

# REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

*Under s 486O of the Migration Act 1958*

*Personal identifier: 521/09*

## **Principal facts**

### *Personal details*

1. Mr X is aged 48 and is a citizen of Vietnam. Mr X is in contact with his nineteen-year-old daughter who is an Australian citizen, and his mother who lives in Vietnam.

### *Detention history*

2. On 26 July 2006 Mr X was detained under s 189(1) of the *Migration Act 1958* after completing a criminal sentence and placed at Villawood Immigration Detention Centre (IDC).
3. Mr X was released from immigration detention on 24 July 2008 as a person affected by the Full Federal Court decision in *Sales*<sup>1</sup> and his visa was reinstated.
4. In September 2008 legislative amendments came into force validating the cancellation of Mr X's visa. Mr X was redetained and placed at Villawood IDC on 13 October 2008.

### *Visa applications*

5. Mr X arrived in Australia on a Vietnamese Refugee Program Visa (July 1988); granted a permanent Resident Return Visa (RRV) in December 1992; convicted of armed robbery and sentenced to five years imprisonment (May 1997); considered for deportation under s 200, warning issued (December 1998); RRV cancelled under s 501 due to criminal offence (January 2005); appealed cancellation at the Administrative Appeals Tribunal (AAT) (February 2005), AAT affirmed visa cancellation decision (May 2005).
6. Mr X lodged s 417 request, deemed invalid (August 2006); Protection Visa (PV) application refused (July 2007); Refugee Review Tribunal (RRT) affirmed refusal decision (September 2007); lodged fresh s 417 request (September 2007), assessed as meeting the guidelines and submission referred to the Minister (June 2008), submission included s 195A option which enables the Minister to grant a temporary visa so that Mr X can demonstrate reformed behaviour before being considered for a PV under s 417; submission was returned to DIAC unsigned as Mr X was released from detention (August 2008); Mr X's redetention submission updated, referred to the Minister and remains ongoing.

### *Current immigration status*

7. Mr X is an unlawful non-citizen detained at Villawood IDC.

### *Removal details*

8. DIAC advises that it is liaising with the Vietnamese authorities to obtain travel authorisation, subject to the outcome of Mr X's Ministerial Intervention request.

## **Ombudsman consideration**

9. DIAC's report to the Ombudsman under s 486N is dated 14 October 2008.

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<sup>1</sup> *Sales v Minister for Immigration and Citizenship* [2008] FCAFC 132 (17 July 2008).

10. Ombudsman staff interviewed Mr X on 19 November 2008 at Villawood IDC.
11. Ombudsman staff sighted a medical summary report from International Health and Medical Services (IHMS) dated 9 July 2008.

## **Key issues**

### *Criminal history*

12. Mr X's criminal record extends from 1989 to 2005, and he has served two periods of imprisonment on armed robbery and drug-related charges. The RRT decision record of September 2007 noted that Mr X had stated that all his periods of imprisonment were as a result of his drug addiction and that he had successfully completed a drug rehabilitation program in gaol.

### *DIAC's review of s 501 visa cancellations*

13. DIAC advised in May 2007 that its review of Mr X's case had been completed and that the Minister had decided not to intervene. Mr X was notified of this outcome in May 2007.

### *Health and welfare*

14. IHMS advises that Mr X is on a methadone program, anti-psychotic and sedative medications. It also advises that Mr X *'was last consulted by the psychiatrist on 3/7/08 where the impression was one of manic behaviour against a background of polysubstance dependence and personality disorder'*.
15. DIAC advises that *'Mr X has been assessed as "high risk" due to his criminal history and the number of violent incidences in which he has been involved'*.

### *Attitude to removal*

16. At interview Mr X stressed that he did not want to return to Vietnam as he did not support the Communist regime, which he said had confiscated all his parents' assets. He said *'I'd rather die here—I won't go back'*.
17. The RRT decision record noted that Mr X had stated that *'his daughter is in Australia ... he has not lived in Vietnam since 1986 and that he wants a chance to make a new start to his life in Australia'*. It noted that these matters *'are of a humanitarian nature'* but concluded that Mr X *'does not have a well-founded fear of being persecuted for a Convention reason in Vietnam'*.

