

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 227/07

Principal facts

Personal details

1. Mr X is aged 47 and is a citizen of France. The Department (DIAC) advises that he is not married and has no dependants.

Detention history

2. In March 2001 Mr X's Permanent Residence Visa (PRV) was cancelled under s 501 of the *Migration Act 1958* on character grounds. He was detained in July 2003, following the completion of his correctional sentence, and placed at Villawood Immigration Detention Centre (IDC). He was released from immigration detention in September 2005 on the basis of the Full Federal Court decision, *Nystrom and MIMIA* [2005]¹, that he may hold an Absorbed Person Visa by operation of s 34.

Visa applications

3. Mr X arrived in Australia in 1969 and was granted a PRV.

Current immigration status

4. DIAC advises that Mr X is unlawful in the community and will be detained prior to removal.

Removal details

5. DIAC advises that during his immigration detention, Mr X consistently refused to cooperate in obtaining travel documentation. It further advises that he is scheduled to be removed on 10 September 2007.

Ombudsman consideration

6. The DIAC report to the Ombudsman under s 486N is dated 28 July 2005.
7. Ombudsman staff attempted to contact Mr X at Villawood IDC and several times in the community but he has not responded.
8. Ombudsman staff sighted a psychological summary report from Professional Support Services (PSS) dated 7 July 2006 and a report from DIAC to the Ombudsman's office, dated 28 May 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 501 of the Act².

¹ *Nystrom v Minister for Immigration and Multicultural and Indigenous Affairs* [2005] FCAFC 121 (1 July 2005)

² *'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.

Key issues

Criminal history

9. DIAC advises that Mr X's criminal convictions included: break, enter and steal; break and enter with intent; resist arrest; stealing; and behaviour to cause a person to be seriously alarmed or affronted. He was fined for these offences and did not receive a custodial sentence.
10. In July 1997 Mr X was held in custody on a charge of manslaughter. He was convicted in February 2000 and sentenced to three years imprisonment with an additional term of three years.

Health and welfare

11. DIAC advises that Mr X was diagnosed with schizophrenia while in criminal detention. A psychologist reported Mr X *'having a personality disorder with the capacity to be violent and extremely dangerous. He is reported to have indicated that he has threatened harm to any person who attempts to remove him from Australia'*.
12. The PSS report noted that an on-site psychologist assessed Mr X in October 2003 and was unable to *'elicit any form of psychopathology'*. Mr X received ongoing supportive counselling and monitoring of his mental state from March to November 2004. It noted that *'Mr X did not engage in therapeutic work and it is noted that ongoing contact with the psychologist ... consisted of discussing topics that were dictated by Mr X. Barriers to any assessment and subsequent treatment included Mr X's refusal to be assessed and unwillingness to disclose personal information'*.

Attitude to removal

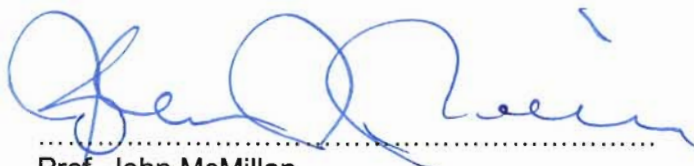
13. Due to Mr X's refusal to be interviewed, his attitude to removal is unknown.

DIAC's review of s 501 visa cancellations

14. In February 2006 the Ombudsman published a report on the application of s 501 as it applies to long-term residents. DIAC advises in May 2007 that its review of Mr X had been completed. It had determined that *'on balance, Mr X was not accorded the highest standard of procedural fairness (as defined and set out in the Ombudsman's report) in the process of the cancellation decision. However, the issues that have been identified are regarded as not serious enough to have led to a legal basis to set the visa cancellation decision aside'*. The Minister considered Mr X's circumstances and decided not to intervene. Consequently Mr X, whose whereabouts were unknown, remained unlawful in the community and removal action was to commence when he was located.

Ombudsman assessment/recommendation

15. Mr X has resided in Australia for 38 years. He was detained in July 2003 following the cancellation of his PRV on character grounds. The decision to confirm Mr X's visa cancellation has been made by the Minister and the Ombudsman has no comment to make on that matter.
16. The Ombudsman understands that there are now no outstanding matters that would prevent Mr X's removal from Australia and that his removal is imminent. The Ombudsman makes no recommendations in this report.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date