

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 514/09

Principal facts

Personal details

1. Mr X is aged 56 and is a citizen of Indonesia.

Detention history

2. On 30 June 2001 Mr X was detained under s 189(2) of the *Migration Act 1958* and placed at the Northern Immigration Detention Facility (NIDF). In October 2001 he was convicted of people smuggling and sentenced to two years imprisonment. The Department (DIAC) advises that Mr X was held in criminal detention and that there is no evidence that he was granted a Bridging Visa (BV) E on the grounds of criminal detention or that he was granted a Criminal Justice Visa, therefore he is considered to have been in immigration detention until he was removed from Australia in June 2003.
3. On 30 September 2006 Mr X, using the alias Y, was apprehended as an Illegal Foreign Fisher, granted an Enforcement Visa (EV) and detained at the NIDF under s 189(1) on 7 October 2006 on expiry of the EV. He was convicted under the *Fisheries Management Act (FMA) 1991* (October 2006) and removed from Australia in November 2006.
4. On 7 August 2008 Mr X was apprehended on suspicion of illegal fishing and granted an EV. On 14 August 2008 he was detained under s 189(1) at the Darwin Correctional Centre on expiry of the EV. When DIAC database records, ISCE and ISIS, were merged it was discovered that Mr X had two previous visits to Australia under different names and that he had spent more than two years in immigration detention.
5. As a former holder of an EV Mr X was not able to be granted a BV on criminal detention grounds¹. He was charged with offences under the FMA, transferred to the NIDF for two days and removed from Australia in September 2008.

Visa applications

6. Mr X has not applied for any visas.

Removal details

7. Mr X was removed from Australia on 12 September 2008.

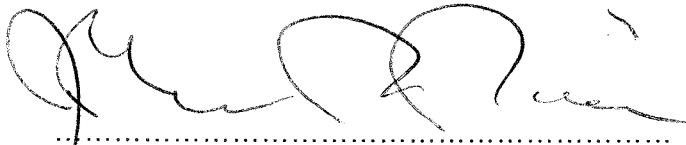
Ombudsman consideration

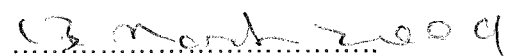
8. DIAC's report to the Ombudsman under s 486N is dated 24 September 2008.
9. Ombudsman staff were unable to interview Mr X.

¹ In September 2008, amendments were made to the *Fisheries Management Act 1991* that enables previous holders of an EV to be granted a BV if they are subsequently in criminal detention.

Ombudsman assessment/recommendation

- 10. The Ombudsman notes that the s 486N report was received after Mr X was removed from Australia and therefore was unable to interview him. The Ombudsman also notes that the s 486N report was required to be provided by 27 October 2006, however, DIAC was not immediately aware of Mr X's previous visits to Australia due to him using different identities.
- 11. Mr X has visited Australia on three occasions: in 2001 when he was imprisoned for two years for people smuggling; in September 2006 as an Illegal Foreign Fisher and removed two months later; and in August 2008 on suspicion of illegal fishing and detained. The Ombudsman notes that Mr X was removed from Australia on 12 September 2008 and makes no recommendations in this report.


.....
Prof. John McMillan
Commonwealth and Immigration Ombudsman


.....
Date