

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 348/08

Case overview

1. Mr X is aged 42 and is a citizen of the Former Federal Republic of Yugoslavia. His partner, two children, parents, two brothers and sister live in Australia.
2. Mr X arrived in Australia with his parents in October 1970 and was granted permanent residence with his parents. In January 2003 the Minister cancelled Mr X's transitional Permanent Visa (PV) under the character provisions of s 501(2) of the *Migration Act 1958*. At the time Mr X was serving a sentence at the Grafton Correctional Centre. He was released from criminal detention in January 2003, detained under s 189(1) and placed at Villawood Immigration Detention Centre.
3. Mr X unsuccessfully sought judicial review of the Minister's decision to cancel his transitional PV at the Federal Magistrates Court and Full Federal Court (FFC). Mr X's application for special leave to appeal to the High Court (HC) was refused by the HC in April 2005. The Department (DIAC) refused Mr X's application for a permanent Protection Visa (PV) in August 2005. On 11 October 2005 Mr X was released from detention as a person affected by the decision of the FFC in *Nystrom*¹ and his transitional PV was reinstated. Following the HC's ruling in November 2006, which overturned the FFC's decision in *Nystrom*, Mr X remained in the community as an unlawful citizen. On 19 January 2007 Mr X was notified that the decision to cancel his visa had been revoked by virtue of the Federal Court decision, *Sales*².

Ombudsman consideration

4. The DIAC report to the Ombudsman under s 486N is dated 15 September 2005.
5. Ombudsman staff attempted to contact Mr X by telephone but he declined to be interviewed.
6. Ombudsman staff sighted a letter from DIAC to the Ombudsman's office, dated 24 July 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 501³.

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. The Minister decided to intervene in Mr X's case and reinstate his visa.


¹ *Nystrom v Minister for Immigration & Multicultural and Indigenous Affairs* [2005] FCAFC 121.

² *Sales v Minister for Immigration & Multicultural Affairs* [2006] FCA 1807.


³ '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.

Ombudsman assessment/recommendation

8. The Ombudsman notes that Mr X was released from detention in October 2005, and that his transitional PV was later reinstated by the Minister. The Ombudsman makes no recommendations in this report.



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



.....
Date