

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 246/07

Case overview

1. Mr X is aged approximately 50, Ms Y approximately 43, Mr Z approximately 18 and Ms A approximately 20. They are citizens of Vietnam.
2. The X family arrived in Australia from Vietnam on Mr X's boat, the *B*, in July 2003 in the company of 49 other people from the same village. The group were detained under s 189(2) of the *Migration Act 1958* and placed at Christmas Island Immigration Reception and Processing Centre.
3. Mr X was arrested on people-smuggling charges in August 2003 and transferred to Hakea Prison in Perth. He was found guilty in March 2004, and was sentenced to five years imprisonment in May 2004. In March 2005, the WA Court of Appeal quashed his conviction and ordered a retrial. He remained in prison until June 2005 then transferred to alternative detention in July 2005. Mr X's retrial found him not guilty and he was acquitted in November 2005.
4. The Department's (DIAC) decision to refuse the X family's application for a Protection Visa in October 2003 was affirmed by the Refugee Review Tribunal (RRT) in April 2004. On appeal to the Federal Court (FC) the matter was remitted to the RRT, which decided in June 2005 that Mr X was a person to whom Australia has protection obligations. A subsequent request under s 195A resulted in the Minister granting Temporary Protection Visas (TPV) in July 2005 and releasing the family from detention.

Ombudsman consideration

5. The DIAC report to the Ombudsman under s 486N is dated 21 July 2005.
6. Ombudsman staff interviewed Mr X on 15 March 2006.
7. Ombudsman staff sighted submissions from refugee advocate Ms C.

Key issues

Attitude to removal

8. Mr X told Ombudsman staff that he and his wife remain very anxious about their future as their TPV is valid until July 2008 and he fears for their lives if returned to Vietnam. He said that his wife is very worried and has lost six to seven kilograms since they were granted a TPV.

Ombudsman assessment/recommendation

9. The Ombudsman notes that the X family are now the holders of TPVs and makes no recommendations in this report.



Prof. John McMillan
Commonwealth and Immigration Ombudsman



Date