

**REPORT FOR TABLING IN PARLIAMENT BY THE
COMMONWEALTH OMBUDSMAN**
Under s 486O of the Migration Act 1958

Personal identifier: 033/06

Principal facts

Personal details

1. Mr X is a male, aged 44. He claims that his wife and two children are deceased and his parents reside in India. He does not know their exact location and claims that he has asked DIMIA to try to find them.

Detention history

2. Mr X was detained on 23 March 2002, after he was returned to Australia without a valid travel document. He has been placed in Villawood Immigration Detention Centre (Villawood IDC) since that time.

Visa applications

3. Prior to his entry in March 2002, Mr X travelled to Australia on a tourist visa in July 2000. In August 2000, he sought a Protection Visa (PV), which was refused by the Department (DIMIA) in September 2000. The Refugee Review Tribunal (RRT) affirmed DIMIA's decision in January 2002. Mr X departed Australia in March 2002 and attempted to enter Malaysia on a false passport. He was refused entry and returned to Australia; he was detained on arrival. In November 2002, Mr X lodged his second PV application. DIMIA refused this application in the same month and the RRT affirmed DIMIA's decision in January 2003. Mr X's appeal against the RRT's decision to the Federal Magistrates Court was dismissed in July 2003, as was his appeal to the Federal Court in November 2003. Several s 417 requests were made to the Minister in October 2002, July 2004 and December 2004. All requests were refused. In December 2005, the Minister declined to exercise her detention intervention powers.

Current immigration status

4. Mr X is currently detained in Villawood IDC, as an unlawful non-citizen.

Removal details

5. DIMIA has advised that Mr X has been uncooperative with the removal process, in that he has refused to complete the necessary travel documentation. DIMIA reports that the Indian Consulate will not issue a travel document without a completed form.

Ombudsman consideration

6. The DIMIA report to the Ombudsman under s 486N was dated 14 September 2005 (received 29 September 2005).
7. Ombudsman staff interviewed Mr X at Villawood IDC on 14 October 2005, in the company of a fellow detainee.
8. The Ombudsman has been provided with the following medical reports: a psychology report from a former Villawood IDC clinical psychologist, dated 3 August 2004; a psychology summary report from Professional Support Services (PSS), dated 28 October 2005; and a medical summary report from International Health and Medical Services (IHMS), dated 31 October 2005.

Key issues

Health and welfare

9. During his interview with Ombudsman staff, Mr X listed a number of physical and mental health problems including loose teeth, pain in his knees, aches in his legs, back and chest, numb fingers, and stress. He states that he has seen the doctor about these problems, but claims that the psychologist won't talk to him despite his numerous requests. His access to medical services is the subject of a current complaint with this office. In an earlier complaint, the Ombudsman concluded that DIMIA had facilitated reasonable access to medical assistance in relation to his physical problems.
10. The PSS report dated 28 October 2005 states that a psychologist first saw Mr X in March 2004, with his most recent session being in October 2005 (though sessions in 2005 have been sporadic). No full psychological assessment has been done on Mr X to enable a diagnosis to be made, but PSS advised that Mr X presents with '*some psychosomatic symptoms*' and '*significant aggressive and behavioural issues*'. It is also stated that '*Mr X's attitudes towards his behaviour is poor. He appears unable to take responsibility for himself and externalises this to other factors and people. These difficulties prevent Mr X from engaging with PSS staff to improve his behaviour in the centre. As such, the prognosis for improvements in his behaviour is poor*'.
11. The psychology report dated 3 August 2004 stated that Mr X '*has sought psychological help to resolve some of the past negative life experiences he has faced ... [E]xamination reveals signs and symptoms of mild to moderate clinical depression. The symptom profile shows biological disturbances, psychosomatic problems, low self-esteem and deterioration in his coping abilities*'. The report goes on to say that such symptoms stemmed '*mainly from the long-term detention and the perceived uncertainty of his future*'.
12. The IHMS report dated 31 October 2005 details Mr X's medical problems as: lower back pain, depression, burn to lower left leg and abnormal blood sugar levels, all of which are being treated and monitored. It mentions that Mr X's medical condition is manageable '*within the detention centre environment*'.

Attitude to removal

13. Mr X has expressed concerns to DIMIA and Ombudsman staff about returning to India, believing he will be the target of hired assassins. In his claim for a PV, he stated that police and an opposition group persecuted him due to his association with the Sikh Student Federation. He claimed that he was arrested in 1983 and, upon release, relocated from Punjab to New Delhi. However, the alleged persecution continued. Mr X moved to the Middle East in 1984 but made several return trips back to India. Mr X claims that the persecution did not end when he left India and stated that security forces murdered his wife and two children in 1997 while he was overseas.

Other detention issues

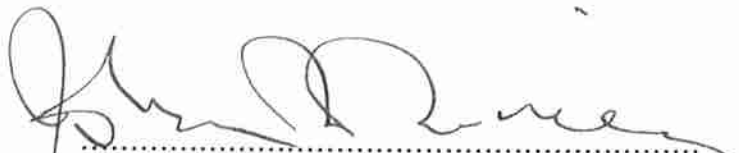
14. Mr X raised a number of concerns about the detention environment. These include: the limited opening times of the medical centre; access to a doctor; refusal to give detainees body cream; the wastage of food by the detention service provider, which could be avoided by allowing detainees to cook their own food; the lack of assistance from detention service provider officers; and the lack of contact from DIMIA case officers.

Ombudsman assessment/recommendation

15. Mr X's applications for refugee status have been well tested in the RRT, the Federal Magistrates Court and the Federal Court of Australia. He was found not to have a

well-founded fear of persecution for a Convention reason. The Ombudsman has no comment to make on this matter.

16. The issue for present consideration is whether Mr X's detention arrangements are appropriate and whether he should remain in a detention centre environment. Mr X has been in a detention centre for over three years, which is recognised in this process to be a significant time. Factors that have contributed to the length of Mr X's detention include his unsuccessful efforts to obtain a PV by pursuing appeals with the RRT and the courts and his refusal to complete a travel document application. It is not clear from DIMIA's report how persistent DIMIA has been in negotiating his removal with the Indian Consulate. As matters currently stand, Mr X does not have any outstanding immigration matters and thus the only thing preventing his removal is the absence of a travel document. It is not clear at this time when a travel document will be obtained by DIMIA, and therefore there is no certainty in Mr X's potential removal date.
17. Recent medical information indicates that Mr X presents with psychosomatic symptoms and has demonstrated signs and symptoms of mild to moderate clinical depression in 2004, the latter being attributed in part to his long-term detention. Medical information available to the Ombudsman suggests that the possibility of his health further deteriorating if he remains in a detention centre is high, especially considering the uncertainty in his removal situation.
18. The length and indefinite nature of Mr X's detention is a matter of concern, independently of the explanation for his status being unresolved. There is, on the other hand, a risk of Mr X absconding if released from detention, and a possibility that his removal from Australia would take much longer. Mr X's case is due for reconsideration by the Ombudsman in a short while under s 486O of the Migration Act. If there is no further development in Mr X's case at that time, the Ombudsman will consider recommending that he be released from detention on a Removal Pending Bridging Visa or that an alternative detention arrangement in the community be made. In reconsidering Mr X's case, the Ombudsman will also seek from DIMIA a detailed report on the efforts being taken and difficulties being encountered in a travel document being obtained for Mr X from the Indian Consulate.



Prof. John McMillan
Commonwealth and Immigration Ombudsman

7 June 2006
Date