

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 290/07

Case overview

1. Mr X is aged 57 and is a citizen of Cuba.
2. In October 1980 Mr X arrived in Australia as the holder of a Humanitarian Entry Permit and was granted a Permanent Residence Visa (PRV) on entry. In January 2003 this visa was cancelled under s 501 of the *Migration Act 1958* on character grounds and Mr X was detained under s 189(1) and placed at Villawood Immigration Detention Centre. On 8 August 2005 he was granted a Removal Pending Bridging Visa and released from detention.
3. DIAC advises that Mr X was found by it to be affected by the decision in *Sales v Minister for Immigration and Multicultural Affairs* [2006] FCA 1807 (*Sales*). The *Sales* decision found that it was not reasonable to give a person with a long history of incarceration and drug or alcohol problems only two weeks to respond to a notice of intention to cancel under s 501. DIAC has set aside the cancellations of persons found to be affected by the *Sales* decision and in March 2007 Mr X's PRV was reinstated.

Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N is dated 3 December 2005.
5. Ombudsman staff interviewed Mr X on 28 April 2006.
6. Ombudsman staff sighted a letter from DIAC to the Ombudsman's office, dated 20 September 2007, on the outcome of a review of Mr X's case in response to the Ombudsman's report on long-term residents whose visas had been cancelled under s 501¹.

Key issues

s 501 Case Review

7. Mr X was identified by DIAC as a client who met the criteria for inclusion in the s 501 Case Review following its agreement to the Ombudsman's proposal at Recommendation 8 of the above mentioned report. DIAC determined that Mr X was affected by the *Sales* decision and re-instated his visa on 13 March 2007. DIAC also advises that the Minister decided on 4 July 2007 not to re-cancel Mr X's visa and he will be allowed to remain in Australia as a permanent resident.

Ombudsman assessment/recommendation

8. The Ombudsman notes that Mr X is now the holder of a PRV and makes no recommendations in this report.


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


.....
Date

¹ *'Administration of s 501 of the Migration Act 1958 as it applies to long-term residents'*, February 2006, Report by the Commonwealth and Immigration Ombudsman, Prof. John McMillan, Report No. 01/2006, Commonwealth Ombudsman, Canberra, Australia.