

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

*Under s 486O of the Migration Act 1958*

*Personal identifier: 089/06*

**Principal facts**

*Personal details*

1. Mr X is aged approximately 25 years. He is a Shi'a Muslim of Hazara ethnicity and a citizen of Afghanistan. His family continue to reside in Afghanistan.

*Detention history*

2. Mr X arrived in Australia in January 2001 as an unauthorised boat arrival. He was detained under section 189(2) of the *Migration Act 1958* at the Woomera Immigration Reception & Processing Centre (IRPC). In March 2002, Mr X escaped from the Woomera IRPC, was recaptured and returned the same day. Mr X was transferred to the Port Hedland IRPC in April 2002, transferred back to the Woomera IRPC in May 2002 then to Baxter Immigration Detention Facility (IDF) in April 2003.

*Visa applications*

3. Applied for a Protection Visa (PV) (February 2001); refused by DIMA (May 2001); refusal affirmed by Refugee Review Tribunal (RRT) (August 2001); application to the Federal Court (FC) dismissed (February 2002); a further application to FC, seeking orders that he was unlawfully detained and a writ of habeas corpus dismissed (December 2003); Full Federal Court appeal dismissed (August 2004).
4. Requests under s 417 and s 48B were lodged with the Minister in July 2004 but deemed inappropriate to consider in August 2004. DIMA reported that five further s 417 requests were lodged between April 2004 and July 2005.

*Current immigration status*

5. DIMA advises that Mr X was granted a global humanitarian visa on 13 October 2005 and released from detention, after his claim to be an Afghan national was accepted. He now resides lawfully in the community.

*Removal details*

6. Mr X accepted the Afghan Reintegration Package in June 2002, later withdrawing his acceptance. Mr X twice applied for an Afghan passport (June 2002 and March 2003) and was interviewed on two occasions by officials from the Embassy of the Islamic Republic of Afghanistan (June 2002 and November 2003).
7. Mr X lodged a second passport application in March 2003, was interviewed by Embassy staff in November 2003, provided written consent for release of his fingerprints and photographs to Afghan authorities in January 2004 and was positively identified as an Afghan national in August 2005.

**Ombudsman consideration**

8. The DIMA report to the Ombudsman under s 486N is dated 30 August 2005.
9. Mr X was interviewed by Ombudsman staff at Baxter IDF on 9 September 2005.
10. The Ombudsman has considered several documents, including: a medical summary report from International Health and Medical Service (IHMS), dated September 2005; and Professional Support Services (PSS) dated 12 September 2005; and two submissions from Ms Y dated 2 August 2005 and 4 November 2005.

## Key issues

### Nationality

11. Mr X claims to be a shepherd from Afghanistan. He said that he came from the sub-village of Dalakchi, in the region of Jaghori, the Ghazni Province of Afghanistan. The RRT found that Mr X was not a credible witness and did not accept that he was a citizen of Afghanistan, nor that he had ever resided in Afghanistan. However, the RRT did not have enough evidence to conclude that he was from Pakistan. The RRT rejected his claim of fear of persecution at the hands of the Taliban.
12. At interview with Ombudsman staff, Mr X said that he had never seen a 'taskira' (Afghan identity document). He said that while in detention he had arranged a statement from a village elder to confirm that he was an Afghan national. He claims that confirmation was difficult because villagers would deny his existence if challenged by the Afghan Identity Unit, for fear of land appropriation and being linked to an individual who fled to a country of Christian infidels.
13. Acting in response to information obtained from a confidential source, DIMA explored the possibility that Mr X was a Pakistan national. Staff from the Ministry of Interior, Islamic Republic of Pakistan, interviewed him in April 2005 and a formal request for identification was subsequently sent to Islamabad. This process became redundant in August 2005 when DIMA was informed that the Embassy of the Islamic Republic of Afghanistan had positively identified Mr X as an Afghan national.

