

**REPORT FOR TABLING IN PARLIAMENT BY  
THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN**

*Under s 486O of the Migration Act 1958*

*Personal identifier: 082/06*

**Principal facts**

*Personal details*

1. Mr X is aged 40 and is a citizen of Turkey. His mother and two brothers live in Australia. Mr X arrived in Australia in August 1972 as a six year old, and was the holder of a permanent resident visa. He travelled from Australia to Turkey twice as an adult; for three months in 1989, and one month in 1997. Mr X returned to Australia in November 1997, the holder of a five year Resident Return Visa. He was previously on the Disability Support Pension.

*Detention history*

2. In October 2002, Mr X's visa was cancelled on character grounds, under s 501(2) of the *Migration Act 1958*. He was detained under s 189(1) in December 2002 at Villawood Immigration Detention Centre (IDC), after completing a prison sentence.

*Visa applications*

3. Mr X filed a draft order *nisi* application in the High Court (HC) (December 2002), which was remitted to the Federal Court (FC); his application for judicial review was dismissed by the FC (October 2003); an appeal to the Full Federal Court (FFC) was dismissed (June 2004).

*Current immigration status*

4. Mr X was granted a Removal Pending Bridging Visa (RPBV) on 25 November 2005 and was released from detention. He lives in the community with his mother and brothers.

*Removal details*

5. An application for a Turkish travel document was made in June 2004. The Turkish Deputy Consul General in Sydney advised that the application had been sent to Turkey. Turkish authorities have not yet issued a travel document. In September 2005, Departmental (DIMA) officials met with the Turkish Ambassador to discuss Mr X's return to Turkey. The Turkish Ambassador has asked that the Minister review Mr X's case.

**Ombudsman consideration**

6. DIMA report to the Ombudsman under s 486N was dated 28 September 2005.
7. Ombudsman staff interviewed Mr X at Villawood IDC on 14 October 2005.
8. Ombudsman staff sighted a number of documents: a psychological assessment report by Ms A, Educational and Developmental Psychologist, dated 27 February 2006; a medical summary report by the International Health and Medical Service (IHMS) dated 21 October 2005; a psychology summary report from Professional Support Services (PSS) dated 3 November 2005; a submission from the Executive Director of the Multicultural Disability Advocacy Association of NSW; copies of letters from Dr B dated 29 August and 19 September 2005; a submission for consideration of possible cancellation of Resident Return Visa under s 501(2) dated 15 October 2002; letters of support for Mr X's application received 3 November 2005; copies of citizenship certificates from members of Mr X's family.

## Key issues

### *Criminal history*

9. Mr X's criminal history is summarised in the table below:

<i>Date</i>	<i>Offence</i>	<i>Sentence</i>
10 Nov 1983	Carried in conveyance	\$200 or eight days hard labour
29 Apr 1987	Possess cannabis	\$250 or five days hard labour
17 May 1990	Attempted stealing & possession of house breaking implements	\$300 & 200 hours community service
11 Nov 1991	Stealing	\$500
17 Feb 1993	Use false instrument	\$1000 two year supervised probation
7 Nov 2000	Make and use false instrument (30 counts each)	Bond (18 Months)
27 Jul 2001	Robbery armed with offensive weapon	Three years four months (parole period one year seven months)
31 Jul 2001	Larceny (<\$2000)	10 Months imprisonment
	Possess prohibited drug	Rising of the Court
29 Aug 2001	Make false instruments	12 months imprisonment

10. The sentencing judge for the armed robbery reduced the sentences considering his intellectual disability, and his congenital health condition, among other factors. She also stated *'but I think it proper to say that he has little criminal history'* and *'I am of the view he has good prospects for rehabilitation'*.

### *Health and welfare*

11. Ms A assessed Mr X as having a mild intellectual disability and, based upon her interview in Villawood IDC in October 2005, found that *'Mr X is currently suffering from a chronic major depressive disorder'*. Ms A visited Mr X at the family home in Sydney, after his release on a RPBV. She noted that he and his mother had a mutually supportive relationship and that he was looking for work. She concluded *'It is my clinical recommendation [that] Mr X be supported in his quest for successful re-integration in the community and in his resumption of a happy and productive life'*.
12. Mr X has been diagnosed with Congenital Adrenal Hyperplasia (CAH) and dyspepsia. The rare, inherited condition of CAH results in a cortisol deficiency and hypertension, requiring life-long cortisone and anti-hypertensive medications. DIMA advises that while in detention Mr X received treatment for this condition and had regular contact with medical professionals.
13. Mr X's endocrinologist, Dr B, stated that the disorder can be managed with medication and regular six-monthly reviews by an endocrinologist. He also stated that disruption of this regime may have adverse consequences on Mr X's health. Commenting on the impact of any removal, Dr B stated that Mr X required supervision to ensure that he takes his medication – given his intellectual disability. Dr B wrote *'if Mr X is sent back to Turkey and is unable to access the correct medication and medical support, then this will have adverse consequences for his health'* and *'even intermittent treatment is likely to have adverse consequences, particularly with regard to poorly controlled high blood pressure'*.
14. Mr X has a history of threatened suicide and has been placed under Suicide and Self Harm (SASH) observation on several occasions. Mr X has been treated for anxiety

attacks by Villawood IDC medical staff and at Fairfield hospital (February 2004). PSS advised that Mr X regularly accessed psychological services while in detention.