### *Discharge issues*

18. Mr X said that on the day of his release he was told he was to be released, given one hour in which to pack his belongings and a taxi fare. He said he was given a letter in English which he could not read and commented *'I wasn't very clear what the reason I got released for'*.
19. Mr X has not lodged a formal complaint about not understanding the terms of his release but the Ombudsman's office has raised it with DIAC in the broader context of a number of people released and redetained as a result of the *Sales* decision and subsequent change in legislation. DIAC advises that *'the notice of release was fully explained to client via Vietnamese TIS [Translating and Interpreting Service] interpreter'*.

### *Post-release issues*

20. Mr X said that while in immigration detention he had been on a methadone program and anti-psychotic medication but was not given a prescription for anti-psychotic medication on his release in July 2008. He said he could not afford methadone from a chemist but attended a local clinic and was admitted to Banks House two weeks after his release, where he stayed for several days.

21. DIAC advises that on Mr X's release from Villawood IDC *'he was provided with a one week supply of all medications and a copy of his medication chart to assist his General Practitioner in the community'*. It also advises that arrangements were made for Mr X to have his doses of methadone for three days post-release at a local pharmacy, and that IHMS would facilitate his ongoing dosage at a local clinic. DIAC reports that Mr X did not present at the pharmacy as pre-arranged, and that IHMS contacted Mr X to reiterate the procedure for his ongoing methadone dosage and stressed the importance of attending the clinic.
22. Mr X said that during his release from detention he was determined not to resume his drug addiction and had refused offers of heroin. He said that when he informed his elderly mother of this decision, she *'managed to buy a cow—which is very expensive, to celebrate that I'm no longer using drugs'*. He also said he had resolved to reduce his methadone dependency and get a job.

*Redetention issues*

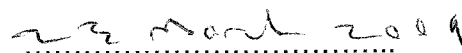
23. Mr X stated that he did not receive any warning from DIAC informing him that he may be liable for redetention. He said he was arrested in the early hours of the morning by six DIAC officers and two police officers who spoke in English which he could not understand. He said that *'the police officer was treating me very bad'* even though he tried to reassure the officers that he would not escape. He said that his girlfriend interpreted for him.
24. DIAC advises that a team of four DIAC officers and two NSW Police Constables attended Mr X's premises at 5.05 am. The team leader identified himself in English and referred to the letter Mr X received when he was released from Villawood IDC, which explained that the decision to release him could change. Mr X was presented with a new letter about the re-cancellation of his visa and the purpose of the visit was explained. He was told further interviews would be conducted at Villawood IDC with a Vietnamese interpreter. Mr X was given time to pack a small bag of belongings including his medication. The police constables then conducted a pat-down search of Mr X and escorted him to a DIAC van. Mr X was driven to Villawood IDC where an interpreter was engaged to explain the reasons for his redetention.
25. Mr X said he felt very stressed at the time, particularly as *'I wasn't doing anything bad ... like stealing or using drugs again'*.

**Ombudsman assessment/recommendation**

26. The Ombudsman notes that Mr X has resided in Australia for over 20 years. He has spent a total of four and a half years in gaol and two years in immigration detention. His permanent visa was cancelled in 2005 under s 501 and that decision was reviewed and affirmed by the AAT. Mr X also applied for a PV and was refused, and that decision was reviewed and affirmed by the RRT. The Ombudsman has no further comment on this matter.
27. Mr X is awaiting the outcome of his s 417/195A submission before the Minister. The Ombudsman notes that if Mr X remains in detention a further report will fall due in April 2009. The Ombudsman will, at that time, review Mr X's circumstances, considering again the impact of detention upon him and the suitability of continued detention in an immigration facility.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date