

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 080/06

Principal facts

Personal details

1. Mr X is a 51 year old citizen of India. He has a wife, two children and a brother who live in India. He is in regular contact with them.

Detention history

2. In July 2000, Mr X arrived in Australia. In August 2004, he was located by the Department (DIMA) and detained under section 189(1) of the *Migration Act 1958* and placed at Villawood Immigration Detention Centre (IDC).

Visa applications

3. Mr X entered Australia on a Business Visa, using his brother's passport (in the name Mr A) (July 2000); visa ceased; PV application lodged using brother's name and Bridging Visa (BV) granted (August 2000); PV application refused (March 2001); Refugee Review Tribunal (RRT) affirmed PV refusal (August 2002); Mr X detained (August 2004). Judicial review of RRT decision sought in Federal Magistrates Court (September 2004); application dismissed (December 2004); appeal to Full Federal Court (January 2005); appeal dismissed (June 2005).
4. Section 417 request seeking favourable exercise of the Minister's humanitarian discretion initiated (June 2005); request refused (September 2005); combined s 417 and s 48B request lodged (October 2005); requests refused (December 2005).
5. Multiple BVs sought (October 2004 - April 2006); six refused and one withdrawn; four of the refusals were appealed to the Migration Review Tribunal, which affirmed all of the refusals.

Removal details

6. DIMA advised that Mr X had initially been uncooperative with removal efforts and had refused to provide identifying documents. On several occasions between January and March 2006, however, he requested to be returned to India. In February 2006 Mr X lodged a complaint with the Ombudsman's office, stating that he had requested an immediate removal to India and that DIMA had failed to enable this. DIMA advised that the delay occurred as Mr X provided varying adaptations of his name to be used in the passport.
7. In March 2006 he provided an Indian driver's licence in the name of Mr Y and filled out a passport application in this name. The following month he requested that the Indian Consulate change the name on the passport to Mr Z. DIMA officers visited his family's home in New Delhi to locate appropriate identification bearing this name. They were successful and in August 2006 Mr X signed a Request for Removal form.
8. DIMA advised that he is scheduled for removal on 28 September 2006, pending the issue of a travel document from the Indian Consulate.

Ombudsman consideration

9. The DIMA report to the Ombudsman under s 486N was dated 7 September 2006.

10. Ombudsman staff interviewed Mr X on 21 September 2006, by telephone, with the assistance of a Tamil-speaking interpreter.

Key issues

Identity issues

11. DIMA advised that Mr X arrived in Australia under his brother's name of Mr A in July 2000 and lodged his PV application in this name the following month. Upon being detained in August 2004 he advised that his true name was Mr X.
12. At interview, Mr X contested this account of events and said he had revealed his true identity shortly after arriving in Australia. In the RRT finding of August 2002, it is stated that he provided his Indian driver's licence, which identified him as Mr X. The RRT accepted this as credible proof of his correct identity, and the hearing was undertaken with this knowledge.
13. DIMA advised that Mr X's case was referred to the National Identity Verification and Advice section in October 2005.

Health and welfare

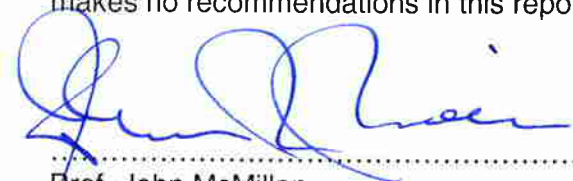
14. DIMA advised that for six days in February 2005, Mr X commenced a period of voluntary starvation and subsequently was placed on Suicide and Self Harm Watch. At interview, Mr X said that he has seen the visiting psychiatrist several times, with the last time being in early September 2006. He said that he has problems sleeping, and feels that this stems from '*trauma*' that he has experienced in the past. He was prescribed sleeping tablets, however elected not to take them, as he believed that they were not good for his health.
15. DIMA further advised that Mr X was treated for minor ailments over the previous year.

Attitude to removal

16. At interview with Ombudsman staff, Mr X said that he had changed his mind about his removal in August 2006. He said that he had initially elected to return voluntarily to India as his mother was sick, however as she died several months later he had notified DIMA that he was withdrawing his request to be removed. He said that two weeks later he was interviewed by DIMA staff who coerced him into signing travel documents to facilitate the removal. He said that they asked how long he planned to live. He claims that, when he replied '*thirty years*', they said that he would spend that time in detention and would never be released or see his wife or children again. The Ombudsman has not pursued this claim with DIMA but adds it to this report for the sake of completeness and so that the Department can investigate it.
17. At interview Mr X stated that he does not want to return to India, reiterating concerns expressed in his August 2000 PV claim that he feared persecution due to support he provided to Tamil refugees fleeing Sri Lanka to India. He also said that he had been believed to be associated with murders committed by the Liberation Tigers of Tamil Eelam (LTTE) and feared retribution for this. The RRT did not accept that he would be targeted as a sympathiser of the LTTE, and also that if the police had any interest in Mr X, then it would be because he had a connection with a serious crime and not for a Convention reason.
18. Mr X expressed concern that the political situation in Sri Lanka has deteriorated recently and that he is at greater risk than before, claiming that his family has been contacted by people looking for him. He further stated that he does not want to return to India as he borrowed a great deal of money to travel to Australia and fears he will be attacked for this reason upon his return. Mr X said that he feels '*fearful*' and will commit suicide upon his return to India.

Ombudsman assessment/recommendation

- 19. Mr X has been in immigration detention for just over two years, primarily due to ongoing litigation relating to his unsuccessful claim for a Protection Visa and difficulty associated with establishing his true identity. The DIMA decision that Mr X does not qualify for protection by Australia has been reviewed and affirmed. There is no evidence available to the Ombudsman that would lead to a different conclusion.
- 20. The Ombudsman understands that there is no outstanding litigation that would prevent Mr X's removal from Australia and that his removal is imminent. The Ombudsman makes no recommendations in this report.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman

28 September 2006
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Date