

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

Under s 486O of the Migration Act 1958

Personal identifier: 088/06

Principal facts

Personal details

1. Mr X is a single male aged approximately 23. He is a citizen of Afghanistan, of Pashtu ethnicity and a Sunni Muslim. Mr X has had no contact with his family in Afghanistan (mother, brothers and sisters) for five years, and does not know their current whereabouts.

Detention history

2. Mr X arrived in Australia by air in November 2000 as an unaccompanied minor, aged 17. He was detained under s 189(1) of the *Migration Act 1958* and placed in Villawood Immigration Detention Centre. He was relocated to Baxter Immigration Detention Facility (IDF) in June 2004 where he remained until his release in October 2005.

Visa applications

3. Applied for a Protection Visa (PV) (November 2000); refused by the Department (DIMA) (March 2001); refusal affirmed by the Refugee Review Tribunal (RRT) (June 2001); application to the Federal Court dismissed (August 2001); request under s 417 refused (December 2001); further 417 request made (December 2004); a s 48B request deemed inappropriate to consider (August 2004); and further s 48B request made (July 2005).

Current immigration status

4. On 4 October 2005, Mr X was granted a Temporary Protection Visa (TPV) after he was confirmed to be a citizen of Afghanistan. He was released from detention and is reported to be residing in Victoria.

Removal details

5. Between 2002 and 2004, DIMA reports it discussed removal options with Mr X on a number of occasions. Mr X was offered the Afghan Reintegration Package in June 2002 and May 2005. The offers lapsed without response.

Ombudsman consideration

6. The DIMA report to the Ombudsman under s 486N dated 30 August 2005.
7. Mr X was interviewed by Ombudsman staff at Baxter IDF on 23 September 2005.
8. Ombudsman staff have viewed medical summary reports from the International Health and Medical Service (IHMS) dated 21 November 2005, and a Professional Support Services (PSS) psychology report dated 21 November 2005.

Key issues

Nationality and refugee claims

9. Mr X claimed that he left Kabul in 2000 to escape forced conscription by the Taliban. He reported that the Taliban were targeting his home and pressuring his father to disclose his whereabouts. He is aware that his father was taken away and predicts he may have been imprisoned. He says he escaped by car to Pakistan and was smuggled by air to Australia.

10. The RRT determined that Mr X was not an Afghan citizen and on that basis affirmed DIMA's decision not to grant a PV. The RRT was not satisfied that Mr X had ever lived in Jalalabad or Kabul, and commented that he was unfamiliar with the names of local geographic features or the details of an Afghan identity document. Mr X said that the interpreter provided for him by DIMA on his arrival was Tajik and not Pashtun like himself and that Tajik people dislike the Pashtuns and this created problems for him both in communication (the interpreter did not speak Pashtun) and identification (the interpreter said Mr X came from Pakistan). On 5 May 2005, the Islamic Republic of Afghanistan Embassy confirmed that Mr X is an Afghan citizen. The DIMA briefing to the Minister states *'this information is authoritative and fundamentally contradicts the findings upon which earlier refusals to [Mr X and four others] were based'*.

Health

11. DIMA advises that it was not aware of Mr X having any significant health issues. During his interview with Ombudsman staff, Mr X indicated that he had some psychological difficulties arising from his prolonged detention. He commented that he was *'going crazy'*, and mentioned he was taking medication. Mr X stated that he had disrupted sleep patterns.
12. IHMS provided a diagnosis of reactive depression, noting that Mr X was treated with medication, and regularly reviewed by the Mental Health Team, and PSS counselling. IHMS reported that Mr X regularly refused to take his prescribed medication and noted that he was not taking any medication at the time of his release from detention.
13. A PSS report stated that Mr X accessed its services seven times between August 2005 to 29 September 2005 and *'was suffering from sleep disturbances, loss of appetite and interpersonal problems ... the signs and symptoms mentioned in the progress notes suggest Mr X is suffering from Major Depression with suicidal ideation'*. PSS observed that *'his problems had decreased after being offered a pending (sic) visa'*.

Other detention issues

14. At interview with Ombudsman staff, Mr X stated that Baxter IDF was *'a place for animals'* and he noted that while some of the guards were good, he felt that some were impolite and disrespectful. Mr X also complained that he was regularly, and he felt unnecessarily, disturbed by the guards undertaking frequent room checks to ensure that all detainees were present.

Attitude to removal

15. Mr X stated that he would be in danger from members of the Mujahideen and Taliban if he returned to Afghanistan.

Ombudsman assessment/recommendation

16. Mr X spent approximately five years in detention and has now been granted a TPV. He first applied for protection in 2000 and it was only in 2005 that his claims for protection were accepted. His initial claim was rejected because DIMA disputed that he was an Afghan citizen, a fact that was positively established when the Embassy of the Islamic Republic of Afghanistan confirmed his Afghan nationality in May 2005. If he had been granted a TPV when he first arrived in Australia, he may now be on a permanent PV.
17. The Ombudsman notes that Mr X arrived in Australia as an unaccompanied minor, aged 17 years old. He was placed in detention and accommodated as an adult. He has lost contact with his family and fears for their safety. He has not had access to educational opportunities due to his circumstances in Afghanistan and because of his prolonged detention in Australia. There is evidence to suggest that Mr X's detention experience has had a detrimental impact on his psychological health, a situation compounded by the lengthy period of detention and his young age. The Ombudsman **recommends** that the

Minister consider granting Mr X a permanent PV or other permanent substantive visa, thus releasing him from the restrictions associated with a TPV and providing him with the security he requires to move on with his life. A permanent visa could also give him greater access to educational opportunities. In considering this issue, it might be appropriate for the Minister to waive the 30 month waiting period for Mr X to apply for a permanent PV.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman

17 October 2006
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Date