

REPORT FOR TABLING IN PARLIAMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN

Under s 486O of the Migration Act 1958

Personal identifier: 093/06

Principal facts

Personal details

1. Mr X is aged 25 and is a citizen of Albania. His parents and two sisters reside in Albania and he is in contact with them. He is married to Ms Y, an Australian citizen.

Detention history

2. Mr X travelled to Australia by plane on 1 March 2004 using a false Greek passport. The Department (DIMA) identified Mr X at the airport as an unlawful non-citizen, cancelled his visa and detained him under section 189(1) of the *Migration Act 1958* at the Maribyrnong Immigration Detention Centre (IDC). He was transferred to Baxter Immigration Detention Facility (IDF) in the same month.

Visa applications

3. Mr X entered Australia on a tourist visa, which was cancelled (March 2004); applied for and was refused a Protection Visa (PV) (March 2004); the Refugee Review Tribunal (RRT) affirmed the refusal (May 2004); applied to Federal Magistrates Court seeking judicial review of RRT decision (June 2004); application dismissed (October 2004); application for an extension of time to appeal to the Full Federal Court (FFC) (May 2005); FFC application dismissed (July 2005).
4. A s 417 submission lodged for the possible consideration by the Minister of her detention intervention powers (September 2004); submission declined (April 2005); s 417 and s 48B submissions lodged (October 2005); submissions declined and new s 417 submission lodged (December 2005); submission declined (February 2006); s 417 submission lodged (April 06) and was combined with internal s 195A DIMA detention intervention submission, sent to Minister (September 2006); combined submission is ongoing.

Current immigration status

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

Removal details

6. DIMA advised that Mr X has been uncooperative with attempts to provide documentation regarding his identity and has not participated in facilitating his removal to Albania. At interview with Ombudsman staff Mr X said that he provided DIMA with his birth certificate in 2005 and it was subsequently misplaced. He then had his family send a copy over from Albania and gave it to DIMA in early 2006. He claimed that he gave DIMA the contact details of his family several months ago. DIMA advised in October 2006 that it was satisfied that his probable identity is Mr X.
7. Mr X stated that he would cooperate further with removal attempts if released from detention on a Removal Pending Bridging Visa and that he is open to being removed to a third country if Australia is unwilling to accept him.
8. DIMA advised that Mr X's removal have been deferred pending the outcome of the Ministerial intervention request.

Ombudsman consideration

9. Two DIMA reports to the Ombudsman under s 486N dated 9 March 2006 and 14 September 2006.
10. Ombudsman staff interviewed Mr X at Baxter IDF on 15 June 2006.
11. Ombudsman staff have sighted a number of documents: a s 417 submission prepared by the Asylum Seeker Resource Centre dated 14 November 2005; two psychological summary reports from Professional Support Services (PSS), dated 29 June 2006 and 26 August 2006; a medical report by International Health Medical Services (IHMS), dated 30 August 2006; a s 417 submission prepared by his migration agent, dated 16 April 2006; and letters of support from people in the community, including Mr X's wife.

Key issues

Health and welfare

12. The Detention Centre's psychological services, PSS, advised that Mr X was seen regularly by PSS counsellors between August 2005 and August 2006 and that he presented with *'depression, insomnia, headaches, sense of hopelessness and helplessness, poor concentration, anxiety'* and was referred to an International Health Medical Service (IHMS) psychiatrist. IHMS notes that Mr X has been diagnosed with depression and Post Traumatic Stress Disorder and has been prescribed anti-depressants. At interview Mr X stated that his medication has been changed three times as it has continued to be ineffective. Mr X stated that the visiting psychiatrist suggested that he would benefit from treatment at Glenside Psychiatric Hospital in Adelaide, however he declined this option, as it would be difficult for his wife to visit him.
13. DIMA advised that in June 2006 Mr X was placed on Suicide and Self Harm (SASH) watch for one week, and during this time was observed to have stopped taking his medication and to not be sleeping well. In August 2006 he commenced a period of voluntary starvation and was placed on SASH watch for a further five days. On 13 September 2006 Mr X and another detainee carried out a protest by climbing on a roof at the Baxter IDF. They came down voluntarily on 15 September 2006 and they were placed on SASH watch for four days, pending review by the Mental Health Multi-Disciplinary Team. Mr X was subsequently seen by the visiting psychiatrist on 16 September 2006. The IHMS report notes that Mr X *'would benefit from being with his wife. In March 2006 the psychiatrist noted that detention and uncertainty over his future was contributing to his depression ... his depression will not improve unless his visa status is dealt with'*.
14. Mr X said that the situation is getting worse for him, *'it is very hard you know, they never tell you what is going to happen and you feel very depressed and stressed and very alone'*. He said that he only sleeps for a few hours a day and only eats one meal a day. He no longer goes to the gym and English classes and elects not to leave the detention facility on planned events such as shopping and bushwalking, as he finds it *'too upsetting'*. He said *'I am very depressed and I can't exist anymore to stay here'*. Ombudsman staff have been advised by Sister Z that Mr X no longer attends church services and has been spending a majority of his time in his room, and both she and Mr X's wife recently reported that he is in a very depressed state and expressed concern about his deteriorating mental state.
15. Mr X stated that he injured his knee during a game of soccer in 2005. DIMA confirmed the injury and advised that Mr X had a successful knee reconstruction operation in March 2006, and has had further postoperative surgery and specialist review. Mr X

confirmed that he has received follow-up remedial treatment, although the area is still numb, and while he can do a light jog he is unable to run on it anymore.

