

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 115/06

This is the combined second and third s 486O report by the Ombudsman on Mr X as he has remained in immigration detention since the Ombudsman's first report (26/06). The Ombudsman's first report was sent to the Minister on 9 January 2006 and tabled in Parliament on 29 March 2006. This report updates the material in that report and should be read in conjunction with it.

Principal facts

Visa applications

1. A s 195A submission was generated by the Department (DIMA) and given to the Minister for the possible consideration of her detention intervention powers (October 2005); the submission was returned to DIMA for updating (26 January 2006) and returned to the Minister (21 March 2006); the submission was put on hold pending the outcome of DIMA's consideration of the Ombudsman's own motion report into s 501 (March 2006).¹

Current immigration status

2. Mr X is currently detained at the Baxter Immigration Detention Facility (IDF) where he has been since 27 October 2003.

Removal details

3. DIMA advised that a travel document was obtained from Hanoi in May 2006, however removal plans are on hold as Mr X is subject to DIMA's review of s 501 visa cancellations. The DIMA submission to the Minister noted that '*negotiations are continuing with the Vietnamese authorities ... in relation to the issue of travel documentation*'.

Ombudsman consideration

4. Two further reports from DIMA to the Ombudsman under s 486N were dated 13 January 2006 and 7 July 2006.
5. Ombudsman staff interviewed Mr X by telephone on 29 September 2006.
6. Ombudsman staff sighted a number of documents: the DIMA submission to the Minister dated 27 March 2006 accompanying the Ombudsman's previous s 486O report; a medical summary report from International Health and Medical Services (IHMS) and a psychological summary report from Professional Support Services (PSS) dated 20 and 24 October 2006 respectively; and numerous letters of support.

Key issues

Health and welfare

7. The second s 486N report (January 2006) brought attention to information that had not previously been disclosed in the initial s 486N report (August 2005). The report noted that

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.

in June 2005, a mental state examination had been carried out by a mental health nurse in response to Mr X spending a lot of time in his room and reporting auditory hallucinations. Mr X was referred to a psychiatrist during this time, however he refused treatment until 30 July 2005. During this assessment Mr X was diagnosed with generalised anxiety and the mental health nurse was instructed to observe for signs of depression during weekly review sessions. Mr X was referred to PSS after being forcibly transferred to Red One compound after several incidents. The PSS report notes that Mr X has been regularly accessing the Baxter IDF mental health services. It noted that he has been *'exhibiting higher levels of anxiety relating to his long term detention'* and has been provided with supportive counselling and mental health intervention to treat this anxiety. At interview with Ombudsman staff, Mr X said that he feels *'crazy in the head'*, however he has elected not to take medication to treat his anxiety.

8. The IHMS report notes that *'Mr X's anxiety would most likely be better managed in the community as the length of time that he has spent in detention is a major cause of this'*.
9. DIMA reports that Mr X continues to participate in recreational, religious and educational opportunities.

Attitude to removal

10. Mr X stated that he does not want to return to Vietnam as he left when he was 13 and does not know anyone there. He wishes to remain in Australia and reconnect with his father, partner and stepdaughter.


Community support

11. Ombudsman staff received numerous letters of support for Mr X attesting that he has rehabilitated, is of good character and will be well supported if released into the community.

Ombudsman assessment/recommendation

12. In Report 26/06, the Ombudsman recommended that the Minister consider granting Mr X a Removal Pending Bridging Visa, noting *'Mr X does not appear to pose a current threat to the Australian community; he has strong family and community ties in Australia; it seems unlikely that he would abscond or be difficult to locate; he has already spent over two years in immigration detention in addition to that time already spent in serving out his sentence; and that continued indefinite detention could impact adversely on Mr X's mental and physical health'*. The Minister's *Statement to Parliament* (29 March 2006) noted that she was not inclined to grant a visa at that time but that the option would be kept under review.
13. Mr X's visa cancellation is being reviewed as part of the review of s 501 decisions in response to the Ombudsman's own motion report. DIMA has undertaken not to remove Mr X while he is subject to this review.
14. Mr X has now been in detention for over three years and new information available to the Ombudsman indicates he has been accessing Baxter IDF's psychological services for nearly two years to manage his anxiety. Recent psychological advice indicates that his ongoing detention is impacting on Mr X's mental health. The Ombudsman understands that DIMA is progressing, as the highest priority, the s 501 reviews of people who remain in detention and it may be that a decision in relation to Mr X is imminent. If, however, final resolution of his immigration status is to be subject to any further delays, the Ombudsman **recommends** the Minister use her powers under s 195A to grant Mr X a Bridging Visa with work rights, while his immigration status is resolved. The Ombudsman considers that, in light of the concerns about Mr X's mental health and the length of his detention, the case for releasing Mr X is now more compelling than at the time of completing Report 26/06.

15. The Ombudsman notes that if Mr X remains in detention, a further report under s 486N will fall due in January 2007. The Ombudsman will, at that time, review Mr X's circumstances, considering again the impact of detention upon his health and the suitability of continued detention in an immigration detention facility.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman

20 December 2006
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Date