

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 084/06

Principal facts

Personal details

1. Mr X is an Iranian man aged 36. Much of his family still resides in Iran, although he also has extended family in Canada. According to his advocate, his sister recently passed away. Mr X advises that his father and brother are imprisoned in Iran and also reports that his brother has a malignant brain tumour. He is concerned because his family reports they have not been able to contact his father and brother for some time.

Detention history

2. Mr X arrived in Australia by boat (November 2000) and the Department (DIMA) detained him under s 189(2) of the *Migration Act 1958*. DIMA placed him into immigration detention at Curtin Immigration Reception Processing Centre (IRPC). He was transferred into police custody (June 2002) and then to Broome Regional Prison, where he served a criminal sentence for destruction of property. He was transferred back to Curtin IRPC (August 2002), to Port Hedland IRPC (September 2002), to the South Australian Police station for questioning for 7 days (January 2003), to Baxter Immigration Detention Facility (IDF) (February 2003), and then a number of times between Baxter IDF and Port Augusta Hospital, Adelaide Hospital, Royal Adelaide Hospital, Noarlunga Medical Centre, and Glenside Hospital. He was released from immigration detention in July 2005.

Visa applications

3. Mr X applied for a Protection Visa (PV) (June 2001); refused (July 2001); appealed to the Refugee Review Tribunal (RRT), refused (October 2001); applied for judicial review at the Federal Magistrates Court (FMC) (October 2001); unsuccessful (July 2002); appealed to the Full Federal Court (FFC) (September 2002); unsuccessful (November 2003).
4. He applied to the Minister under s 417 (January 2004); refused (March 2004); numerous requests under s 417 (November 2004 – April 2005); refused (June 2005); applied to the Minister under s 48B (April 2004); Minister granted the application (June 2005), allowing Mr X to lodge a further application for a PV.
5. He complained to the United Nations High Commissioner for Refugees (UNHCR) (shortly after March 2004); applied for a Removal Pending Bridging Visa (RPBV) (June 2005) but later withdrew application; applied for a PV (July 2005); granted a Temporary Protection Visa (TPV) on 20 July 2005.

Current immigration status

6. Mr X resides in the community on a TPV.

Removal details

7. DIMA reports that Mr X refused to voluntarily return to Iran in the period 2001-2004; DIMA states it offered him the Iranian Reintegration package (December 2003) which he refused; DIMA reports that Mr X was not eligible for involuntary removal from Australia for much of his time in detention because he had outstanding applications to courts, the Minister and the UNHCR.

Ombudsman consideration

8. The DIMA report to the Ombudsman under s 486N is dated 10 August 2005.
9. Ombudsman staff interviewed Mr X on 9 November 2005 with an interpreter.
10. Ombudsman staff sighted submissions from Mr X's migration agent, Ms A dated 5 January 2006 and 20 April 2006. The latter included letters from psychiatrist Dr B dated 11 April 2006; community support worker Ms C dated 14 February 2006; and friend Rev D dated 1 February 2006. Ombudsman staff also sighted a medical summary report from International Health and Medical Service (IHMS) dated 26 August 2005, and Professional Support Services (PSS) dated 30 August 2005. Ombudsman staff received a discharge summary from Glenside Hospital dated 10 August 2005.

Key issues

Health and welfare

11. Mr X described trying to kill himself several times while he was in immigration detention. The DIMA report states *'Mr X has a considerable history of self harm, threatened suicide and voluntary starvation'* and confirms that he was hospitalised following several suicide attempts. The PSS reports describe his issues during detention including *'anger management, depressive symptoms, coping, hopelessness, helplessness, and stress'*. In addition to a number of other hospital admissions, according to the IHMS report he was admitted to Glenside Hospital under the *Mental Health Act (SA)* in April 2005.
12. During this admission, Glenside Hospital diagnosed Mr X with Major Depression and Post-traumatic Stress Disorder (PTSD). The medical information provided by DIMA to the Ombudsman concerning this period of detention and hospitalisation only refers to Mr X having *'depressive and anxiety symptoms'*.
13. Following his grant of a TPV, Mr X remained at Glenside Hospital for several weeks. The Glenside Hospital discharge summary states that at that time (August 2005) he suffered from *'Bipolar Disorder'* and *'PTSD, with disassociation'*. The summary states *'he continues to be disturbed by PTSD symptoms and anxiety that will take time to improve. He needs to continue with regular doses of Lithium and Mirtazepine'*. Eight months later, in April 2006, Dr B reports that Mr X continues to have major depression, and PTSD, and refuses his medication, except amitrypyline. Dr B reports that the lack of a permanent visa compounds his difficult circumstances: *'the uncertainty of his tenure here compounds his disability by magnifying his already maladaptive coping strategies. The attendant anxiety and developing cognitions of hopelessness not only predispose him to future depressive relapses but also make it very difficult to help him develop more adaptive problem solving strategies'*. Dr B goes on to state that Mr X is still at risk of self-harming behaviour, concluding *'The stabilisation of a sense of place will potentially aid in his integration into the community as well as increased effectiveness and efficiency in addressing his psychiatric issues and coping mechanisms'*. Ms C similarly states Mr X would benefit from a permanent visa; *'He is keen to work and start real life again in the community but the uncertainty of his TPV holds him back psychologically'*.
14. In his interview with Ombudsman staff, Mr X stated he is most affected by his inability to find suitable employment, which he says has been difficult because of his criminal record for destruction of property. He said this resulted from him throwing a chair at a window when he was very upset during a riot at Curtin IRPC, which he stated was *'horrifying'* and which he would never forget. Dr B noted he is *'disabled from a social and occupational viewpoint'*. Mr X states *'I am still very frightened. I am worried because of the way my family was treated when I was a child and I am worried because of my detention'*.

