

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 116/06

Principal facts

Personal details

1. Master X is 16 years old and a citizen of Vietnam. He lives with his parents, older sister and grandmother in Australia.

Detention history

2. In July 2003, Master X arrived in Australia by boat with his family. The Department (DIMA) detained him under s 189 of the *Migration Act 1958* and placed him at Christmas Island Immigration Reception and Processing Centre (IRPC).

Visa applications

3. Master X entered Australia (July 2003); included on parents' Protection Visa (PV) application (July 2003); refused (October 2003); the Refugee Review Tribunal (RRT) affirmed the refusal (April 2004); applied to the Federal Court (FC) seeking judicial review of the RRT decision (May 2004); matter remitted back to the RRT (February 2005); RRT application successful (May 2005) and Master X granted a Temporary Protection Visa (TPV) (July 2005).

Current immigration status

4. Master X resides in the community on a TPV.

Removal details

5. DIMA advised that at no point during his detention period was Master X available for removal.

Ombudsman consideration

6. DIMA's report to the Ombudsman under s 486N is dated 21 July 2005.
7. Ombudsman staff interviewed Master X on 18 November 2005 in Melbourne in the presence of a family friend and with the assistance of an interpreter. Ombudsman staff also spoke with his father, Mr Y, by telephone on 21 February 2006, as Mr Y had been unable to attend the interview with his son.
8. Ombudsman staff sighted a report from social worker Mr A of Foundation House, dated 13 September 2006.

Key issues

Visa issues

9. Master X was one of a group of fifty-three Vietnamese individuals who arrived by boat in July 2003, and were detained at Christmas Island IRPC. All but twelve of the group were subsequently released from detention on substantive visas. Master X was one of the twelve who remained in detention until mid 2005. While some of the fifty-three persons were granted PVs after successful RRT appeals in the first instance, many were granted visas following remittal from the FC to the RRT. On remittal, in this case, the RRT found *'the arrival of the applicant's group in Australia attracted national and international media*

coverage. Since then the group has been at the centre of a campaign of telephoning and writing to the media publicising their identities, their leaflet activities and their criticism of the Government of Vietnam. There is evidence that Vietnamese authorities may monitor such activities'. Consequently 'the applicants may have an imputed political opinion as a result of events since their arrival in Australia ... the Tribunal is satisfied that there exists a real chance that the Applicants may be subject to harm of a kind outlined in the country information, that is, they may be subject to imprisonment or physical abuse on charges of spying or political disaffection by reason of association with persons and expressions of ideas considered to be antithetical to the Communist Party of Vietnam'. On 24 June 2005, his family were granted TPVs. Due to delays in completing the required health checks, Master X was not granted his TPV until 8 July 2005.

10. Section 486O requires the Commonwealth Ombudsman to conduct an assessment into the circumstances relating to the immigration detention of any person who had been in detention for more than two years, as at 29 June 2005. Master X falls into this reporting category, however the remaining members of his family do not. As Master X is still a minor Ombudsman staff also spoke with his father, Mr Y.

Health and welfare

11. At interview with Ombudsman staff, Master X said that he felt continually 'frustrated' and unable to relax during his detention. He saw a psychologist during this time, however he did not feel that he benefited from this. Master X said, 'I am a young one, and I can leave the detention centre and go outside to have activities outside, and it can be easier for me than for my mum and dad, but if I had to stay much longer, a few more years, I think my head would explode – boom!'
12. Mr Y stated that he also saw a psychologist in detention, and now that he is in the community he continues to attend regular sessions with a social worker from Foundation House to manage ongoing headaches and 'obsessive thinking'. He said that his wife is suffering from similar problems. The Foundation House report notes that Mr Y 'exhibits symptomatology consistent with a depressive illness and post traumatic stress disorder'. It further notes that his symptoms include dysphoria, depression, sleeplessness and nightmares. The Foundation House report notes that Mr Y seems to demonstrate a 'preoccupation' with his detention experiences, and that he has actively availed himself to a range of human service professionals and medical practitioners to help him manage the trauma he has experienced. It further notes that he requires ongoing treatment and psychosocial support for the future.
13. Both Master X and his father expressed concern about the uncertainty of being on a TPV. Master X said 'now that my visa is a temporary visa and it will be reviewed after three years I worry'. Mr Y said 'I never stop thinking about this - when will I have a permanent visa ... so that I can feel safe ... I was afraid if anything happens, something goes wrong with my application ... and I am returned to Vietnam, I think my life would end at that point in time'. The Foundation House report notes that Mr Y has an 'abiding concern for his family's safety', and exhibits anxiety when discussing his family's possible return to Christmas Island or Vietnam.

Attitude to removal

14. At interview Master X appeared uncomfortable discussing how he felt about returning to Vietnam, however he stated that it was a good idea to leave. He said he is happy now that he is in Australia.
15. Mr Y does not want his family to return to Vietnam. He stated at interview, 'after the fall of Saigon back in 1975, the family was quite ill treated by the new regime - the Communist party. After taking over the Government, certain rights of a citizen were stripped ... life was hell as a result of that ... [we decided we would] escape to another country to look for

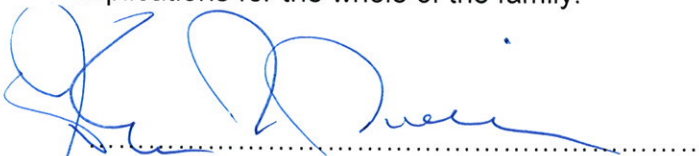
a better future'. On remittal, the RRT accepted that the family has a well founded fear of persecution if they were to return to Vietnam.

Other detention issues

16. Master X stated that there was a 'lack of freedom' at Christmas Island IPRC, and he was unable to play regular sport or participate in other recreational activities. Master X and the other children in detention were given permission to leave the detention centre and go to school. He stated that he was treated well by the local people on the island. As English classes were only available to adults in the detention centre, he used a dictionary while at school to understand his classes.
17. Master X said that his family had good access to doctors and medical treatment while in detention. His father said that the guards were generally good and the detainees were able to grow vegetables. With regard to the food in detention, Mr Y stated '*at the beginning the food didn't suit our taste, but gradually we were able to arrange with the cook to change the cooking way and the outside organisations were able to bring food in from outside, so gradually the food became very acceptable*'.

Ombudsman assessment/recommendation

18. Master X spent approximately two years in immigration detention, primarily as a result of his family's unsuccessful pursuit of protection visas. Master X has been granted a TPV (July 2005), which entitles him to reside in Australia for 36 months, and to be considered for another visa at the conclusion of 30 months, or earlier at the discretion of the Minister.
19. The main issue that is relevant to this reporting function is that Master X was granted a TPV, rather than a PV. The Ombudsman does not have available to him all the background information that was relevant to this decision. The Ombudsman notes, however, that Master X spent two years in detention at a young age and this has caused considerable disruption to his life. It is now settled Government policy that it is unacceptable to detain children in immigration detention facilities, particularly for lengthy periods of time. Master X is now settling into school and life in Australia but the uncertainty around the TPV continues to concern him and place his future 'on hold'. The reports indicate that his father's mental health has deteriorated and his mother has also reportedly experienced problems since the family's release from detention. It is to be expected that the parents' health concerns would be having a negative impact on the well being of the family, including Master X. A PV would reduce Master X's anxiety about his future and assist him to move on with his life. The Ombudsman **recommends**, in accordance with the 'best interests of the child' principle, that the Minister consider waiving the thirty month waiting period to allow Master X to apply for a permanent visa. The Ombudsman acknowledges that acceptance of this recommendation would have implications for the whole of the family.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date