

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 296/07

Case overview

1. Ms X is aged 55 and is a citizen of Vietnam. She claims her father and two brothers live in Vietnam and that her four sons, two daughters and 11 grandchildren live in Australia and are Australian citizens.
2. Ms X arrived in Australia in March 1992 on a Spouse Visa that ceased in May 1996, when she was granted a five-year Resident Return Visa (RRV). Ms X was sentenced to two years imprisonment (November 2000). The Minister cancelled her visa under s 501 of the *Migration Act 1958* on character grounds (October 2002). She was released from criminal custody, detained under s 189(1) and placed at Villawood Immigration Detention Centre (IDC) (November 2002). She was released when the Federal Court (FC) set-aside the Minister's decision to cancel her RRV (November 2003). The Full Federal Court (FFC) allowed the Minister's appeal and the Minister cancelled her visa (September 2004). She was re-detained and placed at Villawood IDC (August 2005).
3. On 28 November 2006 Ms X was granted a RRV and was released from detention.

Ombudsman consideration

4. DIAC's report to the Ombudsman under s 486N is dated 10 August 2006.
5. Ombudsman staff interviewed Ms X on 29 September 2006.
6. Ombudsman staff sighted the following documents including: a psychological report from the Transcultural Mental Health Centre (TMHC) dated 16 December 2005; a Professional Support Services (PSS) report dated 13 September 2006; and a letter from DIAC to the Ombudsman's office, dated 2 July 2007, on the outcome of a review of Ms X's case in response to the Ombudsman's report on long-term residents whose visas had been cancelled under s 501 of the *Migration Act*¹.

Key issues

Health and welfare

7. The TMHC report noted that Ms X was suffering from depression, anxiety and residual symptoms of Post-traumatic Stress Disorder.
8. The PSS report noted that in January 2006 Ms X's mental health was deteriorating. She was admitted to Banks House of Bankstown Hospital from February to April 2006. Ms X was diagnosed with hypertension and Major Depression with psychotic features. DIAC arranged for Ms X to have weekly visits to her daughter's home from June 2006.

s 501 Case Review

9. Ms 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 concluded that its original


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.

cancellation decision of Ms X's visa was affected by jurisdictional error as the decision failed to consider the best interests of Ms X's grandchildren as a primary consideration.

10. The Minister decided to intervene and granted Ms X a substantive RRV under s 195A.

Ombudsman assessment/recommendation

11. The Ombudsman notes that Ms X is now the holder of a RRV and makes no recommendations in this report.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman

19 November 2007
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Date