

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 087/06

Principal facts

Personal details

1. Mr X is a single male, aged 29 years old. He is a citizen of Iran, of a Farsi speaking Arab minority and is a Shi'a Muslim.

Detention history

2. Mr X arrived in Australia by boat in December 2000. He was detained by the Department (DIMA) under s 189(2) of the *Migration Act 1958* and placed in the Woomera Immigration Reception and Processing Centre (IRPC). In March 2002, he escaped from the Woomera IRPC. He was captured in March 2003 and re-detained at the Baxter Immigration Detention Facility (IDF).

Visa applications

3. Applied for Protection Visa (PV) (July 2001), refused (August 2001); Refugee Review Tribunal (RRT) affirmed refusal (January 2002); judicial review to the Federal Magistrates Court (FMC) (February 2002), dismissed (September 2004); appeal to Federal Court dismissed (March 2005).
4. Request under s 417 (January 2004), declined (March 2004); five further s 417 requests (March – June 2005); request under s 48B (April 2005); Mr X included in s 417/s 48B submission to the Minister (in a submission on Iranian apostasy cases) (June 2005), s 48B successful and new PV application lodged (July 2005).

Current immigration status

5. On 25 July 2005, Mr X was granted a Temporary Protection Visa (TPV) and was released from detention. He currently resides in the community at Port Pirie, South Australia.

Removal details

6. An Iranian re-integration package was offered to Mr X in September 2003. The offer was withdrawn in November 2003 due to active litigation.

Ombudsman consideration

7. The DIMA report to the Ombudsman under s 486N was received on 19 August 2005.
8. Ombudsman staff interviewed Mr X in Adelaide on 29 September 2005.
9. Ombudsman staff have sighted a number of documents, including: medical summary reports from International Health and Medical Service (IHMS) (August 2005) and Professional Support Services (PSS) (August 2005); s 417 and s 48B submissions to the Minister from Ms Y (April 2005); and letters from the Australian Refugee Association (ARA).

Key issues

Health and welfare

10. The IHMS report lists Mr X's diagnoses as: major depression; Post Traumatic Stress Disorder; nasal fractures; and nasal deformity. It notes a history of self-harm, including a

hanging attempt and an episode of voluntary starvation. The IHMS report also indicates that Mr X was detained as an involuntary patient under the *Mental Health Act 1993 (SA)* and was transferred to Glenside Hospital in June 2005, where he received psychiatric care.

11. The PSS report indicates that between October 2004 and May 2005, Mr X presented with symptoms of depression and anxiety. Prior to his admission to Glenside Hospital he was seen daily by PSS staff due to concerns about his risk of suicide and self-harm. The PSS report states that although Mr X *'had engaged with PSS, his anti-social characteristics had limited his ability to actively participate and benefit from PSS contact.'*

Security and safety

12. DIMA reports that in April 2004 Mr X pleaded guilty to escaping immigration detention in March 2002. He was remanded into immigration custody and placed on a twelve-month good behaviour bond.

Attitude to removal

13. At interview with Ombudsman staff, Mr X stated that he was a refugee with legitimate rights to remain in Australia. He expressed concern about being returned to Iran, citing that Arabs are regarded as second-class people by Iranians and are discriminated against, and that if returned to Iran he would be killed. Mr X said that his family had their land in Iran forcibly removed by the government and military and two of his brothers were killed in the subsequent protests and disputes. He said that he heard that some of his friends were arrested for torching the resumed land and that the authorities sought him as they wrongly believe that he was involved in the demonstrations against the land resumption.

Other detention issues

14. Mr X advised Ombudsman staff that he had experienced a lot of stress and hardship during his long period of detention. He stated that his DIMA case officer had not kept him informed, seeing him only monthly or bi-monthly, and focussed on detention conditions, instead of addressing his concerns about his continued detention.
15. Mr X claimed that he experienced delays of up to two months to receive medical care. For example, he said that it took eight months to see a dentist even though he was experiencing pain. Further, he commented that his nose was broken whilst in detention and the treating doctor said it should be reviewed in six to eight weeks, and considered for a specific operation. He stated that he received the operation eight months after the incident.
16. Mr X said that he spent seventy days in the Management Unit and Red One at Baxter IDF after a hanging attempt. He alleged that he was initially told that he would stay in Red One for two to three days and felt that he was being punished after the suicide attempt, instead of getting appropriate medical help. He also felt that there was less food provided in Red One and believed that that this was to reduce his energy and to punish him. The Ombudsman has not tested these allegations with DIMA or GSL but has included them in this report for the sake of completeness and for consideration in the context of the ongoing management of the Management Unit and the Red One compound at Baxter IDF.


Issue since release

17. Mr X said that since his release from detention he has enquired about English classes for him and four to five other Iranians. He was disappointed to learn that the education centre requires eight to ten students to commence a class and feels that he is being disadvantaged. As a consequence he is doing a correspondence course.

18. Mr X also noted that although he is permitted to work with a TPV, he is unable to do so because of his poor mental health.

Ombudsman assessment/recommendation

19. Mr X spent three years and seven months in detention, principally as a consequence of his attempts to gain a PV. He was granted a TPV on 25 July 2005.
20. The uncontradicted medical evidence before the Ombudsman indicates that Mr X suffers from a serious mental health condition, which culminated in his involuntary admission to hospital in June 2005. The evidence indicates that his condition appears to be related to his lengthy detention. While Mr X's health has improved since his release from detention, he continues to require ongoing medical and psychiatric care. He has commented that he is unable to find employment due to the poor state of his mental health. Accordingly, DIMA will need to consider what continuing role it plays in providing medical assistance to Mr X.
21. In light of these points, the Ombudsman **recommends** that consideration be given to whether a permanent PV might be more appropriate in Mr X's circumstances. This would release him from the restrictions associated with a TPV (36 month validity, inability to sponsor family to come to Australia), assist in recovering his mental health, and provide him with the security he requires to move on with his life. In doing so the Minister may find it appropriate to consider exercising her public interest powers to waive the 30 month waiting period for application for a permanent PV.


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


.....
Date