

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 059/06

Principal facts

Personal details

1. Mr X is a 42-year-old citizen of Turkey. He is married to Mrs Y, an Australian Citizen. His former wife and two children (aged 18 and 21) reside in Turkey.

Detention history

2. Mr X has been detained under s 189(1) of the *Migration Act 1958* on three separate occasions. On 6 April 1998, Departmental (DIMA) officers detained Mr X, and kept him in an interview room on Immigration premises after his application for a bridging visa (BV) was refused on character grounds. He escaped from these premises the same day. On 4 May 1998, he was located at a residential address, and taken to Maribyrnong Immigration Detention Centre (IDC). He escaped from there on 23 October 1998. On 22 January 2004, DIMA officers located Mr X working illegally in Griffith, re-detained him at the Griffith Police Station, and transferred him to Villawood IDC the next day, where he remains.

Visa applications

3. Arrived in Australia on a Visitor Entry Permit (May 1988); visa expired (July 1988); Extended Eligibility Temporary Entry Permit/Permanent Entry Permit after Entry application refused (January 1995); decision affirmed by the Immigration Review Tribunal (November 1996); BVs held between June 1997 – April 1998; BV refused on character grounds pursuant to s 501 (April 1998); a further nine BVs were refused; appeals to the Migration Review Tribunal unsuccessful; Protection Visa (PV) refused (June 1998); decision affirmed by the Refugee Review Tribunal (RRT) (August 1998); appeal to the Administrative Appeals Tribunal denied on the basis that Mr X could not proceed with the application (Mr X could not be located after his escape from Maribyrnong IDC in October 1998) (December 1998); application seeking judicial review with the Federal Court (FC) was struck out due to Mr X's unknown whereabouts (March 1999); application seeking judicial review dismissed by the FC (September 2004); application for an extension of time to appeal to the Full FC was dismissed (December 2004); s 351 request denied (November 2004); four s 417 requests (lodged between July-August 2005) outstanding; Minister advised that she is considering the s 417 requests and has requested further information regarding health and character, confirmation of the genuineness of his marriage, and provision of an Assurance of Support (January 2006).

Current immigration status

4. Mr X is currently detained in Villawood IDC.

Removal details

5. DIMA advises that Mr X remains ineligible for removal as a result of his outstanding s 417 requests, and had been unavailable for removal for the large part of his detention period due to successive visa applications, and merits and judicial review attempts. A scheduled removal for 25 July 2005 was aborted due to lodgement of a s 417 request.

Ombudsman consideration

6. The DIMA report to the Ombudsman under s 486N was dated 25 November 2005.
7. Ombudsman staff interviewed Mr X at Villawood IDC on 22 February 2006 with the assistance of an interpreter.
8. Ombudsman staff sighted medical reports from International Health and Medical Services (IHMS) dated 6 December 2005 and Professional Support Services (PSS) dated 7 December 2005; as well as reports from a Senior Social Worker at Hospital Z dated 18 January 2006 (and other related reports), a report from a psychologist, dated 20 February 2006 regarding Mr X's wife; and a collection of reports from another social worker/counsellor, including character references.

Key issues

Criminal history

9. Mr X was convicted in September 1997 for cultivation and possession of cannabis and for theft of electricity. He was sentenced to twelve months imprisonment, suspended for two years.
10. During the interview with Ombudsman staff, Mr X claimed that the drug cultivation was for personal use and was done at a time when he was working 15-hour days. As a result of his lifestyle and his then de facto partner's gambling habits, he became hooked on alcohol and gambling, which led to a drug addiction.
11. No advice has been received from DIMA on whether Mr X has been, or will be, charged over his escapes from immigration detention. Mr X advised Ombudsman staff that on the first occasion he had walked out of the room where he was being interviewed as he was 'annoyed'. He claimed that 'he felt like a lower person' and alleged that the DIMA officer made racist remarks towards him and refused to provide an interpreter or allow him to contact his lawyer. He denied breaking anything, and merely 'opened the door' and left. On the second occasion, he advised that he had escaped from Maribyrnong by using a ladder that had been left unattended by painters who were using them.

Health and welfare

12. The IHMS report states that Mr X is continuing to receive treatment for problematical teeth. The PSS report states that 'Mr X has described depressive symptoms and adjustment difficulties, whilst presenting with aggressive behaviour at times', and that he has been diagnosed with depression by an external, Turkish speaking, psychologist. It was concluded by PSS, 'Given that Mr X has been provided with an external psychologist as requested, the prognosis for change may be good. However, should the detention environment be a contributing factor to his depression, then this may reduce the effectiveness of any therapeutic intervention.' Mr X advised Ombudsman staff that the external psychologist has been helpful.

Health concerns for Mrs Y (Mr X's wife)

13. Mr X advises that he and Mrs Y married in December 2001, and were residing in Griffith, NSW at the time Mr X was detained the third time and sent to Villawood IDC. Mrs Y moved to Sydney so she could be closer to him. She currently is an inpatient of Hospital Z due to her poor mental health and has been there since late November 2005. She speaks limited English, has no family or friends in Sydney, and therefore is reliant on the community and mental health workers. Prior to her hospitalisation, she visited Mr X every day in Villawood IDC. As she no longer can do this, DIMA has recently started to facilitate

visitations by Mr X to the hospital (twice a week, for three hours). The Ombudsman commends DIMA for this initiative.