### Health

14. Mr X was the subject of a psychiatric assessment by Dr Z in June 2005, after his legal advisers raised concerns about his mental health. Dr Z diagnosed Mr X as suffering from Post Traumatic Stress Disorder (PTSD), with secondary depression, and prescribed anti-depressant medication.
15. Mr X was placed on suicide and self-harm watch for eight days in July 2005 and placed himself on the waiting list for voluntary transfer to Glenside Hospital. During this time, the Immigration Detention Advisory Group suggested that Mr X be referred to the Mental Health Multi-Disciplinary Team for assessment and an ongoing mental health care plan be put in place.
16. IHMS lists Mr X's key medical problems as, '*PTSD with secondary depression, right shoulder pain, dyspepsia and otitis externa [infection of the ear canal]*' and comments that he has received treatment for all these conditions.
17. PSS states that Mr X was seen on ten occasions between February 2004 and September 2005 and '*presented as highly agitated during most sessions ... He appeared as highly anxious and restless ... still [September 2005] appears to be highly agitated. His agitation is easily triggered by issues with DIMA, and issues regarding his medications*'.
18. At interview with Ombudsman staff, Mr X said '*after five years we have lost the feeling, we don't have any feelings, we don't feel anything ... we become happy by the face, we don't know how to become happy in the heart*'. He said he had a discharge from his ear and described chronic problems with digestion that he claimed was related to his poor mental state.

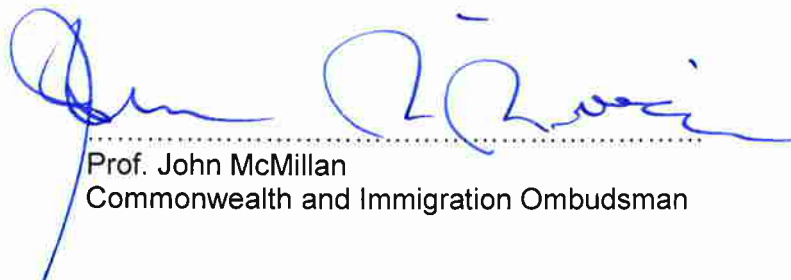
### Other detention issues

19. Mr X was impressive at his interview with Ombudsman staff, presenting as an eloquent, intelligent man, with a good command of English (which he states he gained in detention). He seemed frank and forthright. Mr X expressed a keen understanding of Australian border protection and detention policies. At the same time, he articulated the position of a refugee and the effects indeterminate detention has on an individual's


mental and emotional health. He expressed the view that Afghans of Hazara ethnicity have become victims of these policies. He also stated that the Hazara have experienced significant difficulty with the use of interpreters. He claimed that interpreters that have been used by DIMA and the courts don't generally speak Hazaragi and that they belong to other ethnic groups with long-held enmity towards the Hazara.

### **Ombudsman assessment/recommendation**

20. Mr X spent four years and nine months in immigration detention that ended with the grant of a global humanitarian visa. Although Mr X's situation has been resolved, there is one troubling aspect of his case that should be noted for future guidance in other cases. The length of his detention stemmed in part from the fact that his claim to be from Afghanistan was not believed. In part this was based on information received by DIMA from a confidential source. Mr X has also claimed that the interpreters used by DIMA did not have the appropriate capability to deal with his situation. The Ombudsman is aware that these issues have affected other detainees, including a number of Hazara Afghani nationals. The Ombudsman welcomes the recent establishment of the National Identification Verification and Advice Section (NIVA) in DIMA, which can provide a more thorough and rigorous approach to identification issues.
21. The evidence available to the Ombudsman indicates that there was a considerable deterioration in Mr X's mental and physical health during his period of detention, due in part to the indefinite period of detention. As noted in other reports where the same issue has arisen, the Ombudsman suggests that DIMA consider what ongoing role it needs to play in relation to mental health treatment for Mr X. Recent reports indicate that Mr X is attending a community refugee education centre in Melbourne and has a positive outlook on his new life in Australia and is thinking of applying for a job in DIMA's NIVA Section.



Prof. John McMillan  
Commonwealth and Immigration Ombudsman



Date