The Hon Chris Bowen MP
Minister for Immigration and Citizenship

Mr Dick Smith
PO Box 418
TERREY HILLS NSW 2084

Dear Mr Smith

Thank you for your letter dated 25 November 2010, regarding Mr Ali Al Jenabi.

As you are aware Mr Al Jenabi is the holder of a Removal Pending bridging visa (RPBV). He has held this visa since February 2008 when it was granted to him by the former Minister, Senator the Hon Chris Evans. Mr Al Jenabi was granted the RPBV following the former Minister's personal decision to refuse Mr Al Jenabi a Protection visa. The decision to refuse the Protection visa application was based on Mr Al Jenabi's conviction for people smuggling.

In granting the RPBV, Senator Evans acknowledged, in a media release dated 7 February 2008, that continued indefinite detention was an unacceptable solution. I have included a copy of the February 2008 media release for your information.

Whilst I acknowledge that the circumstances of his convictions were at the time somewhat controversial, I do not believe it is appropriate at this time to consider a permanent visa for a person convicted of people smuggling offences.

Officers of my Department continue to engage with Mr Al Jenabi as a condition of his RPBV.

I trust the information provided is helpful.

Yours sincerely

CHRIS BOWEN

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Media release

Senator Chris Evans

Leader of the Government in the Senate
Minister for Immigration and Citizenship

013.08
2008

7 February

Minister refuses protection visa for people smuggler

The Minister for Immigration and Citizenship, Senator Chris Evans today refused an application for a Protection visa by an Iraqi asylum seeker convicted and jailed for people smuggling.

Senator Evans said he had refused the application by Ali Al Jenabi on character grounds due to the serious nature of his crime.

"The Rudd Government deplores people smuggling. It is a heinous crime that puts lives at risk, undermines Australia's border security and weakens our immigration system," Senator Evans said.

"For those reasons I have refused Mr Al Jenabi's application for a Protection visa on character grounds."

Australia has protection obligations to Mr Al Jenabi under the *Refugees Convention* which means he cannot currently be returned to Iraq.

Senator Evans said to avoid holding Mr Al Jenabi in indefinite detention he had granted Mr Al Jenabi a Removal Pending Bridging visa.

"Indefinite detention is an unacceptable option," Senator Evans said.

Mr Al Jenabi has spent almost 20 months in limbo in the Villawood Immigration Detention Centre after serving four years of an eight year prison term in Darwin.

He was transferred to Villawood after being released from prison in June 2006 when he then made an application for a Protection visa.

The former Minister failed to deal with Mr Al Jenabi's application within the required 90 day timeframe and the matter became subject to protracted litigation.

Senator Evans said that while people smuggling was an abhorrent crime, Mr Al Jenabi could not be detained at Villawood indefinitely and the matter had to be resolved.

"The previous Government put Mr Al Jenabi's case in the too hard basket and failed to deal with it for 18 months despite being required to make a decision within 90 days," Senator Evans said.

"In fact, the Federal Court described the former Government's indecision on the matter as an 'egregious failure by the (then) minister'."

Senator Evans said that although Australia had protection obligations to Mr Al Jenabi, the serious nature of his crimes had to be balanced with those obligations.

"Mr Al Jenabi's people smuggling activities showed a blatant disregard for Australian law," Senator Evans said.

"His conduct in repeatedly bringing boatloads of illegal immigrants into Australia, the expectations of the Australian community that a person who commits crimes of this nature not be rewarded with a visa, and the general deterrence factor in discouraging others from engaging in similar conduct weigh heavily against Mr Al Jenabi."

Senator Evans said he was seeking legal advice on how best to strengthen the provisions for dealing with people smugglers in the *Migration Act* and the seriousness with which the offences are considered for the purposes of the *Refugees Convention.*

Mr Al Jenabi was extradited from Thailand to Australia on 22 February 2003 to face charges under the *Migration Act* of facilitating the bringing into Australia of a group of five or more people, knowing they would become, upon entry to Australia, unlawful non-citizens.

He was convicted in September 2004 and sentenced to eight years' imprisonment for the first count and six years for the second charge with a non-parole period of four years, backdated to June 2002.