealand. Ms X married Mr Y, an Australian citizen, in April 2008. Ms X said her parents have died; she has three siblings, two of whom live in Australia and one in New Zealand; and she has never met her extended family in New Zealand.

Detention history

2. On 11 August 2004, Ms X was detained under s 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC). On 20 October 2005 Ms X was found to be affected by the *Johnson*¹ decision and her visa was reinstated. In September 2007 Ms X's visa was cancelled under s 501(2) and she was redetained and placed in Villawood IDC on 2 October 2007.

Visa applications

3. Ms X arrived in Australia at the age of one with her family, in September 1979. In July 2004 Ms X's Special Category Visa (SCV) was cancelled under s 501; appealed cancellation to the Administrative Appeals Tribunal (AAT) (August 2004); AAT affirmed the Department's (DIAC) s 501 cancellation decision (November 2004); lodged Protection Visa (PV), associated Bridging Visa (BV) application deemed invalid (December 2004); PV refused, the Refugee Review Tribunal (RRT) affirmed DIAC's decision (January 2005); s 417 request lodged (March 2005).
4. Ms X was convicted of theft and transferred to Mulawa Correctional Centre (March 2005); completed three months imprisonment, redetained and transferred to Villawood IDC (June 2005); lodged further BV request, deemed invalid (June 2005); s 417 request referred to the Minister who declined to intervene (August 2005); repeat s 417 request did not meet the guidelines for referral to the Minister (August 2005); ten s 417 requests were made on Ms X's behalf to the Minister during the period August to October 2005, all of which did not meet the guidelines for referral.
5. Ms X was deemed to hold an Absorbed Person Visa (APV) which had been incorrectly recorded as a SCV, APV reinstated and she was released from detention (October 2005); APV cancelled under s 501 (September 2007), Ms X was redetained; appealed cancellation of APV to the AAT which affirmed DIAC's decision (December 2007); appealed the AAT decision to the Federal Court (FC) (January 2008), FC reserved judgment (September 2008); Ms X's case was included in the Minister's review of long term detainees, ongoing.

Current immigration status

6. Ms X is an unlawful non-citizen detained at Villawood IDC.

¹ *Johnson v Minister for Immigration and Multicultural and Indigenous Affairs* [2004] FCA 137.

Removal details

7. DIAC advises that removal action will be progressed subject to the Minister's review of the s 501 caseload and Ms X's current litigation.

Ombudsman consideration

8. DIAC's report to the Ombudsman under s 486N is dated 15 October 2008.
9. Ombudsman staff interviewed Ms X on 19 November 2008 at Villawood IDC.
10. Ombudsman staff sighted a psychological summary report from Professional Support Services (PSS) dated 2 October 2008 and a medical summary report from International Health and Medical Services (IHMS) dated 10 October 2008.

Key issues

Criminal history and visa cancellation

11. Ms X's criminal record extends from 1993 to 2006, for crimes including theft and robbery, public mischief, larceny, using a weapon to avoid apprehension, resisting arrest, custody of an offensive implement, driving while disqualified from holding a licence, maliciously destroying or damaging property, breaking and entering, possession of equipment for administering prohibited drugs, possession of goods reasonably suspected of being stolen, resisting an officer in execution of duty, possessing prohibited drugs and custody of a knife in a public place.
12. The AAT decision record of 2007 noted that, although Ms X's offences were not '*within clause 2.6 of Direction No. 21 which identifies offences the government considers to be very serious*', the decision maker had '*no option but to find that the risk of recidivism is very high indeed and at all events, unacceptably high*'.
13. Ms X stated that when she was told her visa was cancelled she did not understand the implications as she thought she was a dual citizen.

Health and welfare

14. The IHMS report notes that Ms X '*has a history of diet controlled diabetes, chronic liver complaint and substance abuse*'. DIAC advises that Ms X '*has a history of drug induced psychosis, threatened self harm, behavioural outbursts and non-compliance with staff*, and has been on a methadone program for the past two years.
15. At interview with Ombudsman staff Ms X said that after being physically and sexually abused as a child she left the family home at the age of 11, became addicted to drugs and alcohol and '*lost myself*'. She said '*I battled for myself all this time, I pat myself everyday that I'm alive*'. However, Ms X stated that being on methadone '*takes the urges [for heroin] off me ... I like being clean, I like being able to understand things now*'.
16. The PSS report advises that Ms X '*reported that she engages in self-harm behaviour when she is upset by asphyxiating herself*'. IHMS advises that Ms X attempted self harm in May 2008 and was placed on Suicide and Self Harm observation for five days.

Attitude to removal

17. Ms X said that she considers Australia her home having lived in Australia since the age of one, and has no family or community links in New Zealand. She commented '*I can't go there with no money ... I can't go there and take Y there and be on the street*'.
18. The AAT decision of 2007 considered the hardship that might be suffered by her family and now husband, Mr Y, if Ms X was to be removed but concluded that she has minimal to no contact with her family and saw no reason why Mr Y could not follow Ms X to New Zealand. Ms X has advised the Ombudsman's office that her family in Australia has

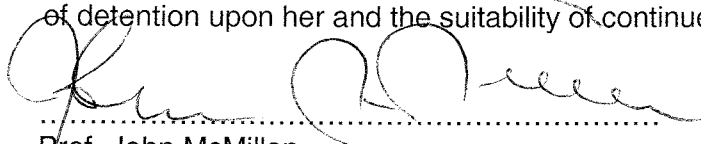
made contact with her and has offered her assistance if she is released from immigration detention.

Other detention issues

19. Ms X said that she learned to read and write in gaol and is *'trying to get Immigration to let me do a course because I've always done courses in gaol'*. She commented that she is bored every day and *'it's a lot better in gaol—you can do a lot more'*.
20. Ms X said she does not have regular contact with her DIAC case officer whom she perceived as wanting *'to deport us [New Zealanders]'*. She also said that she does not understand the difference between the role of her case officer and case manager.
21. Ms X said that if she was allowed to stay in Australia she would work to save money so that she and Mr Y could move *'out of Sydney'* and *'start afresh'*, and that Mr Y's parents would assist them to move interstate.
22. Ms X further stated *'I need to work, I want my job back, I want to work with trucks again, I want to work with forklift driving'*. She also said she wants to *'start helping kids that are in my kind of trouble'*.

Ombudsman assessment/recommendation

23. Ms X migrated to Australia at the age of one. She has lived in Australia for 29 years and has no ties to New Zealand. Ms X's visa was cancelled under s 501 because of her criminal record. The DIAC decision to cancel Ms X's visa has been reviewed and affirmed and she is currently seeking judicial review of the cancellation decision at the FC. The DIAC decision that Ms X does not qualify for protection has also been reviewed and affirmed. The Ombudsman has no further comment on this matter.
24. The Ombudsman notes that Ms X perceives that she does not have regular or meaningful engagement with her DIAC case manager. It may be that more regular engagement may assist DIAC's understanding of Ms X's circumstances.
25. Ms X has been in immigration detention for over two years and is awaiting the outcome of the Minister's s 501 review and a FC decision. The Ombudsman notes that if Ms X remains in detention a further report under s 486N will fall due in April 2009. The Ombudsman will, at that time, review Ms X's circumstances, considering again the impact of detention upon her and the suitability of continued detention in an immigration facility.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

12 February 2009
Date