Attitude to removal

15. Mr X initially applied for a PV on the basis that he would be persecuted in Iran as his family have strong ties to the former monarchy, and he was involved in an anti-government movement. He also claimed to have been detained and mistreated on a number of occasions. He says his father and brother are currently being detained and he would receive similar treatment if he were returned. The RRT accepted that he had been detained and beaten but did not accept many of Mr X's other claims.
16. The Minister granted Mr X's application to lodge a further application for a PV. Mr X had been baptised in the Christian faith since arriving in Australia and claimed that his rejection of Islam exposed him to a risk of persecution in Iran. In addition, the FFC judgment concerning Mr X was published on the web and includes his brother's full name. This is likely to mean the Iranian government could identify his protection claims.


Post-release issues

17. Mr X reports that he has had little assistance in the process of finding work and finds it very difficult to be without employment. As a recipient of income support payments, he is eligible for some of Centrelink's job seeker support services.
18. Mr X sees a psychiatrist at the Port Adelaide Mental Health Service. He uses his Centrelink special benefit to meet the gap payment for consulting the doctor and the cost of medication.

Ombudsman assessment/recommendation

19. Mr X spent almost five years in immigration detention, before being granted a TPV. His initial claim for protection was on the basis of his family background and political activities. He was allowed to make a second claim for protection on the basis of his religion and the publication of his details on the Internet. It was this second claim that was accepted.
20. Mr X became very unwell during his time in immigration detention. The medical reports provided to the Ombudsman describe him having Post-traumatic stress disorder and Major Depression. These reports do not describe the causes of his conditions but there is no evidence to suggest that his conditions pre-dated his time in immigration detention. Mr X attributes his fearfulness to both his time in detention and his childhood experiences. Mr X appears to have suffered a great deal, having made multiple attempts at suicide and experiencing several hospitalisations.
21. It appears that Mr X continues to experience difficulty, with his treating psychiatrist describing him as being socially and occupationally impaired. His psychiatrist and his case-worker both say the lack of a permanent visa is inhibiting his recovery. His capacity to get support from his extended family is limited by the conditions of his TPV, which prevent him from travelling to Canada. His TPV lasts for thirty-six months. Mr X's migration agent has asked the Minister to exercise her discretion to allow him to be considered for the grant of a PV earlier than this. It is unlikely that his need for protection will change, given the circumstances of his case. In light of those considerations, the Ombudsman **recommends** that the Minister consider exercising her discretion to waive the waiting period for application for a PV.
22. The statement tabled by the Minister in the Parliament under s 486P dated 28 March 2006, states 'the Department will discuss with State and Territory Health Authorities protocols to facilitate continuity of health care as part of its future detention health strategy when persons are granted a visa and move between the detention environment and the general community'. Mr X was connected with a mental health support network upon his release by Glenside Hospital but his psychiatrist highlights his difficulty in maintaining contact with services, stating that he has '*longer term problems relating to*

his coping style. From a service viewpoint, this is manifest in his lack of consistent contact with various services and his resistance to following up on recommendations with regards to preventative and maintenance measures. He has tended to present only during crisis situations'. Mr X's case is complex and he could perhaps benefit from ongoing casework support. Further, Mr X has to meet the costs of psychiatrist appointments from his Centrelink payment. Because of the link between Mr X's depressive illness and his period in detention, the Ombudsman **recommends** that DIMA consider what ongoing financial and casework support it can provide to Mr X.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman

12 October 2006
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Date