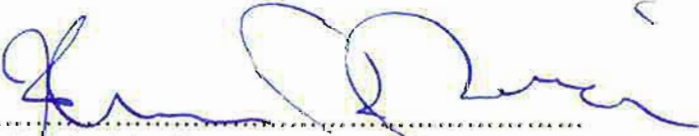
14. A number of concerns have been raised with the Ombudsman regarding Mrs Y's psychological state. In a letter dated 18 January 2006 to the Minister's office, the Senior Social Worker at Hospital Z advised '*[Mrs Y] is significantly depressed and anxious. Over the last 2 months her symptoms are worsening despite medication. She has many somatic symptoms and has been experiencing hallucinations ... She is being kept in hospital for containment and safety reasons ... Given her mental state, the treatment team believes that her suicide could be a likely consequence if her husband is not released from Detention. She is finding the strain of waiting for the decision "too much" and she feels like the "waiting" is "killing" her. Her mental state is likely to further deteriorate unless the decision is made quickly ... We are of the opinion that the release of her husband will significantly impact on her recovery.*' These concerns are mirrored by various medical staff, as relayed in a collection of reports advanced by another social worker.
15. In the psychological report received by this office, it was stated, '*[Mrs Y] has exhibited a range of symptoms consistent with Major Depression with Psychotic Feature ... She also presented symptoms which were consistent with Post Traumatic Stress Disorder such as flashback memories, recollection of ideas regarding the traumatic event, feeling extreme guilt etc.*' The report documents a number of significant events in Mrs Y's life that have impacted on her mental state. It is mentioned that Mrs Y had suffered from depression prior to her marriage to Mr X and that her psychological status improved upon meeting Mr X. It is further reported that since Mr X's detention, Mrs Y's depression and suicidal thoughts resurfaced, and that she '*felt her life was completely shattered.*' The psychologist goes on to say '*She has lost all her abilities and coping strategies that she can no longer function in normal daily life. Beside her suicidal tendencies, [Mrs Y] is at risk of being institutionalised as she is feeling more secure and comfortable in her hospital room than outside.*'
16. Mr X advised that at the time of his third detention, Mrs Y had suffered an ectopic pregnancy and underwent a termination in Griffith. She was recuperating with her daughter, when she was re-hospitalised to have a second operation (the initial doctors were not aware that she was having twins). Mr X advised that he was on his way to visit her when he was detained and transferred to Villawood IDC. A few months after her move to Sydney, she suffered from complications as a result of these operations and attended Hospital Z, at which point she was admitted as a mental health patient.
17. Mr X claimed that at the time DIMA attempted to remove him in July 2005, DIMA refused to allow him contact with Mrs Y. When Mrs Y heard about his potential removal through friends, she attempted to kill herself. In response, a social worker who was with Mrs Y at the time, lodged the s 417 request with the Minister.

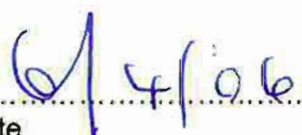
Attitude to removal

18. Mr X claims that if he is returned to Turkey, his '*life would be in danger*' as he had left his former wife and two children, and that he would be punished by fundamentalists on return to Turkey for these and other actions contrary to his faith. In the psychological report, it is mentioned that Mrs Y would not return to Turkey as she has her own fears. Medical reports provided to the Ombudsman express a genuine concern that Mrs Y may attempt suicide if Mr X is removed from Australia.

Ombudsman assessment/recommendation

19. Mr X has been in immigration detention for a cumulative period of approximately two and a half years. It is understood that the Minister is currently considering Mr X's s 417 requests, with a view to determining whether or not to grant him a substantive visa.
20. The Ombudsman **recommends** that the Minister reach a decision on Mr X's s 417 requests as soon as possible, reaching a decision no later than the statutory period prescribed in s 486P for the tabling of this report in Parliament (viz, within 15 sitting days of receiving the report). The Ombudsman notes the competing considerations in Mr X's case. On the one hand, his claims for refugee status have been well tested in the tribunals and courts and he has been found not to be owed protection; he has demonstrated a disregard for immigration law in Australia, having a history of overstaying his visa and absconding twice from immigration detention; and his visa has been cancelled on character grounds. On the other hand, it is clear that Mr X's ongoing detention is having an adverse impact on him, and his Australian citizen wife, who is currently receiving inpatient psychological treatment. There is a danger that Mrs Y may attempt self harm or suicide if Mr X is removed from Australia.
21. If there is likely to be a delay in reaching a decision, the Ombudsman **recommends** that the Minister consider granting Mr X an appropriate visa to enable his immediate release from detention and re-connection with his wife. A complicating factor in Mr X's case is that he previously absconded while in immigration detention and the Ombudsman acknowledges the risk that he might not observe reporting and surety conditions if he were to be released into the community on a temporary visa while his immigration status is resolved. The relevance of Mr X's earlier behaviour now has to be balanced against later developments, in particular, his committed relationship with an Australian citizen whose mental health is suffering and who is in need of his care. Mr X has community support and, from the evidence available to the Ombudsman, there is nothing to indicate that he would constitute a risk to the safety of the Australian community if he were to be released.


.....
Prof. John McMillan
Commonwealth and Immigration Ombudsman

Date 
.....