Other detention issues

16. Mr X has been involved in two incidents that have been reported to the South Australian Police (SAPOL). In July 2005, Mr X was involved in a disturbance in protest against the food at Baxter IDF, which he claims was poorly cooked. The DIMA report indicates that the Australian Federal Police advised on 15 February 2006 they will prepare a brief of evidence and forward it to the Commonwealth Director of Public Prosecutions for consideration. On 14 August Mr X appeared in the Port Augusta Magistrates Court to face charges arising from damage to Commonwealth property at BDF on 22 July 2005. Mr X was due to re-appear in court on 16 October 2006 but the Ombudsman was unaware of the outcome of this matter at the time of completing this report.
17. The other incident was on 28 June 2006 after Mr X received a negative decision on a Bridging Visa E application from DIMA. Mr X is reported to have damaged Commonwealth property, which also resulted in him being placed on SASH observations. This incident has been referred to SAPOL who will report the event and refer it to the Department of Public Prosecutions for adjudication.

Attitude to removal

18. Mr X stated that he does not want to return to Albania. He said a blood feud with a neighbouring family had resulted in his uncle and brother being murdered and he believed that it was too dangerous for him to return, as his life would potentially be at risk. He said that Albania is a small country and it would be impossible for him to relocate and hide, and for this reason his family do not support him returning.
19. The RRT accepted that these killings had occurred but found that this was a criminal action and not a blood feud and *'even if the dispute is a blood feud, the applicant would be in no danger ... because it is his family's turn to take revenge'*. It also found that it would be plausible for him to relocate within Albania to avoid harm. He was therefore denied protection. The RRT did accept that the Albanian police have been *'ineffective in pursuing the crimes which have been committed so far'*. The current s 417 submission from Mr X's migration agent draws attention to this risk, contending that *'the threat to Mr X's personal security resulting from the blood feud is of sufficient severity to warrant your [the Minister's] humanitarian intervention'*. It highlights Migration Series Instructions 386, noting that the Minister has the power to intervene when *'the public interest may be served through the Australian Government responding with care and compassion where an individual situation involves unique or exceptional circumstances'*.

Community support and involvement


20. Mr X married Ms Y, an Australian citizen, in November 2005. Ms X visits Mr X twice a week. Ms X wrote to the Ombudsman in February 2006, stating *'Mr X now has a supportive family, a big support network through my friends and church circle, we have a house lined up awaiting his release and he has a job waiting for him at [text removed], where we plan to live'*. The current s 417 submission notes that Mr X *'has developed substantive familial and emotional links with the [Y] family and is ready and willing to start a new life with his wife here in Australia'*. It also draws attention to several other factors: Mr X's deteriorating mental health; his marriage to an Australian citizen; and his willingness to accept a job in an Australian regional area.


Ombudsman assessment/recommendation

21. Mr X has been in immigration detention for over two years. DIMA now accepts that he is Mr X, however after prolonged efforts to obtain travel documents there does not appear to be any immediate prospect of his removal from Australia. Mr X's claims for refugee

status have been tested in the RRT and courts and he has been found not to be owed protection.

22. It is understood that the Minister is currently considering a combined s 417 and s 195A request. The Ombudsman **recommends** that the Minister reach a decision on these requests as soon as possible, but no later than the statutory period prescribed in s 486P of the Migration Act for the tabling of this report in Parliament (*viz*, within 15 sitting days of receiving the report).
23. DIMA has advised that Mr X is eligible to apply offshore for a Spouse Visa. The Ombudsman notes that although this is an option for Mr X, it may not be viable for two reasons: firstly he is likely to face an exclusion period before he can apply to live in Australia and secondly he will have a large outstanding debt to the Commonwealth for his immigration detention costs. This option may therefore impede his ability to apply for this visa and subsequently return to Australia to live with his wife.
24. The Ombudsman does not make any other recommendation at this stage about Mr X's detention. It is noted that he arrived in Australia on a false passport, that there has been ongoing difficulty between Mr X and DIMA in arranging his voluntary removal from Australia, and that there are two submissions currently being considered by the Minister in relation to his immigration status. Mr X's continuing detention is nevertheless a matter of concern. The medical evidence available to the Ombudsman indicates that detention is having an adverse impact on his mental health, that over the last several months he has been showing an increasing range of symptoms, and he has been diagnosed with depression and Post Traumatic Stress Disorder. An option that warrants consideration by the Department and Minister is for Mr X to be released on an alternative form of detention with his wife while his immigration issues are resolved. This option will be reconsidered by the Ombudsman with a view to making a firm recommendation if Mr X remains in detention and another report is prepared under s 486O of the Migration Act.


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Prof. John McMillan
Commonwealth and Immigration Ombudsman


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Date