

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 241/07

Case overview

1. Mr X is aged approximately 39, Ms Y approximately 40, Master Z approximately 15 and Master A approximately 10. They are citizens of Vietnam.
2. The X family arrived in Australia by boat in July 2003. They were detained under s 189(2) of the *Migration Act 1958* and placed at Christmas Island Immigration Reception and Processing Centre.
3. The Department's (DIAC) decision to refuse the X family's application for a Temporary Protection Visa (TPV) in October 2003 was affirmed by the Refugee Review Tribunal in April 2004. A request under s 195A resulted in the Minister granting TPVs on 28 July 2005 and the family was subsequently released from detention.

Ombudsman consideration

4. The DIAC report to the Ombudsman under s 486N is dated 21 July 2005.
5. Ombudsman staff interviewed Mr X and Ms Y together with two of Mr X's brothers, Mr B and Mr C (who are the subject of Reports 243/07 and 244/07 respectively), on 27 October 2005.

Key issues

Health and welfare

6. Ms Y told Ombudsman staff that while in detention her children cried a lot and asked '*why do we have to stay here when everybody else goes?*'
7. Ms Y further commented that she and Mr X were suffering from headaches due to their continuing concern over being removed to Vietnam.

Attitude to removal

8. Ms Y told Ombudsman staff that the family do not want to return to Vietnam as she fears that they will be persecuted by Vietnamese authorities because of their anti-communist beliefs, and '*will go to gaol*' or '*be killed*' if they are returned.

Issues outside of detention

9. At interview, the X family stated that they were aware that they had a visa for three years only and were not aware that as holders of a TPV, they were entitled to apply for a PV at the conclusion of 30 months, or earlier at the discretion of the Minister.

Ombudsman assessment/recommendation

10. 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



20 Feb 2007

Date