

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 086/06

Principal facts

Personal details

1. Mr X is a 33 year-old Indian man from Tamil Nadu. He applied for refugee protection twice under an assumed name.

Detention history

2. Mr X arrived in Australia on 18 January 2001, using his Indian passport and an entertainment visa. He was located working illegally in April 2004 and was detained under s 189(1) of the *Migration Act 1958* at Villawood Immigration Detention Centre (IDC). In December 2004, Mr X was transferred to the Baxter Immigration Detention Facility (IDF).

Visa applications

3. Mr X applied for a Protection Visa (PV) (March 2001) under the false name of Mr B; Bridging Visas (BV) granted (March 01) and ceased (April 2003); PV refused (October 2001); refusal affirmed by Refugee Review Tribunal (RRT) (March 2003); application for judicial review dismissed by Federal Magistrates Court (December 2004); Full Federal Court (FFC) refused his application for an extension of time to appeal (April 2005) but found that Mr X may have been denied procedural fairness; the Minister thereupon lifted the bar under s 48B, allowing a second PV application which was refused (November 2005); Mr X sought and withdrew an application for review by the RRT (January 2006).
4. In May and June of 2004, Mr X made requests for a favourable ministerial decision under s 417 and s 48B, using his assumed name of Mr B. Both applications failed. The Ministerial Intervention Unit, in July 2006, refused a combined s 417/s 48B made by Mr X under his current known identity, stating the requests did not meet ministerial guidelines.

Current immigration status

5. Mr X is an unlawful non-citizen and is detained at Baxter IDF.

Removal details

6. The Department (DIMA) advises that Mr X completed an application for a Sri Lankan travel document in his assumed name in October 2005, but delayed its lodgement while he awaited the outcome of his second PV application. Mr X acknowledged his identity as a citizen of India in December 2005, in response to investigations by DIMA's National Identity Verification and Advice Section (NIVA). The Department reports that Mr X cooperated and completed an Indian travel document application in January 2006; it followed up with the Indian High Commission in May 2006, who advised that further enquiries were being made by Indian authorities.

Ombudsman consideration

7. The DIMA report to the Ombudsman under s 486N is dated 20 May 2006.
8. Ombudsman staff sighted a Professional Support Services (PSS) psychology summary report by Mr C dated 25 May 2006; an International Health and Medical Services (IHMS)

summary medical report by Dr D, dated 10 July 2006; a submission from Mr X, including a copy of a combined s 417/s 48B request, dated 13 February 2006.

9. Ombudsman staff interviewed Mr X at Baxter IDF on 15 June 2006, in the company of his supporter, Sr G.

Key issues

Identity

10. Mr X's original protection claims were fraudulent, based upon an assumed identity, and were considered and dismissed twice by DIMA and once by the RRT.
11. An Australian Federal Member of Parliament wrote to DIMA in 2001, producing wedding photos, invitations and a letter from Mr X's Indian wife, advising of the marriage and his Indian identity.

Health and welfare

12. The PSS report indicates that Mr X was seen regularly between November 2005 and the date of the report in May 2006. The report provides diagnoses of *'depression and anxiety'*. The report stated *'Mr X presented with feelings of anxiety and irritability. Also, he reported experiencing nightmares, concentration problems, poor sleep and appetite and feelings of helplessness'* and that his *'mental health is closely monitored while in mandatory detention'*. He was taking psychiatric medications. He stopped taking medication and was booked for a review by the psychiatrist. The Department reported that he was placed on a Suicide and Self Harm (SASH) watch on 7 February 2006 *'after reporting nightmares and command hallucinations about cutting and killing himself. Mr X's condition was monitored by PSS and he was removed from the SASH watch on 16 February 2006'*.
13. The IHMS medical report provides diagnoses of Generalised Anxiety Disorder and Major Depression. The report advised *'While his conditions can be managed within the detention setting, his anxiety and depression are likely to be better managed if he were placed in the community'*.
14. At interview with Ombudsman staff, Mr X appeared to be fragile and anxious. He talked of killing himself, expressing guilt, remorse and a sense of hopelessness. He reported seeing a psychiatrist the week before interview and being offered voluntary admission to Glenside Hospital. Mr X had declined; he said *'I am not crazy'*. He did report still hearing voices telling him to *'get up [out of bed]'*. He reported ceasing to eat for thirty-two days in October 2005, as he had wanted to die. He claimed to have lost 17 kilograms, saying he'd weighed 75kg and now weighed 57kg.
15. Noting his recent psychiatric history, Ombudsman staff reported to Departmental officers post-interview and relayed their concerns regarding his presentation and hopelessness.

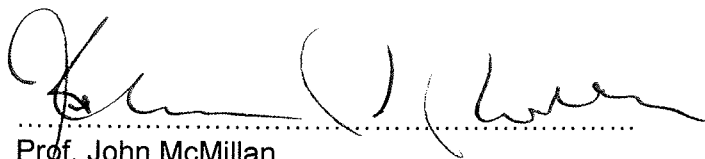
Attitude to removal

16. At interview, Mr X described his 1997 arranged marriage and said that his wife was physically and verbally abusive towards him, and had threatened to kill him while he slept. He had sent his wife away but the Tamil culture was traditional and did not allow divorce, and the unresolved rejection of his wife had shamed both their families. His family were comparatively well-to-do and his wife's father-in-law was a leader in local government, and their reputations and prestige had suffered. If he returned to Tamil Nadu both families would force the marriage to continue, and if he refused, he feared that his wife would make a false domestic violence report to the police about him, or her family would harm him. He had come to Australia to escape his problems and he felt that as an Indian he would have no protection claims, so he had assumed a Sri Lankan identity in order to claim protection.

17. Mr X said he dreaded returning to Tamil Nadu, as he did not plan to resume the marriage. He felt trapped by his circumstances and by his culture.

Ombudsman assessment/recommendation

18. Mr X has been in immigration detention for over two years. He made fraudulent claims for protection, commencing in 2001, which have been refused. Confronted with information by NIVA, in December 2005, he acknowledged his identity as an Indian citizen. Since then he has cooperated with attempts at removal. DIMA is awaiting the issue of travel documents from India.
19. The Ombudsman has been advised Mr X completed an Indian travel document application in January 2006 and DIMA followed up with the Indian High Commission in May 2006. It may be, therefore, that travel documents are shortly available and Mr X's removal from Australia could be imminent.
20. If, however, a travel document is not soon issued, consideration should be given to granting Mr X a Removal Pending Bridging Visa (with reporting and surety conditions that DIMA considers appropriate to prevent the risk of absconding) so that his period of detention does not continue indefinitely. Mr X appears to be in a fragile state, is diagnosed with Major Depression, and his mental health appears to be under close and active review by DIMA and PSS. IHMS reports that his conditions *'are likely to be better managed if he were placed in the community'*. Mr X reports feeling trapped by his circumstances, and while cooperating with removal efforts, he believes he faces harm as a consequence of his flouting of Indian Tamil custom in leaving an arranged marriage. Any improvement in his psychological health, coupled with counselling, may afford Mr X the opportunity to review his situation and to face a potential return to India with greater equanimity.
21. Mr X's mental state and emotional health should continue to be closely monitored and supported. Any removal arrangements would best be managed in a manner that takes into account Mr X's mental state and his fitness to travel.



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Prof. John McMillan
Commonwealth and Immigration Ombudsman

13 October 2006
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Date