

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 342/07

Case overview

1. Mr X is aged 33 and is a citizen of Sri Lanka of Tamil ethnicity.
2. Mr X arrived by boat code-named the *Dulcot* at the Cocos (Keeling) Islands on 15 September 2001. He was detained under s 189(3) of the *Migration Act 1958* at the Cocos Islands Immigration Reception and Processing Centre (IRPC). In February 2002 he was transferred to Christmas Island IRPC and then to Perth Immigration Detention Centre (IDC), Port Hedland IRPC and Baxter IDC. On 22 July 2005 Mr X was granted a Removal Pending Bridging Visa and released from detention.
3. Mr X unsuccessfully applied for a Refugee and Humanitarian Visa in January 2002. The Department's (DIAC) decision in November 2002 to refuse Mr X's application for a Protection Visa (PV) was affirmed by the Refugee Review Tribunal in February 2003. He unsuccessfully sought judicial review at the Federal Magistrates Court, Full Federal Court and High Court. A request under s 48B resulted in the Minister allowing Mr X to lodge another PV application, and on 25 September 2006 he was granted a Temporary Protection Visa (TPV).

Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N is dated 28 October 2005.
5. Ombudsman staff interviewed Mr X on 6 March 2006.
6. Ombudsman staff sighted excerpts of DIAC's response to the Human Rights and Equal Opportunity Commission (HREOC) dated 12 May 2003, and 19 letters of support and character references indicating that Mr X had integrated well into the local community, obtained full-time employment and was playing A-Grade cricket.

Key issues

Issues relating to the Excision of the Cocos (Keeling) Islands

7. Mr X arrived two days before the excision of the Cocos Islands from the Australian migration zone, which took effect from midday 17 September 2001. DIAC advised that at the time, it thought that all those aboard the *Dulcot* who were seeking asylum were 'offshore entry persons' and not eligible to apply for a PV. It later became clear to DIAC that this was wrong. Details of a similar case are discussed in Report 201/07.

Other detention issues

8. The Cocos Islands IRPC, a former animal quarantine station, was reported by HREOC to be 'completely inappropriate for anything but initial health checks'¹.

¹ 'A Report on Visits to Immigration Detention Facilities by the Human Rights Commissioner 2001', 2002, Human Rights & Equal Opportunity Commission.

Attitude to removal

9. At interview Mr X stated that he feared for his life if returned to Sri Lanka, as he would be targeted for recruitment by the Liberation Tigers of Tamil Eelam (LTTE) and would also be suspected of LTTE involvement by the Sri Lankan Army.

Ombudsman assessment/recommendation

10. When Mr X first arrived in Australia, DIAC appears to have made an administrative error in classifying him as an offshore entry person from an excised zone. As a result, Mr X was prevented from making a PV application until one year after his arrival and detained at Cocos Islands IRPC for five months in conditions described by HREOC as inappropriate for ongoing detention.
11. In light of these considerations the Minister might consider exercising his discretion to waive the usual 30 month waiting period and allow Mr X to be considered for a PV.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date