### **Attitude to removal**

15. At interview with Ombudsman staff, Mr X stated that he does not wish to be removed to Turkey. He has spent thirty-four of his forty years in Australia. Mr X does not have close family in Turkey and has no history there, apart from two short visits to Turkey on holidays.

### *Issues relating to visa cancellation, detention and pending removal*

16. Mr X identified himself as an Australian and advised that all the members of his family are Australian citizens. He was under the impression that he was included on his mother's certificate of citizenship which was issued in 1982, prior to his sixteenth birthday. He said it was when he was detained after his prison sentence that he realised that he was not an Australian citizen. He provided a copy of his mother's citizenship application, which omits the children. He stated that his mother had poor English skills and was assisted to complete the application by a Registrar, who had erroneously failed to advise her to include the dependant children in her application. Mr X told Ombudsman staff that he believed he is absorbed into Australian society for all practical purposes and it was only his holiday to Turkey in 1989 that excluded him from meeting the definition of an 'absorbed person' under s 34.
17. Mr X has no close family in Turkey. If he were removed he would lack his family contact and their supervision. At interview, he said his family were very upset by his possible removal from Australia. He was worried about his mother's health and he said it depressed him to think he was [then] detained and unable to support her. In relation to the impact of the visa cancellation upon his family, the Executive Director of the Multicultural Disability Advocacy Association of NSW, in a letter to the Minister (October 2005) reported that '*[Mr X's mother] spent a month in hospital after attempting suicide shortly after Mr X was first taken into immigration detention*'.
18. Mr X expressed remorse for the offending behaviour that resulted in his prison sentence. He said that he has been rehabilitated, is a reformed person, and wants to get on with his life as a good Australian and help support his family. He completed an anger management course in 2002. Mr X said that if he were given a permanent visa, he would be able to get work at the horse stables at Warwick Farm and would live with and support his mother and two brothers. One brother is in college and the other is on a disability pension.

### **Ombudsman assessment/recommendation**


19. Mr X has committed a number of criminal offences, including a serious offence of theft involving a knife. The Minister formed the view that Mr X did not pass the character test because he had a substantial criminal record within the meaning of s 501(6), and cancelled his visa.
20. In February 2006, the Ombudsman released a report into the detention and removal of long-term Australian residents whose visas had been cancelled under s 501<sup>1</sup>. The report made recommendations that may change the immigration status of those subject to the report. Features of this and other cases to which the s 501 report draws attention, include: Mr X arrived in Australia as a six year-old child, has spent his formative years in Australia, has strong family and other ties to the Australian community, has no similar


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<sup>1</sup> *Administration of s 501 of the Migration Act 1958 as it applies to long-term residents*, February 2006, Report by the Commonwealth and Immigration Ombudsman, Prof. John McMillan, Report No. 01 / 2006, Commonwealth Ombudsman, Canberra, Australia.

ties with Turkey, and, it is likely that his removal would cause hardship both to him and to his family in Australia.

21. The Ombudsman notes that Mr X's visa cancellation is being reviewed as part of the Departmental response to the Ombudsman's report on s 501 cancellations. One of the issues that will arise for consideration in that review is the adequacy of the earlier submission to the Minister concerning the impact on Mr X's health if he were to be removed to Turkey. In this respect, the Ombudsman notes the evidence of Mr X's specialists that removal could cause significant hardship for him in light of his intellectual disability, and concerns about his ability to manage his CAH in Turkey. The s 501 report of the Ombudsman drew attention to the difficulties that Mr X would face if he were to be removed to Turkey, noting that he would not be eligible for the Turkish equivalent of Medicare without a history of employment in Turkey, nor would he be able to access social security.
22. Despite his long residence in Australia, Mr X does not meet the conditions of an absorbed person under s 34 of the Act because of his holiday to Turkey in 1989. He is excluded because he left Australia during the period 2 April 1984 and 1 September 1994. Apart from this brief absence, Mr X's circumstances meet the requirements set out in the Act.
23. The Ombudsman notes that Mr X was granted a RPBV on 25 November 2005 and was released after almost three years in immigration detention. While this visa allows for his potential removal from Australia, the Department has not yet completed its review of those cases discussed by the Ombudsman in the report on s 501 cancellations. The Ombudsman **recommends** that the Department forestall any removal efforts from Australia, until a thorough review of Mr X's circumstances has been completed as part of the case review recommended by the Ombudsman's s 501 report.

  
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Prof. John McMillan  
Commonwealth and Immigration Ombudsman

  
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Date